

## CHAPTER 1. GENERAL PROVISIONS

Effective December 27, 1994  
Including Amendments Received Through  
September 1, 2022

### SUBCHAPTER 1.000 APPLICABILITY; CONSTRUCTION

#### RULE 1.001 TITLE; CITATION

These are the “Lac Vieux Desert Band of Lake Superior Chippewa Indians Tribal Court Rules of 2022”. These rules in part either affirm, amend, or replace “Lac Vieux Desert Band of Lake Superior Chippewa Indians Tribal Court Rules of 2008”. An individual rule may be referred to as “Lac Vieux Desert Court Rule-2022” and cited by the abbreviation, “LVD/2022 \_\_\_\_.” For example, this rule may be cited as “LVD/2022-1.001.”

#### RULE 1.002 EFFECTIVE DATE

These rule take effect on December 27, 1994. They govern all proceedings in actions brought on or after the date, and all further proceedings in actions then pending. The rules in this compilation shall stay in effect until amended or modified by certification of the Chief Tribal Court Judge.

#### RULE 1.003 APPLICABILITY

These rules govern practice and procedure in all courts established by the Constitution and Laws of the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

#### RULE 1.004 COMPUTATION OF TIME

Unless otherwise indicated under an individual provision, in computing a period of time prescribed or allowed by these rules, by court order, or by statute, the following rules shall apply:

(A) Beginning the day the act, event, or default occurred, with the exception of Court Orders or documents filed with the court.

(B) The date which any order of the Court or document is filed or stamp dated by the Clerk of Court.

#### 1999 Comment

LVD II/1999 1.004 is substantially the same as LVD/II 1.004 except for the added provision of “..unless otherwise indicated”.

#### RULE 1.005 PROVISION OMISSIONS

Where the Court finds that in these rules there are any kind of particular omission under any rule herein, the Court may use its discretion in establishing procedural guidelines to cure the omission if it finds that such application to any action would be feasible to work justice.

#### RULE 1.006 SCOPE OF RULES

These rules shall cover all matters coming before the Court in matters of small claims, family relations, juvenile matters, civil actions and criminal actions. Chapters of these rules have been expressly established to apply to the particular action. For the purpose of these rules a small claims action is a civil action whereby the dollar amount in dispute does not exceed \$3,500.00. For the

purpose of these rules a family relations action includes marriages and divorces and related matters. A civil action under these rules are those brought by a private party against another. Chapter 2 is established to govern the procedures of a civil action. For the purposes of these rules a criminal action is one where an action is brought by the people of the Tribe against an individual for the violation of a criminal offense. Criminal procedures are expressly covered in Chapter 3 of these rules. A Juvenile matter, for the purposes of these rules are matters involving an individual who is defined to be a minor under the laws of Lac Vieux Desert. Depending on the nature of the action, these actions are governed under Chapter 5 or 6.

**2022 Comment**

Pursuant to Administrative Order 2022-1, effective August 1, 2022, the small claims monetary limit of \$3,500.00 now replaces its 2008 counterpart which had set the claim limit at a value not to exceed \$2,500.00.

**RULE 1.007 GENERAL RULES OF CONSTRUCTION**

**(A) Gender Neutrality of Terms.** Throughout this text terms that would otherwise connote a particular gender shall be interpreted as meaning that of either gender.

**(B) Strict Construction of Terms.** If no definition of a term is given then the term is deemed to be defined in the traditional legal definition, according to Black's Law Dictionary. Terms shall not be given liber definitions thus defeating other provisions herein.

**(C) Consistency of Sections.** If possible, all sections in this court rules shall be read consistently with another, thus, one section shall not be read so that it ignores the other.

**(D) Sovereignty of the Tribe.** It is inherent throughout this text that the Lac Vieux Desert Band of Lake Superior Chippewa Indians is a Sovereign Nation. Cases or definitions from other nations or states shall not be in and of themselves binding on the interpretation of terms or sections contained here.

**1999 Comment**

This rule is entirely the same as former LVD II/1994, 3.008, and has been renumbered here to add consistency to the General Provisions.

**SUBCHAPTER 1.100 REHABILITATION FOR CANDIDACY**

**RULE 1.101 AUTHORITY; EFFECTIVE DATE AND DEFINITIONS.**

**(A) Authority and Effective Date.** Pursuant to Article VII, Section 4, Subsection (B), of the Lac Vieux Desert Tribal Constitution, these rules establish the procedure by which an otherwise disqualified Candidate of any Tribal Election may Petition the Court to seek an Order of Rehabilitation within the applicable time prescribed under these rules. This Subchapter of the Lac Vieux Desert Tribal Court Rules becomes effective November 28, 2000 and includes all subsequent amendments governing all future proceedings and actions brought on or after the date, and all further proceedings in all actions then pending.

**(B) Definitions.** When used in this Subchapter, unless the context otherwise indicates, "Rehabilitation for Candidacy" means: the Lac Vieux Desert Tribal Court's finding and order that a person is fit to be a valid Candidate after the person has otherwise been disqualified for running for an election to a public office of the Lac Vieux Desert Tribal Government pursuant solely to the provisions of Article VII, Section 4, Subsection (B) of the Lac Vieux Desert Tribal Constitution.

“Rehabilitation for Candidacy” does not mean to set aside an adjudication, as such is provided for under Subchapter 1.400 of these Rules; and it does not mean the obliteration or destruction of the court file or record.

**2000 Comment**

The provisions of Article VII, Section 4, Subsection (B) of the Lac Vieux Desert Tribal Constitution reads as follows: *Disqualification from Candidacy and Rehabilitation*: “No person shall be eligible to be a candidate for an election to the Tribal Council who has been convicted of any felony under Federal, State, or Tribal Law, unless such person has not been convicted or imprisoned for such felony within the preceding ten (10) years, or the Tribal Judiciary, in accordance with such rules as it shall establish, certifies that the person in question is rehabilitated.”

**2008 Comment**

This Rule was formerly located under Rule 1.301 of LVD/2003 and prior Court Rules.

**2022 Comment**

Subrule (A) remains substantially unchanged with the exception of the added language for the inclusion of subsequent amendments pertaining to the provisions for rehabilitation for candidacy since its promulgation in 2000.

**RULE 1.102 APPLICABLE TYPES OF CONVICTIONS AND JURISDICTIONS.**

**(A) General.** The court may, upon a finding for good cause, issue an Order of Rehabilitation thereby allowing the individual Petitioner to be a valid Candidate for the upcoming Tribal Election.

**(B) Classification of Criminal Convictions; Jurisdiction.** This Subchapter applies to only a Felony under Federal, State or Tribal Law of which a person has been convicted or imprisoned for such felony which has not been less than Eight (8) years from the time of an individual's nomination and acceptance as a Candidate of Public Office for the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

**2002 Comment**

Subrule (a) of this Rule now omits the provision of the 2001 corresponding rule which provided for the court's consideration of an Order of Rehabilitation, “after a person has been duly nominated and accepted such nomination as a candidate for Public Office.” This change is the result of adoption of the amended Election Ordinance by Tribal Council, effective January 15, 2002.

**2003 Comment**

Subrule (B) now amends the time period an individual must be free from conviction from the former provision of 7 years to now 8 years.

**2008 Comment**

This Rule was formerly located under Rule 1.302 of LVD/2003 and prior Court Rules.

**RULE 1.103 PETITION FOR REHABILITATION; TIME; NOTICE.**

**(A) Time for filing Petition.**

(1) An individual seeking an Order of Rehabilitation for the purposes of qualification for Candidacy may file with the Court a Petition for Rehabilitation, in accordance with the applicable Election Ordinance requirements in place governing that particular election.

(2) A person seeking an Order of Rehabilitation for the purposes of qualification for Candidacy is barred from filing a Petition at any time after the acceptance of said Nomination.

**(B) Contents of the Petition.**

(1) Petition; Generally. A person convicted of not more than One (1) felonious offense under Federal, State or Tribal Law, may file a petition with the Lac Vieux Desert Tribal Court seeking an Order of Rehabilitation within the applicable time provisions of this Rule. An Order Certifying Rehabilitation, shall only be valid for the election for which an individual is a Candidate for.

(2) Contents of the Petition. The Petition for Certification of Rehabilitation is invalid unless it contains the following information, and is signed under oath by the person seeking rehabilitation:

- (a) The full name, date of birth, and address of the Petitioner.
- (b) The reason(s) for the request for Certification of Rehabilitation;
- (c) The specific title of conviction; date of conviction; and jurisdiction which rendered the felonious conviction for which the Petition is seeking Certification of Rehabilitation;
- (d) If applicable, a list of all other criminal convictions which have been adjudicated within the past ten (10) years;
- (e) A list of the address(s) the Petitioner has lived at for the past ten (10) years;
- (f) A list of at least two character references who know the Petitioner and are not related to the Petitioner by the first degree, who will testify in court on the Petitioner's behalf;
- (g) Documentation or some other proof by the Petitioner that the Petitioner has had no other felony convictions in the previous Seven (7) to Ten (10) years.

**(C) Filing Fee; Notice.** The court shall not accept for filing any Petition for Certification of Rehabilitation until a filing fee in the amount of \$25.00 is paid to the court by the Petitioner. Upon the filing of a duly executed Petition for Certification of Rehabilitation, the Clerk of Courts shall cause to have served a copy of the same upon the Chairperson of the Lac Vieux Desert Election Board.

**2001 Comment**

The requirement that the Petition for Rehabilitation be accompanied by a \$25.00 filing fee has been inserted in Subrule (C) of this rule as a result of this filing being incorporated into the 2001 Tribal Court Fee Schedule.

**2002 Comment**

Due to the January 15, 2002 amended provision of Section 4.5 of the Lac Vieux Desert Election Ordinance, Subrule (A)(1) of Rule 1.3003 now omits the former provision that required the filing of Petition for Rehabilitation to be filed within 21 days after formally accepting the Nomination, or 7 days after notification that the person is ineligible.

Paragraph (2) of Subrule (A) of this Rule now omits the 2001 corresponding provision which provided that a person seeking rehabilitation, *"(is barred from filing a Petition after 7 days from which the individual was notified that he or she is not a qualified candidate....."*

Subrule (C) of this Rule now omits the corresponding 2001 provision which provided service of the copy of Petition for Certification of Rehabilitation by the court to the Chairperson of the Lac Vieux Desert Election Board.

**2008 Comment**

This Rule was formerly located under Rule 1.303 of LVD/2003 and prior Court Rules.

### **RULE 1.104 CRITERIA FOR CONSIDERATION.**

**(A) Victimless Crime.** The court shall only consider entering an Order for Rehabilitation where the relevant felonious conviction was for a victimless crime which shall be not earlier than the preceding Eight (8) year period. For the purposes of this provision, "victimless crime" shall be construed to mean a crime whereby there has been no identifiable individual victim.

**(B) Satisfaction of Sentence Imposed.** In addition to the requirement of Subrule (A) of this Rule, the court shall only consider entering an Order for Rehabilitation where all terms of probation, restitution, fines and court costs, as well as any other sentence imposed as a result of the conviction of said victimless felonious crime has been satisfied in full by the Petitioner. The Petitioner shall have the burden of demonstrating to the Court that said terms and conditions of the sentence imposed has been satisfied in full.

**2003 Comment**

The former provisions of Subrule (A) requiring an individual to be free from a felonious conviction "not earlier than 7 years" has now been amended to "not earlier than 8 years".

**2008 Comment**

This Rule was formerly located under Rule 1.304 of LVD/2003 and all prior Court Rules.

**RULE 1.105 ENTRY OF ORDER; EFFECT.**

**(A) Generally.** If all general requirements and criteria are met and the Court determines that the circumstances and behavior of the Petitioner from the date of the Petitioner's conviction to the filing of the Petition warrant Certification of Rehabilitation, and that the Certification of Rehabilitation is consistent with the public welfare, the court may enter an Order Certifying Rehabilitation. A Certification of Rehabilitation under this Subchapter is a privilege and is conditional and is not a right. The entry of an Order either Certifying Rehabilitation or Denying Rehabilitation is not appealable to any court or elsewhere.

**(B) Effect of Order of Certification of Rehabilitation.** Upon the entry of an Order Certifying Rehabilitation, the Petitioner, for the purposes of the applicable provisions governing Tribal Elections under the Tribal Constitution and all other election laws and ordinances, shall be considered to be eligible as a Candidate for the Tribal Election then following. An Order Certifying Rehabilitation shall only be valid for that Election in which the Petitioner has been nominated, and duly accepted such nomination, for an elected public position with the Lac Vieux Desert Band of Lake Superior Chippewa Indians. An Order Certifying Rehabilitation does not set aside any particular adjudication as such is provided for under Subchapter 1.200 of these Court Rules.

**2001 Comment**

The provision contained under Subrule (A) of this Rule providing the denial of an appeal from either the entry of an Order Certifying Rehabilitation or the denial of an entry of an Order Certifying Rehabilitation is new.

**2008 Comment**

This Rule was formerly located under Rule 1.305 of LVD/2003 and all prior Court Rules.

**SUBCHAPTER 1.200 TRIBAL COURT RECORDS; SETTING ASIDE ADJUDICATIONS****RULE 1.201 EFFECTIVE DATE AND DEFINITIONS.**

**(A) Effective Date.** Pursuant to Lac Vieux Desert Tribal Resolution Number 00-12, this Subchapter of the Lac Vieux Desert Tribal Court Rules becomes effective on March 7, 2000 and governs all future proceedings and actions brought on or after the date, and all further proceedings in all actions then pending.

**(B) Scope.** These rules apply to the court's authority for setting aside Lac Vieux Desert Tribal Court Orders, and do not apply to the setting aside of State, Federal or Tribal Court Orders from other jurisdictions.

**(C) Definitions.** When used in this subchapter, unless the context otherwise indicates, "Setting Aside Tribal Court Adjudications" means: To negate or rescind, reverse, cancel, annul, or revoke a Tribal Court Order or Judgment, as a matter of public record, a particular Court File or Record. It does not mean the obliteration or destruction of the Court File or Record.

**2000 Comment**

The term "Setting Aside" as opposed to "Expungement" of record of conviction is inserted herein so that the convictable crime, as a classification, can still be used for the sake of Tribal Court statistics.

**2008 Comment**

This Rule was formerly located under Rule 1.401 of LVD/2003 and all prior Court Rules.

**2022 Comment**

Subrule (B) is new and has been added to clarify the court's scope of authority to limit the setting aside of the Orders of the Lac Vieux Desert Tribal Court and not Orders from other Tribal Court Jurisdiction, or other State or Federal Courts.

Subrule (C) remains unchanged and is renumbered from its former Subrule (B) of LVD/2008 and all prior court rules.

### **RULE 1.202 TRIBAL COURT RULES AND RECORDS**

**(A) General.** The court may at any time for good cause set aside its records consisting of an Order or Judgment pertaining to an offense by or against a minor or an adult over which it has jurisdiction other than an adjudicated offense described under Subrule (B) and (C) of this Rule.

**(B) Juvenile Delinquency Files and Records.** The court must set aside the diversion record of a juvenile after the juvenile becomes 18 years of age, subject to the following:

(1) The Court may not set aside an adjudication of an offense which, if committed by an adult, would constitute a Felony, before the period of Ten (10) years after the conviction of said Felony.

(2) The Court may not set aside an adjudication of an offense which, if committed by an adult, would constitute a criminal traffic violation, before the period of Ten (10) years after the conviction of said Felony.

**(C) Adult Criminal Files and Records.** The court may not set aside an adjudication of an offense by an adult which constitutes a felony, misdemeanor or any offense by an adult which is a criminal traffic violation, before the expiration of the following periods of time:

(1) Felonies. The court may not set aside an adjudication of an offense by an adult which constitutes a Felony, before the period of Ten (10) years after the conviction of said Felony;

(2) Misdemeanors. The court may not set aside an adjudication of an offense by an adult which constitutes a Misdemeanor, before the period of Five (5) years after the conviction of said Misdemeanor.

#### **2000 Comment**

The “good cause” provision for the standard of review contained in Subrule (A) of this Rule is consistent with the provision in Michigan Court 5.625€, which governs the expungement of juvenile records.

#### **2008 Comment**

This rule was formerly located under Rule 1.402 of LVD/2003 and all other prior Court Rules.

### **RULE 1.203 PETITION TO SET ASIDE TRIBAL COURT CONVICTION; FILING FEE; CONTENTS**

**(A) Petition; Generally.** Except as provided under 1.202 and the applicable provisions of this rule, a person convicted of not more than One (1) offense classified as a Felony and not more than One (1) offense classified as a misdemeanor, may file a petition with the convicting division of the Tribal Court for the entry of an order setting aside the conviction.

**(B) Filing Fee; Contents of Petition.** The court shall not accept for filing any Petition to Set Aside Conviction until a filing fee in the amount of \$25.00 is paid to the court by the Petitioner. The Petition to set aside a conviction is invalid unless it contains the following information, and is signed under oath by the person whose conviction is to be set aside:

(1) The full name and current address of the petitioner;

(2) A record of the conviction to be set aside;

(3) A statement that the petitioner has not been convicted of an offense other than the one sought to be set aside as a result of the petition;

(4) A statement as to whether the petitioner has previously filed a petition to set aside the particular conviction or any other conviction and, if so, the disposition of the petition;

(5) A statement as to whether the petitioner has any other criminal charge(s) pending against him or her in any other Federal, State or Tribal Court;

(6) A consent to the use of the nonpublic record of that conviction which has been set aside for the purposes of statistical and/or historical court data.

**2000 Comment**

Paragraph Numbered 6 of Subrule (B) of this rule provides for the statistical/historical classification of the particular crime, even after any conviction which has been set aside. The purpose of this provision is to prevent inconsistencies of trial court statistical data.

**2001 Comment**

The requirement that the Petition to Set Aside Conviction be accompanied by a \$25.00 filing fee has been inserted under Subrule (B) of this Rule as a result of this filing fee being incorporated into the 2001 Court Fee Schedule.

**2008 Comment**

This Rule was formerly located under Rule 1.403 of LVD/1999 and all prior Court Rules.

**RULE 1.204 NOTIFICATION TO TRIBAL PROSECUTOR AND/OR VICTIM OF ASSAULTIVE CRIME AND/OR SERIOUS MISDEMEANOR.**

A copy of the Petition shall be served upon the Tribal Prosecutor, and an opportunity shall be given to the Tribal Prosecutor to contest the Petition. If the conviction was for an assaultive crime or a serious misdemeanor, the Tribal Prosecutor shall notify the victim of the assaultive crime or serious misdemeanor associated with the adjudication sought to be set aside. Notice shall be by first-class mail to the victim's last known address. The victim has a right to appear at any proceeding under this Subchapter concerning that conviction and to make a written or oral statement to the court. Upon the filing of a Petition to Set Aside a Conviction, the Court may require further individuals to take proofs and/or file affidavits as the court considers proper.

**2000 Comment**

The provision of this rule concerning the notification of the victim of an assaultive crime corresponds with, and does not exceed, any applicable provisions as contained in the Victims Crime Act, 780.882a and 780.827a of Michigan Compiled Laws.

**2008 Comment**

This Rule was formerly located under Rule 1.404 of LVD/2003 and all prior Court Rules.

**RULE 1.205 ENTRY OF ORDER; EFFECT.**

**(A) Generally.** If the court determines that the circumstances and behavior of the Petitioner from the date of the Petitioner's conviction to the filing of the Petition warrants setting aside the conviction and that setting aside the conviction is consistent with the public welfare, the court may enter an order setting aside the conviction. The setting aside of the conviction under this Subchapter is not a privilege and is conditional and is not a right. An Order Setting Aside a Conviction or an Order Denying the Setting Aside of a Conviction is not appealable to any Court or elsewhere.

**(B) Effect of Order Setting Aside Conviction.** Upon the entry of an Order Setting Aside a Conviction, the Petitioner, for purposes of the law, shall be considered not to have been previously convicted, except as provided as follows:

(1) The Petitioner is not entitled to the remission of any fine, costs, or other money paid as a consequence of a conviction which has been set aside;

(2) An Order Setting Aside a Conviction does not affect the right of the victim of a crime to prosecute or defend a civil action for damages.

**2000 Comment**

Subrule (A) of this rule is consistent with the “good cause” standard of review as contained under Subrule (A) of Rule 1.402 of this Subchapter.

**2001 Comment**

The provision contained within Subrule (A) barring an appeal from a decision Setting Aside a Conviction or Denying the Setting Aside a Conviction is new, and has been adopted by the Court under these 2001 Rules.

**2008 Comment**

This Rule was formerly located under Rule 1.405 of LVD/2003 and all prior Court Rules.

**RULE 1.206 ENTRY OF ORDER; NONPUBLIC RECORD; DISCLOSURE.**

**(A)** Upon the entry of an order pursuant to Rule 1.205, the Court shall send a copy of the order to the arresting agency and the Tribal Prosecutor. The Tribal Clerk of Courts shall deposit within the permanent record of said offense containing the relevant conviction the Order Setting Aside said conviction.

**(B)** The conviction which has been set aside shall be considered a nonpublic record. This nonpublic record shall be made available only to another court of competent jurisdiction, an agency of the judicial branch of tribal government, the tribal police department, the tribal prosecutor, or the tribal chairman upon request and only for the following purposes:

(1) To show that a person who has filed a petition to set aside a conviction has previously had a conviction to set aside a conviction pursuant to the provisions of this Subchapter;

(2) The court’s discretion in determining the sentence to be imposed upon a conviction for a subsequent offense that is punishable as a felony or misdemeanor or an offense which is a criminal traffic violation;

(3) Consideration by the Tribal Police if a person whose conviction has been set aside applies for employment with the law enforcement agency;

(4) Consideration by the Tribal Chairman and the Tribal Council in appointing a prospective person to any board or committee that the council may appoint from time to time.

(5) Notwithstanding the provisions of Subchapter 1.100, the determination of eligibility for candidacy of the Lac Vieux Desert Election Board.

**2008 Comment**

This Rule was formerly located under Rule 1.406 of LVD/2003 and all prior Court Rules.

**2022 Comment**

Paragraph (5) of Subrule (B) is new and has been added for consistency as to the entities entitled to the disclosure of the nonpublic record setting aside an associated conviction.

**RULE 1.207 MAXIMUM NUMBER OF CONVICTIONS SET ASIDE.**

Except in matters involving the setting aside of Juvenile delinquency files and records as provided for under Subrule (B) of Rule 1.202, a person may be eligible to have One (1) adult criminal felony conviction set aside, and One (1) adult criminal misdemeanor conviction set aside under the



provisions of this Subchapter.

**2000 Comment**

The provision inserted here excepting Juvenile delinquency files expounds upon the requirement as contained under Subrule (B) of Rule 1.402 that the court must set aside the diversion Juvenile record of misdemeanor and other civil infractions, with the exception of felonious criminal traffic violations, once the juvenile has turned 18 years of age.

**2008 Comment**

This Rule was formerly located under Rule 1.407 of LVD/2003 and all prior Court Rules.

## **SUBCHAPTER 1.300 PERSONAL PROTECTION ORDERS**

### **RULE 1.301 APPLICABILITY; EFFECTIVE DATE AND DEFINITIONS.**

**(A) Applicability and Effective Date.** The rules in this Subchapter become effective January 1, 2001, and govern practice and procedure related to personal protection orders regarding adults and minors, except where otherwise provided under the specific provisions contained in applicable chapters of these rules.

**(B) Definitions.** When used in this subchapter, unless the context otherwise indicates:

(1) “Personal Protection Order”, is synonymous with the term “Restraining Order”. This term refers to a Court Order obtained by independent action for the purpose of restraining or enjoining another individual from physical or otherwise verbal contact with another.

(2) “Petition” refers to a pleading for commencing an independent action for personal protection;

(3) “Petitioner” refers to the individual seeking a Personal Protection Order;

(4) “Respondent” refers to the party to be restrained;

(5) “Existing Action” means an action in this court or any other court in which both the petitioner and the respondent are parties; existing actions include, but are not limited to, pending and completed domestic relations actions, criminal actions, other actions for personal protection orders.

**2008 Comment**

This Rule was formerly located under Rule 1.501 of LVD/2003 Court Rules and all prior Court Rules.

### **RULE 1.302 COMMENCING A PERSONAL PROTECTION PROCEEDING.**

**(A) Petition in General.** The petition must:

(1) Be in writing and list the Petitioner and Respondent’s names and addresses;

(2) State with particularity the facts on which it is based;

(3) State the relief sought and the conduct to be restrained;

(4) State whether an ex parte order is being sought; and,

(5) Be signed by the Petitioner.

**(B) Other Pending Actions; Order, Judgments.** The Petition must specify whether there are any other pending actions in this or any other court, or orders or judgments already entered by this or any other court affecting the parties, including the name of the court and case number, if known.

**(C) Minor Person.** Where a personal protection proceeding involves minors as parties, either or both the Petitioner or the Respondent, the applicable minor(s) parents, or legal guardians, must also be named in the action and act on behalf of the minor.

**(D) Request for Ex Parte Order.** Except as provided for under Rule 1.303 of these rules, if the Petition requests an ex-parte order, the petition must set forth specific facts showing that immediate and irreparable injury, loss, or damage will result to the petitioner from the delay required to effect notice or from the risk that notice will itself precipitate adverse action before an order can be issued.

**2003 Comment**

This rule remains substantially the same as its 2001 counterpart with the exception that the former provision provided for, under Subrule (A), a \$25.00 filing fee. This change is effective January 1, 2003.

**2008 Comment**

This Rule was formerly located under Rule 1.502 of LVD/2003 and all prior Court Rules.

**RULE 1.303 FOREIGN COURT PERSONAL PROTECTION ORDERS.**

Consistent with the Violence Against Womens Act (18USC 2265)) as well as all other orders and judicial acts concerning enforcement of Personal Protection Orders as entered by a United States Federal Court, State Court, and other Tribal Courts, shall be entered and enforced by the Lac Vieux Desert Tribal Court, ex-parte, provided the person requesting enforcement meets the applicable criteria for registration of the same as provided for under Chapter 10 of these rules. There are no filing fees associated with the filing of a foreign court personal protection order.

**2002 Comment**

Subrule (B) is new. It has been adopted to add consistency to the requirement of mutual personal protection orders engendered under Rule 1.505(B) of these rules.

**2003 Comment**

The rule in its present form rescinds in whole the former provisions of Subrule (B) of its 2001 counterpart. This Rule consists of former Subrule (A) with the added language specifying for enforcement of those Personal Protection Orders which fall within the perview of the Violence Against Womens Act.

**2008 Comment**

This Rule was formerly located under Rule 1.503 of LVD/2003 and all prior Court Rules.

**RULE 1.304 ISSUANCE OF PERSONAL PROTECTION ORDERS.**

**(A) Ex Parte Orders.**

(1) The court must rule on a request for an ex parte personal protection order within 72 hours of the filing of the petition.

(2) If it clearly appears from specific facts shown by verified complaint, written petition, or affidavit that the petitioner entitled to relief sought, an ex parte order shall be granted if immediate

and irreparable injury, loss, or damage will result from the delay required to effectuate notice or that the notice will itself precipitate adverse action before a personal protection order can be issued.

(3) If the court refuses to grant an ex parte order, it shall state the reasons in writing and advise the petitioner of the right to request a hearing. Said request for hearing must be made in writing. If the petitioner does not request a hearing within 21 days of entry of the order, the order denying the petition is final. The court shall not be required to give such notice if petitioner's claims are sufficiently without merit that the action should be dismissed without a hearing.

**(B) Hearings.**

(1) Except in matters of registrations of foreign court Personal Protection Orders, the court shall schedule a hearing as soon as possible in the following instances, unless it determines after interviewing the petitioner that the claims are sufficiently without merit that the action should be dismissed without a hearing:

- (a) The Petition does not indicate a request for an ex parte order; or
- (b) The court denies an ex parte order and the petitioner subsequently requests a hearing.

(2) The court shall cause to have served notice of hearing upon the respondent along with a copy of the petition. Service up to One (1) day before the scheduled date of the hearing is deemed sufficient notice to the respondent.

(3) The petitioner must attend the hearing. If the petitioner fails to attend the hearing, the court may either adjourn and reschedule the hearing or dismiss the petition.

(4) If the respondent fails to appear at a hearing on the petition and the court determines that diligent attempts to serve the respondent have been made, whether the respondent was served or not, the order may be entered without further notice to the respondent if the court determines that the petitioner is entitled to relief.

(5) At the conclusion of the hearing the court shall state the reasons for granting or denying a personal protection order on the record and enter an appropriate order. In addition, the court shall state the reasons for denying a personal protection order in writing.

**2008 Comment**

This Rule was formerly located under Rule 1.504 of LVD/2003 and all prior Court Rules.

**RULE 1.305 STANDARDS FOR ISSUANCE OF PERSONAL PROTECTION ORDERS.**

*[Adopted, effective, July 1, 2021]*

The following factors are to be considered by the court in deciding whether or not to issue a personal protection order. The Court shall not grant relief under this subchapter unless the petition alleges facts that demonstrate that the respondent has perpetrated or threatened one or more of the acts listed below. The court may restrain or enjoin an individual against whom a protection order is sought. In any case within (1) or (2) below, the court may consider the frequency or number of contacts between the parties, the activity involved, and/or the threatened harm or improper conduct at hand, when issuing or refusing to issue a personal protection order.

**(A) Domestic Cases.** In Domestic Cases the court may restrain or enjoin a spouse, a former spouse, or an individual with whom he or she has had a child in common, an individual with whom

he or she has or has had a dating relationship, or an individual residing or having resided in the same household as the petitioner, from One (1) or more of the following:

- (1) Entering on premises.
- (2) Assaulting, attacking, beating, molesting, or wounding a named individual.
- (3) Threatening to kill or physically injure a named individual.
- (4) Removing minor children from the individual having legal custody of the children, except as otherwise authorized by a custody or parenting time order issued by a court of competent jurisdiction.
- (5) Purchasing or possessing a firearm.
- (6) Interfering with petitioner's efforts to remove petitioner's children or personal property from the premises that are solely owned or leased by the individual to be restrained or enjoined.
- (7) Interfering with petitioner at petitioner's place of employment or education or engaging in conduct that impairs petitioner's employment or educational relationship or environment.
- (8) If the petitioner is a minor who has been the victim of sexual assault by the respondent and if the petitioner is enrolled in a public or nonpublic school that operates any of grades Kindergarten through Twelfth Grade, attending school in the same building as the petitioner.
- (9) Having access to information in records concerning a minor child of both petitioner and respondent that will inform respondent regarding the address or telephone number of petitioner and petitioner's minor child or about petitioner's employment address.
- (10) Engaging in conduct that is prohibited under the Lac Vieux Desert Tribal penal or criminal codes, or Michigan Penal Code.
- (11) Any of the following with the intent to cause the petitioner mental distress or to exert control over the petitioner with respect to an animal in which the petitioner has an ownership interest:
  - (a) Injuring, killing, torturing, neglecting, or threatening to injure, kill, torture, or neglect the animal.
  - (b) Removing the animal from the petitioner's possession.
  - (c) Retaining or obtaining possession of the animal.
- (12) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence, harm or sexual assault, or other improper conduct.

**(B) Non-domestic Cases.** The may restrain or enjoin a person from one or more of the following:

- (1) Threatening to sexually assault, kill, or physically injure the petitioner or a named individual.

- (2) Entering onto a premises.
- (3) Purchasing or possessing a firearm.
- (4) Interfering with the petitioner's rightful efforts to remove petitioner's children or personal property from premises owned or leased by the individual to be restrained or enjoined.
- (5) Interfering with the petitioner at the petitioner's place of employment or education or engaging in conduct that impairs the petitioner's employment or educational relationship or environment.
- (6) Following or appearing within the sight of, or otherwise stalking of the petitioner.
- (7) Approaching or confronting the petitioner in a public place or on private property.
- (8) Appearing at the petitioner's workplace or residence.
- (9) Entering onto or remaining on property owned, leased, or occupied by the petitioner.
- (10) Contacting the petitioner by telephone.
- (11) If the petitioner is a minor who is enrolled in a public or nonpublic school that operates any grades Kindergarten through Twelfth Grade, attending school in the same building as the petitioner.
- (12) Sending mail or electronic communications to the petitioner.
- (13) Placing an object on, or delivering an object to, property owned, leased, or occupied by the petitioner.
- (14) Engaging in conduct that is prohibited under Lac Vieux Desert Tribal Penal or Criminal Codes, or Michigan Penal Code.
- (15) Any other specific act or conduct that imposes upon or interferes with personal liberty or that causes a reasonable apprehension of violence, harm or sexual assault, or other improper conduct.

**2022 Comment**

Rule 1.305 "Standards for Issuance of Personal Protection Orders" is new and effective July 1, 2021, pursuant to Administrative Order 2021-1.

**RULE 1.306 ORDERS.**

**(A) Form and Scope of Order.** An order granting a personal protection order must include the following:

- (1) A statement that the personal protection order has been entered, listing the type or types of conduct enjoined.

(2) A statement that the personal protection order is effective when signed by the judge and is immediately enforceable.

(3) A statement that violation of the personal protection order will subject the individual restrained or enjoined to immediate arrest and the civil and criminal contempt powers of the court, and that if found guilty of criminal contempt, he or she shall be imprisoned for not more than 90 days and/or may be fined up to \$500.00, and/or banished from the lands of Lac Vieux Desert.

(4) If other than the general 1 year expiration date as provided for under Rule 1.307 of this Chapter, an alternative expiration date stated clearly on the face of the order.

(5) For ex parte orders, including those orders entered enforcing a foreign court restraining order, a statement that the individual restrained or enjoined may file a motion to modify or rescind the personal protection order and request a hearing.

**(B) Mutual Personal Protection Order.** Except for Personal Protection Orders resulting from Domestic matters, civil or criminal in nature, a personal protection order issued by the Lac Vieux Desert Tribal Court may be made mutual in nature, thereby restraining both the Petitioner and Respondent of a certain type or types of conduct enjoined.

**2003 Comment**

This Rule formerly was broken down into two subrules. Former Subrule (B) *Mutual Personal Protection* is now rescinded. Subrules (A) through (E) as they presently appear were formerly numerated as Paragraphs (1) through (5) of Subrule (A). Subrule (D) in its present form [formerly (A)(4)] is now supplemented with reference to the general 1 year expiration date as provided for under the new provisions of Rule 1.507.

**2008 Comment**

This Rule was formerly located under Rule 1.505 of LVD/2003 and all prior Court Rules.  
Effective January 7, 2008, the 2001 rule concerning Mutual Personal Protection has been reinstated. The rule in its present form now provides for single party personal protection orders in domestic matters, providing further for mutual orders in all other matters.

**2022 Comment**

Rule 1.306 was formerly located under Rule 1.305 of LVD/2008 and all prior Court Rules.  
Subrule (B) now supplants the former provision of “shall” with “may” concerning the issuance of mutual personal protection orders.

**RULE 1.307 MODIFICATION OR RESCISSION OF ORDER.**

**(A) Time for Filing and Service.** Either party may file a motion to modify or rescind a personal protection order and request a hearing for good cause at any time after the personal protection order is issued.

**(B) Hearing on the Motion.** The court must schedule and hold a hearing on a motion to modify or rescind a personal protection order.

**2008 Comment**

This rule was formerly located under Rule 1.506 of LVD/2003 and all prior Court Rules.

**2022 Comment**

This rule was formerly located under Rule 1.306 of LVD/2008 and all prior Court Rules.  
Subrule (A) eliminates the language pertaining to an extension and the setting of a new expiration date.  
Subrule (B) now eliminates the language of its 2008 counterpart which had provided that both the Petitioner and Respondent agree to the entry of the modification or rescission of a Personal Protection Order.

**RULE 1.308 EXTENSION OF PERSONAL PROTECTION ORDER**

**(A) Generally.** Either party may file with the court a motion to extend a personal protection order. A motion to extend the expiration of the Personal Protection Order must be filed at least 21 days before the expiration of the inceptive order.

**(B) Effect.** A motion to extend a Personal Protection Order so granted, shall be effective for a period of One (1) year from the expiration date of the inceptive Personal Protection Order.

**2022 Comment**

This Rule is new and adopted effective July 1, 2021 in conjunction with Administrative Order 2021-1.

**RULE 1.309 EXPIRATION OF PERSONAL PROTECTION ORDER**

All Personal Protection Orders, with the exception of those Foreign Court Personal Protection Orders so honored by the Courts of Lac Vieux Desert, issued in accordance with this Chapter, shall expire 1 year from the date of entry of the Order.

**2002 Comment**

Rule 1.507 is new. It provides a generic definitive time period for the expiration of Personal Protection Orders in instances where a deliberate time period for the life of a personal protection order is not so stated.

**2008 Comment**

This Rule was formerly located under Rule 1.507 of LVD/2003 and all prior Court Rules.

**2022 Comment**

This Rule was formerly located under Rule 1.307 of LVD/2008 and all prior Court Rules.

The language contained in the LVD/2008 counterpart of this rule, "Unless otherwise stated by means provided for under Rule 1.305 (B)(4) or Rule 1.306" has now been eliminated.

**SUBCHAPTER 1.400 CHANGE OF NAME PROCEEDINGS****RULE 1.401 APPLICABILITY AND EFFECTIVE DATE.**

The rules in this Subchapter become effective February 1, 2001 and govern practice and procedure relating to changes of name of adults and minors who are enrolled members, or eligible for enrollment as members of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, and their spouses, and/or other individuals who are either enrolled or eligible for enrollment with another Federally recognized Indian Tribe of the United States of America.

**2008 Comment**

This Rule was formerly located under Rule 1.601 of LVD/2003 and all prior Court Rules.

**RULE 1.402 COMMENCEMENT OF CHANGE OF NAME PROCEEDINGS.**

**(A) Filing Fee.** A proceeding to change name is commenced by filed a petition with the court and depositing with the clerk of courts a filing fee in the amount of \$100.00.

**(B) Contents of Petition.** At a minimum, the Petition to Change Name, must contain the following:

(1) The present name, address, date of birth, and social security number of the individual for whom the change of name is sought;

(2) The proposed name;

(3) A statement identifying the particular reasons for the request of the change of name;

(4) The signature of the Petitioner.

**2008 Comment**

This Rule was formerly located under Rule 1.602 of LVD/2003 and all prior Court Rules.

**2022 Comment**

Pursuant to Administrative Order 2022-1, the current \$100.00 filing fee supplants the former \$75.00 filing fee which replaced the \$45.00 filing fee provision contained under Rule 1.402 of LVD/2008.

**RULE 1.403 PUBLISHED NOTICE; CONTENTS.**

Upon receipt of the completed petition and proper filing fee, the clerk of courts shall have caused to be published notice of a proceeding to change name. The published notice shall be published one time and contain the following information: name of the petitioner; the current name if the subject to the petition; the proposed name, and a statement that objections to the change of name may be filed with Tribal Court by a definite date.

**2008 Comment**

This Rule was formerly located under Rule 1.603 of LVD/2003 and all prior Court Rules.

**2022 Comment**

Pursuant to Court Administrative Order 2022-5, effective, August 19, 2022, the number of times of published notice has changed from four times to one time.

**RULE 1.404 CHANGE OF NAME OF MINORS.**

**(A) Filing of the Petition.** A petition for a change of name on behalf of a minor must be signed and otherwise executed by that minor's parent or legal guardian, and remit the required \$25.00 filing fee. A change of name for a minor need not be published as otherwise required under Rule 1.403, except in instances where the address is unknown as to those entitle to notice under this Rule.

**(B) Consent of Parties or Non-custodial Parent.** In all change of name proceedings involving children under the age of 18 years of age, the consent of both biological parents, regardless of whether one is the non-custodial parent is required, except in matters where the court determines that the parental rights of one or both parents have been terminated.

**(C) Notice to Non-custodial Parent.** Service on a non-custodial parent of a minor who is subject to a change of name shall be made in the following manner:

(1) Address Known: If the non-custodial parent's address or whereabouts is known, that parent shall be served with a copy of the petition and notice of hearing. For the purposes of this provision, service may be made personally or by certified mail, return receipt requested.

(2) Address Unknown: If the non-custodial parent's address or whereabouts is not known and cannot be ascertained after diligent inquiry, the clerk of courts shall have caused to be published notice of a proceeding to change name involving said minor. A notice published under this subrule shall contain the information required under Rule 1.403 and also contain the name of the non-custodial parent whose address cannot be ascertained.

**(D) Consultation With Minor; Presumption.** For all children 8 years of age and older, consultation concerning a preference on change of name is required. A child 7 years of age and under are presumed not of sufficient age to be consulted concerning a preference on change of name.

**2008 Comment**

This Rule was formerly located under Rule 1.405 of LVD/2003 and all former Rules.



**2022 Comment**

As such pertains to change of name of minors, Subrule (A) now contains the language, "...and remit the required \$25.00 filing fee", pursuant to amended filing fee schedule of Administrative Order 2022-1, effective August 1, 2022.

**RULE 1.405 HEARING ON NAME CHANGE PETITION.**

**(A) Generally.** Within 90 days of the filing of a Petition to Change Name, the court shall schedule a hearing date upon the Petition. The purpose of this hearing shall be to either grant or deny the Petition before the Court.

**(B) Hearing.** The Petitioner, and, if a child being 8 years or older for whose change of name is sought, the court shall require said child to attend the hearing on name change petition. In the event the Petitioner does not appear, and/or the child, as the case may be, the court may either dismiss the petition or reschedule the hearing to another date and time. At the hearing, at a minimum, the court shall ascertain the following from the Petitioner:

(1) Ascertain on the record, from the Petitioner the name, address, and age of the individual for whom the change of name is sought;

(2) Whether the individual for whom the change of name is sought is either an enrolled member of eligible for enrollment as members of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, and/or is a spouse of such; or, whether the individual resides within the boundaries of Lac Vieux Desert and is either enrolled or eligible to for enrollment with another Federally recognized Indian Tribe of the United States of America;

(3) If the individual for whom the change of name is sought is 8 years of age or older, the court shall question the minor concerning a preference on change of name.

(4) Whether the name change is for fraudulent or evil purposes.

(5) Whether there are any creditors that might be deceived by the name change.

**2008 Comment**

This Rule was formerly located under Rule 1.605 of LVD/2003 and prior Court Rules.

**2022 Comment**

Consistent with Rule 1.404(D) "Consultation with Minor", Subrule (B) of Rule 1.405 now requires that a child 8 years of age or older, attend the change of name hearing.

**RULE 1.406 FILING OF ORDER CHANGING NAME.**

**(A)** If the court finds cause to grant the Order changing name, the Court shall prepare a written Order identifying the former name and changed name of the individual for whom the change of name is sought. If the court finds the requisites of name change have not been met, the court shall issue an order denying said petition.

**(B)** It shall not be the responsibility of the court to record or file the Order Changing name with any County, State or Tribal Government other the filing of a true and correct copy of the Order with the Lac Vieux Desert Tribal Court. Should an individual for whom a change of name was ordered desire that the Order Changing Name be filed and/or recorded in another jurisdiction, certified copies of the same may be obtained from the Clerk of Tribal Courts for a fee as time to time set by

the court.

**2008 Comment**

This Rule was formerly located under Rule 1.606 of LVD/2003 and prior Court Rules.

## **SUBCHAPTER 1.500 ADMISSION TO PRACTICE BEFORE THE TRIBAL COURT**

### **RULE 1.501 PURPOSE; EFFECTIVE DATE AND DEFINITIONS.**

**(A) Effective Date.** The rules in this Subchapter become effective February 1, 2001 and govern the practice and procedure related to the admission to practice before this court, except where otherwise provided for under the specific provisions contained in applicable chapters of these rules.

**(B) Purpose.** The purpose of this Subchapter is to provide standards relating to the admission to practice before this court. The Court has a legitimate interest in protecting prospective parties and in the quality of justice within the Tribal System. Consequently, the court, by these rules, imposes requirements relative to these interests on anyone seeking to represent clients/parties before the Tribal Court.

**(C) Definitions.** When used throughout this Subchapter, unless the context otherwise indicates:

(1) “Attorney” means any individual who is a current member of the State Bar of Michigan or some other State. The terms “attorney” is synonymous with the term “Lawyer”. Further, a lawyer must be admitted to practice before this court pursuant to the applicable provisions herein.

(2) “Court” means any and all courts of the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

(3) “Lawyer” means an individual who is a current member of the State Bar of Michigan or some other State. The term “lawyer” is synonymous with the term “attorney”.

(4) “Lay Advocate” means a person who is a non-lawyer and who has been qualified by the court to serve as an Advocate on behalf of a party.

**2001 Comment**

The effective date of this Rule applies only to actions brought on or after February 1, 2001. This Rule, and the Subchapter, generally, does not apply to representation of individuals in matters then pending before the court.

**2008 Comment**

This Rule was formerly located under Rule 1.701 of LVD/2003 and all prior Court Rules.

### **RULE 1.502 RIGHT TO LEGAL REPRESENTATION**

**(A) Representation by Attorney/Lay Advocate in Criminal Matters.** Any party to a criminal action shall have the right to be represented by an attorney/ lay advocate of his/her own choice who has been admitted to practice before this court. Representation which is other than court appointed representation shall be at the parties own expense.

**(B) Representation by Attorney/Lay Advocate in Civil Matters.** Any party to a civil action shall have the right to be represented by an attorney/ lay advocate of his/her own choice and at his/her own expense pursuant to the admission procedures set forth herein.

**2001 Comment**

Subrule (A) corresponds with Rule 3.005 "*Right to Assistance of Advocate; Advice, Waiver*" under these rules.

Subrule (B) applies to all matters other than criminal actions, which includes, but is not limited to civil appeals under the applicable provisions of these rules.

**2008 Comment**

This Rule was formerly located under Rule 1.702 of LVD/2003 and all prior court rules.

**RULE 1.503 LICENSED ATTORNEYS.**

**(A) Practice Before the Tribal Court.** Any attorney licensed in the State of Michigan or any other State may represent any person in an action before this court upon being duly admitted in accordance with the applicable provisions herein.

**(B) Admission Procedure.** A lawyer as defined under Rule 5.501 herein, who desires to practice before this court shall submit to the Court:

(1) The court approved Application for Admission to Practice accompanied by a Certificate of Good Standing or other appropriate documentation from the State Bar of Supreme Court of the State in which such lawyer is duly licensed to practice law; and further, such application must be signed and dated by the applicant in the presence of a Notary Public;

(2) A certification that he/she shall conform to the Code of Ethics or Professional Responsibility for the State in which said lawyer is currently licensed as he/she performs his/her duties as an Attorney before this Court;

(3) A sworn Oath of Admission (as provided by the Court), which must be signed and dated by the attorney applicant in the presence of a Notary Public; and,

(4) Submission of an application fee for admission to practice before this court in the amount of \$100.00.

**(C) Approval or Disapproval of Application for Admission to Practice.**

(1) Upon the filing of the required documents and fee, the court shall approve the Application for Admission to Practice provided said Attorney has complied with the admission procedures set forth herein. If so approved, the Attorney's name shall be entered on the roster of attorneys admitted to practice before the court and shall be provided with a Certificate of Admission to Practice from this Court.

(2) An applicant for Admission to Practice shall respond to any additional requests for information or documentation from this Court within Twenty-one (21) days of the date of said request.

(3) An applicant who was denied Admission to Practice shall receive written notice of the basis for the denial and the applicant may then submit a response within Twenty-one (21) days of the date of said notice. The court will then review the application materials, the basis for denial, and the applicant's response, and then notify the applicant in writing of the subsequent decision. In the

Court's discretion, a hearing may be held to elicit testimony bearing on the basis for the denial prior to making such decision. Any approval or disapproval of the application for Admission to Practice shall be final and there in appeal therefrom. Any applicant whose application has not been approved may reapply for Admission to Practice in the Tribal Court no less than 120 days from the date of the last disapproved application.

(4) General Standards for disapproval of Admission to Practice. A disapproval for Admission to Practice may include, but are not limited to, the following:

- (a) Failure to meet the Admission requirements set forth herein;
- (b) Refusal to furnish available information or answer questions relating to the applicant's qualifications for Admission to Practice;
- (c) Knowingly making false statement(s) of a material fact or failure to disclose a fact necessary to correct a misapprehension or misrepresentation in connection with his/her application; or
- (d) Is subject to disciplinary action as an attorney in the jurisdiction for the State in which the attorney is so licensed.

**2008 Comment**

This Rule was formerly located under Rule 1.703 of LVD/2003 and all former Court Rules.

**2022 Comment**

Subrule (B)(4) now supplants the former application fee of \$50.00, current filing fee of \$100.00 adopted by the Court on May 15, 2019 and affirmed pursuant to Administrative Order 2022-1, effective August 1, 2022.

**RULE 1.504 LAY ADVOCATES.**

**(A) Practice Before Tribal Court.** A Lay Advocate may represent any person in an action before this court upon being duly admitted in accordance with the applicable provisions herein.

**(B) Admission Procedures.** A Lay Advocate, as defined under Rule 1.501 herein, who desires to practice before this court shall submit to the Court:

(1) The court approved Application for Admission to Practice, which shall be signed and dated by the lay advocate applicant in the presence of a Notary Public; and further, said application shall provide information with regard to the following criteria for admission and/or attach appropriate documentation which shows that said applicant:

- (a) is at least Twenty-one (21) years of age;
- (b) Possesses at least a High School Diploma or GED Certificate;
- (c) Possesses good communication skills, both written and verbal and has the ability to express his/her position clearly and concisely;
- (d) Has legal or law-related education and/or training;
- (e) Has legal or law related work experience including but not limited to experience and practice before the Tribal Courts;
- (f) Knows and understands tribal traditions and customs;
- (g) Has knowledge and understanding of the Tribal Constitution, Tribal Code(s), and Tribal Court Rules and the Indian Civil Rights Act;
- (h) Knows and understands Tribal Court Jurisdiction and the history, structure and function of the judicial system;
- (i) Has the ability to perform legal research and use the law library;
- (j) Possesses good character and moral fitness to represent clients, including supporting affidavits from at least two people familiar with the applicant's integrity, honesty, moral

character, judgment, courtesy and self-reliance as well as providing background information and permission to contact other references in the Court's discretion.

(k) Submit to an in-person interview as to law and procedure conducted by the Chief Judge or his/her duly authorized delegate.

(2) A sworn Oath of Admission (as provided by the Court) which must be signed and dated by the lay advocate applicant in the presence of a Notary Public; and,

(3) A application fee for admission in the amount of One Hundred (\$100.00) Dollars.

**(C) Approval or Disapproval of Application for Admission to Practice.**

(1) Upon the filing of the required documents and fee, the court shall approve the Application for Admission to Practice provided said lay advocate has complied with the admission procedures set forth herein. If so approved, the Lay Advocate's name shall be entered on the roster of Lay Advocates admitted to practice before this Court and shall be provided with a Certificate of Admission to Practice from this Court.

(2) An applicant for Admission to Practice shall respond to any additional requests for information or documentation from this Court within Twenty-one (21) days of the date of said request.

(3) An applicant who was denied Admission to Practice shall receive written notice of the basis for the denial and the applicant may then submit a response within Twenty-one (21) days of the date of said notice. The court will then review the application materials, the basis for denial, and the applicant's response, and then notify the applicant in writing of the subsequent decision. In the Court's discretion, a hearing may be held to elicit testimony bearing on the basis for the denial prior to making such decision. Any approval or disapproval of Application for Admission to Practice shall be final and there is no appeal therefrom. Any applicant whose application has been disapproved may reapply for Admission to Practice in Tribal Court no less than 120 days from the date of the last disapproved application.

(4) General Standards for Disapproval for Admission to Practice. A disapproval for Admission to Practice may include, but are not limited to, the following:

- (a) Failure to meet the Admission requirements set forth herein;
- (b) Refusal to furnish available information or answer questions relating to the applicant's qualifications for Admission to Practice.
- (c) Knowingly making false statement(s) of a material fact or failure to disclose a fact necessary to correct a misapprehension or misrepresentation in connection with his/her application.
- (d) Is subject to pending criminal charges in Tribal, State or Federal Courts, and/or is subject to disciplinary action as a lay advocate in the jurisdiction or State which the lay advocate is so authorized to practice as a lay advocate.

**2008 Comment**

This Rule was formerly located under Rule 1.704 of LVD/2003 and all former Court Rules.

**2022 Comment**

Subparagraph of Subrule (B)(1) is new and now provides for an interview process of Lay Advocate applicant.

Subrule (B)(3) now supplants the former application fee of \$50.00, current filing fee of \$100.00 adopted by the Court on May 15, 2019 and affirmed pursuant to Administrative Order 2022-1, effective August 1, 2022.

**RULE 1.505 ANNUAL RENEWAL TO PRACTICE.**

Once admitted to practice before the Tribal Courts of Lac Vieux Desert, a Licensed Attorney or Lay Advocate may continue to practice before this court each year thereafter provided that said Licensed Attorney or Law Advocate continues to meet the criteria for admissions set forth under the applicable Rule of this Subchapter.

**2003 Comment**

This provision now eliminates the former annual recertification to practice. Under the amended rule an individual once admitted to practice remains eligible to practice in Tribal Court unless found not to be in good standing.

**2008 Comment**

This Rule was formerly located under Rule 1.705 of LVD/2003 and all former Court Rules.

**2022 Comment**

Rule 1.505 has been reworded to add consistency to the 2003 amendment to this Rule,.

**SUBCHAPTER 1.600 BANISHMENTS****RULE 1.601 EFFECTIVE DATE AND DIFINITIONS.**

**(A) Effective Date.** This subchapter of the Lac Vieux Desert Court Rules becomes effective June 1, 2007 and governs all proceedings and actions brought on or after the date concerning the procedures for imposition and lifting of Banishments imposed by the Lac Vieux Desert Tribal Court.

**(B) Banishment Defined.** The term “banishment” as used in these rules shall be construed as to mean a customary sentence imposed by the Tribe for offenders who have been criminally convicted of offenses which violate the basic rights of life, liberty, and property of the community and whose violation is a gross violation of the peace, dignity and safety of the Tribe requiring the person to be totally expelled for the protection of the community.

**RULE 1.602 EFFECT OF BANISHMENT.**

During the term of Banishment, a person who is banished from the lands and association of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, shall:

**(A)** Be considered ineligible to engage in contracts or come before the courts of the Tribe for any reason not related to the original conviction. The Banished person, however, shall retain all rights of a criminal defendant during any prosecution for an offense during the term of the banishment, and while attending and going directly to or from the Tribal Court, or proceeding involving a criminal action to which he or she is a party including the appeal of his or her case.

**(B)** Be expelled from the jurisdiction of the Tribe and not be allowed to return for any reason during the period of Banishment except when required to attend court.

**(C)** Forfeit all positions or offices of honor or profit with the Tribe.

**(D)** Be ineligible to vote in any election conducted by or hold any office in the Tribe.

**(E)** Be ineligible for any services, monies, or benefits provided by the Tribe, or due as a result of citizenship in the Tribe.

**(F)** Be grounds for any debtor of the banished person to apply for an order attaching the banished person's personal property within the jurisdiction and bringing execution thereon to satisfy the debt.

**RULE 1.603 VIOLATION OF BANISHMENT.**

**(A)** If the person banished be found within the jurisdiction of the Tribe not going directly to, attending, or returning from a Court hearing required in his or her case, such act shall be considered criminal contempt of court in violation of a lawful order of the court and may be punished accordingly.

**(B)** A person under a decree or judgment of banishment found unlawfully within the jurisdiction of the Tribe shall, upon conviction, and in addition to any other punishment imposed for disobedience of a lawful order of the court, forfeit to the Tribe all personal property brought by him into the jurisdiction of the Tribe or in his immediate control therein, whether ownership of said property is in the control of the banished person, or another, as civil damages for breach of the peace and safety of the Tribe.

**RULE 1.604 EXPIRATION OF BANISHMENT TERM.**

Upon expiration of the term of banishment and satisfaction of any other terms imposed by the sentence, the banished person shall be restored to all rights forfeited during the banishment and shall thereafter be treated as if the banishment had never been imposed.

**RULE 1.605 ENTRY OF ORDER; NOTIFICATION.**

Upon the entry of an Order imposing and lifting every banishment, the Tribal Prosecutor and Tribal Police shall be given notice that said Order has been entered.

**RULE 1.606 PETITION TO LIFT/RESCIND BANISHMENT.**

**(A) Generally.** A person banished from the lands of Lac Vieux Desert may not Petition the Court for lifting of said banishment before the period of One (1) year after the imposition of said Banishment.

**(B) Contents of Petition.** The Petition to Lift Banishment is invalid and shall not be considered for review by the court, unless it contains the following information:

(1) The full name and current address of the Petitioner;

(2) The date of the Banishment at issue;

(3) A statement that the Petitioner has not been convicted of an offense other than the one which resulted in the Banishment for the past year.

(4) A statement as to whether the petitioner has any other criminal charge(s) against him or her, or is on probation, in any other court in the United States or any other Federally recognized Indian Tribal Court.

**RULE 1.607 HEARING UPON PETITION TO LIFT BANISHMENT.**

**(A) Notice.** Within Sixty (60) days of receipt of a proper Petition to Lift Banishment, the Court shall schedule a hearing upon the same and sent notice of the time and date of said hearing to the Petitioner, Tribal Prosecutor, Tribal Police, and Tribal Chairman.

**(B) Limited Appearance.** A banished individual's presence on the lands of Lac Vieux Desert is restricted specifically for the purposes of attending the referenced banishment hearing.

**(C) Failure to Appear.** If the Petitioner/ Banished individual fails to appear for a hearing upon the Banishment Petition, the Petition shall be dismissed, and the Petitioner shall be barred from refiling a similar Petition for One (1) year from the date of dismissal.

**RULE 1.608 ENTRY OF ORDER; EFFECT.**

**(A) Generally.** If the court determines that the circumstances and behavior of the Petitioner from the date of the Petitioner's conviction to the filing of the Petition warrants setting aside the conviction and that setting aside the conviction is consistent with the public welfare, the court may enter an order lifting the banishment.

**(B) Denial of Petition.** The lifting of an imposed banishment is not a privilege and is conditional and is not a right. A denial of a Petition to Lift Banishment shall be final for One (1) year and is not appealable.

**(C) Effect of Order Lifting Banishment.** Upon the entry of an Order Lifting Banishment, the Petitioner, for purposes of the law, shall have restored all rights, privileges and freedoms as such relates to the Tribe.

**RULE 1.609 DISCLOSURE OF ORDER.**

Upon the entry of an Order Lifting Banishment, the court shall send a copy of the order to the Tribal Police, Tribal Prosecutor and Tribal Chairman. The Tribal Clerk of Courts shall deposit within the permanent record of said offense associated with the initial banishment, the Order Lifting Banishment.

**SUBCHAPTER 1.700 ADMINISTRATIVE RULES****RULE 1.701 EFFECTIVE DATE.**

Unless otherwise indicated in commentary, this subchapter of the Lac Vieux Desert Court Rules becomes effective May 5, 2008 and governs all proceedings and actions brought on or after the date concerning the administrative rules imposed by the Lac Vieux Desert Tribal Court.

**RULE 1.702 DUTIES AND POWERS OF CHIEF JUDGE.**

**(A) Generally.** A Chief Judge shall act in conformity with the Tribal Court Rules, Administrative Orders, and Lac Vieux Desert Constitution and should freely solicit the advice and suggestions of the other judges of his or her bench as well as other jurisdictions.



**(B)** As the presiding officer of the court, the chief judge shall:

- (1) Call and preside over meetings of the court;
- (2) Initiate policies concerning the court's internal operations and its position on external matters affecting the court;
- (3) Represent the court in its relations with the Executive and Legislative branches of Tribal Government;
- (4) Counsel and assist other judges in the performance of their responsibilities;
- (5) As director of the administration of the court, a chief judge shall have administrative superintending power and control over the judges of the court and all court personnel with authority and responsibility to:
  - (a) Supervise caseload management and monitor disposition of the judicial work of the court;
  - (b) Supervise court finances, including financial planning, the preparation and presentation of budgets, and financial planning;
  - (c) Perform any act or duty or enter any other order necessarily incidental to carrying out the purposes of this rule.
- (6) To appoint and/or bar individuals from practicing before the courts of Lac Vieux Desert.

**RULE 1.703 ASSIGNMENT OF CASES.**

**(A) Assignment.** The Chief Judge shall either directly assign, or appoint the Clerk of Court the responsibility to assign cases to the judges serving in the Tribal Court.

**(B) Reassignment.** If a judge is disqualified, or for other good cause cannot undertake an assigned case, the Chief Judge shall reassign it to another judge by written order with notification to the parties and attorneys of record. The Chief Judge may be the judge to whom the case is reassigned.

**(C)** Actions arising out of the same transaction or occurrence.

- (1) If one or two or more actions arising out of the same transaction or occurrence has been assigned to a judge, the other action or actions must be assigned to that judge;
- (2) If an action arises out of the same transaction or occurrence as a civil action previously dismissed or transferred, the action must be assigned to the judge to whom the earlier was assigned.

**RULE 1.704 DISQUALIFICATION OF JUDGE.**

**(A) Who may Raise.** A party may raise the issue of a judge's disqualification by motion, or the judge may raise it sua sponte.

**(B) Grounds.** A judge is disqualified when the judge cannot impartially hear a case, including a proceeding in which the judge:

- (1) Is interested as a party;
- (2) Is personally biased or prejudiced for or against a party or attorney;
- (3) Has been consulted or employed as an attorney in the matter in controversy;
- (4) Is disqualified by law for any other reason; or, in the judge's discretion, believes that the relationship between the parties is such that one will not receive a fair and impartial trial.

**(C) Procedure.**

(1) Time for Filing. To avoid delaying trial and inconveniencing the witnesses, a motion to disqualify must be filed within 10 days after the moving party discovers the ground(s) for disqualification. If the discovery is made within ten (10) days of the trial, then the moving party must file forthwith. If the party fails to file in a timely manner the judge shall have the sole discretion to disqualify himself/herself, taking into account the reason for the delay in the motion.

(2) Form of Filing. The party moving to disqualify the judge must file with the Clerk of Courts a written, preferably typed, motion listing the reasons that the judge should be dismissed in any particular matter.

(3) Granting of the Motion. The assigned judge has the ultimate decision in determining whether to grant the motion consistent with this section. If the judge does disqualify himself, then the Chief Judge should find a substitute judge at the earliest possible time.

**RULE 1.705 MECHANICAL RECORDING OF COURT PROCEEDINGS.**

**(A) Official Record.** The court shall have caused to have recorded by means of mechanical devices all hearings and proceedings in the courts of Lac Vieux Desert.

**(B) Obtaining Official Record.**

(1) Official Court Transcript. A party seeking to obtain an official written court transcript of proceedings mechanically recorded, must:

- (a) Submit to the court a written request identifying the case name, case number and date of the proceeding;
- (b) Indicate whether a transcript of the entire proceeding is being sought or some portion less than the full proceeding. In the event of the latter, the requesting party must indicate the portion of the proceeding being sought;
- (c) Pay to the court a nonrefundable processing fee of \$50.00 for each proceeding or portion of proceeding being sought. The processing fee will cover the cost of downloading and burning onto disc the recorded proceeding by the Clerk of Court, and delivery of the burned disk by the clerk to the requesting party or to a duly certified court reporter for transcription.

(2) Transcription. Where the requesting party receives the burned disc of the recorded proceeding, said party shall be responsible for hiring and paying a duly certified court reporter for transcription. Where the Clerk of Court delivers the burned disc to a certified court reporter, the

court will pay the transcription fee and submit an invoice to the requesting party for reimbursement to the court for the full cost of transcription.

**2008 Comment**

This rule is adopted effective October 15, 2007.

**2022 Comment**

Amendments to this Rule are effective November 1, 2016 pursuant to Administrative Order 2016-0002. The rule in its present form expands upon the former corresponding rule whereby this rule now specifically provides for the actual transcription of mechanically recorded court proceedings by a certified court reporter.

**RULE 1.706 FILING FEES.**

**(A) Generally.** This rule governs filing/motion fees in all divisions of the Tribal Court. Where a filing fee is applicable, before any matter can be filed or otherwise heard before the court, the associated filing/motion fee must be deposited with the court.

**(B) Waiver/Suspension of Filing Fees.** The waiver/suspension of filing fees is conditional and is not a right. The waiver/suspension shall be determined at the sole discretion of the Chief Judge, or if assigned, the presiding judge, and is not appealable. The Chief Judge, or if assigned, the presiding judge, may waive/suspend, a filing/motion fee if:

(1) The party moving for the waiver/suspension is a duly authorized Lac Vieux Desert Tribal Department/ Entity; or,

(2) The party moving for the waiver/suspension demonstrates in writing an inability to pay the filing/motion fee.

**RULE 1.707 REQUESTS FOR RESCHEDULING.**

A request for rescheduling of a matter set on the court's calendar to be heard, shall only be granted or denied by the judge assigned to hear the particular matter. If granted, in civil matters, it shall be the moving parties responsibility to serve notice of rescheduling to the opposing parties, with proof of service of the same upon the court.

**SUBCHAPTER 1.800 ELECTIONS**

**RULE 1.801 SCOPE; APPLICABILITY.**

This Subchapter establishes the expedited procedure for Allegations of Impropriety by Election Board Member, effective July 23, 2018 by virtue of Administrative Order 2018-002, and in accordance with LVD Const. Art. VII, Section 5(e), and LVD Election Ordinance, Section 2.13(c).

**RULE 1.802 EXPEDITED PROCEDURE FOR ALLEGATIONS OF IMPROPRIETY BY ELECTION BOARD MEMBER.**

**(A) Petition to be Verified; Time for Filing Petition; Filing Fee.**

(1) An action brought in the Lac Vieux Desert Tribal Court alleging impropriety by an Election Board Member shall be by verified petition filed with the court on or before 3:30p.m. central standard time, of the next business day following the discovery of the alleged impropriety.

(2) A Petition filed past the deadline as provided for in Subrule (A)(1), may be dismissed by the court on the motion of a party or on the court's own initiative.

(3) A filing fee of \$75.00 must be paid at the time of the filing of the petition.

**(B) Commencement of Action; Service of Process; Pleadings; Form of Petition and Answer.**

(1) The provisions of the rules of civil procedure shall apply to cases governed by this Subchapter, except as otherwise provided herein.

(2) All pleadings filed under this Subchapter shall adhere to the following:

(a) Commencement of action rules under Subchapter 2.200, and the general rules for pleadings as provided for in Rule 2.205;

(b) The form of pleadings and other papers as provided for in Rule 2.206;

(c) The rules for signatures of attorneys and parties; verification; effect; and sanctions as provided for in Rule 2.207, and MCR 2.114 (adopted pursuant to Rule 1.005); and,

(d) Form of Response Pleading. A written answer to the petition may be filed with the court, or the respondent may answer the allegations of impropriety on the record at the scheduled hearing. In either case, the respondent shall appear at the hearing.

(3) In addition to the pleading and form requirements as provided for in Subrule (B)(2), petitions shall state the date on which each allegation of impropriety was discovered. A failure to do so may be cause for dismissal by the court on the motion of a party or on the court's own initiative.

(4) Process; Manner of Service. Process shall be served pursuant to Rule 2.202(E), except that the petitioner shall cause a summons and petition to be served personally on the respondent Election Board Member, or on an officer or agent of the Election Board Office, no later than the day preceding the date of the hearing.

**(B) Expedited Hearing.**

(1) A hearing shall be scheduled on the second business day following the filing of a Petition Alleging Impropriety.

(2) Burden of Proof. Impropriety must be proven by clear and convincing evidence.

(3) All claims shall be heard by the court without a jury. The rules of evidence apply. The Clerk of Court may issue subpoenas upon request of the parties. All subpoenas shall be caused to be served by the party requesting the subpoenas.

## CHAPTER 2. CIVIL PROCEDURE

Effective December 27, 1994  
Including Amendments Received Through  
September 1, 2022

*[This Chapter was formerly located under Chapter 3 of LVD II/1994]*

### SUBCHAPTER 2.000 GENERAL PROVISIONS

#### **RULE 2.001 APPLICABILITY**

These provisions of the Lac Vieux Desert Court Rules governs practices and procedures in all courts established by the Constitution and Laws of the Lac Vieux Desert Band of Lake Superior Chippewa Indians. This Chapter applies to any and all civil matters unless specific provisions are contained herein. If rules are provided for pertaining to a specific matter, then those rules control over these, the general rules. These rules may govern proceedings in administrative agencies if so desired by the Tribal Council, Tribal Court, or the particular Administrative Agency.

##### **1999 Comment**

LVD/II 1994 3.001 and 3.002 have been in part combined and replaced by the above rule which essentially remains unchanged from LVD/II 1994 3.003.

#### **RULE 2.002 CONSTRUCTION.**

These rules are to be construed to secure the just, speedy, and economical determination of every action and to avoid the consequences of error that does not affect the substantial rights of the parties. These rules are to reflect tribal customs and traditions as appropriate.

#### **RULE 2.003 COMPUTATION OF TIME.**

In computing a period of time prescribed or allowed by these rules, unless otherwise indicated, the provisions as set forth under Rule 1.004 “Computation of Time” of these court rules shall apply.

##### **1999 Comment**

This provision is substantially different from LVD II/ 1994 3.005 in that subsections One (1) through subsections Three (3) have been omitted to include the uniform rule as contained under LVD II/ 1999 1.004.

#### **RULE 2.004 WAIVER OR SUSPENSION OF FEES AND COSTS**

At the Chief Judge’s discretion, certain filing fees and costs may be waived for an individual party, Tribal Administrative Agency, or the Tribal Council under this Chapter.

##### **1999 Comment**

LVD II/ 1999 2.004 revises the same provisions of LVD II/1994, regarding who is eligible for a waiver of filing fees and costs. The new rule provides for an application of waiver of said fees and costs “....of (any) individual party” as opposed to the former rule providing that: “Only a natural member of Lac Vieux Desert (may be) eligible for the waiver suspension of fees and costs....”

**RULE 2.005 DISQUALIFICATION OF JUDGE.**

**(A) Who May Raise.** A party may raise the issue of a Judge's disqualification by motion, or the judge may raise it sua sponte.

**(B) Grounds.** A judge is disqualified when the judge cannot impartially hear a case, including a proceeding in which the judge:

- (1) is interested as a party;
- (2) is personally biased or prejudiced for or against a party or attorney;
- (3) has been consulted or employed as an attorney in the matter in controversy;
- (4) is disqualified by law for any other reason; or,

(5) in the judge's discretion, believes that the relationship between the parties is such that one will not receive a fair and impartial trial.

**(C) Procedure.**

(1) Time for Filing. To avoid delaying trial and inconveniencing the witnesses, a motion to disqualify must be filed within 10 days after the moving party discovers the ground(s) for disqualification. If the discovery is made within ten (10) days of the trial, then the moving party must file forthwith. If the party fails to file in a timely manner the judge shall have the sole discretion to disqualify himself, taking into account the reason for the delay in the motion.

(2) Form for Filing. The party moving to disqualify the judge must file with the Clerk of Courts a written, preferably typed, letter listing the reasons that the Judge should be dismissed in any particular matter.

(3) Granting of the Motion. The assigned Judge has the ultimate discretion in determining whether to grant the motion consistent with this section. If the judge does disqualify himself, then the court shall find a replacement judge at the earliest possible time.

**1999 Comment**

Former LVD II/1994 Rule 3.008 which should have followed LVD II/ 1999 Rule 2.005 herein, has been omitted and consolidated in its entirety under LVD II/1999 Rule 1.007 of this text.

**2001 Comment**

Paragraph (3) of Subrule (B) clarifies the corresponding provision of LVD II/1999 in that it deliberately vests whether to grant the Motion for Disqualification upon the assigned Judge.

**SUBCHAPTER 2.100 SMALL CLAIMS PROCEEDINGS.****RULE 2.101 DEFINITION.**

Any civil action in which the dollar amount does not exceed \$3,500.00 shall be deemed a small claims action. Such actions shall proceed in the manner provided for under this Subchapter.

**1999 Comment**

This provision amends the former provision of LVD II/1994 1.101 in which the dollar amount was recited as not to exceed \$1,000.00

**2008 Comment**

Rule 2.101 was formerly located under Rule 1.101 of LVD/2003 and prior Court Rules.

**2022 Comment**

Pursuant to Administrative Order 2022-2, effective August 1, 2022, the dollar limit for an action limit has been changed from \$2,500.00 to \$3,500.00

**RULE 2.102 COMMENCEMENT OF ACTION.**

**(A) Complaint; Filing Fee.** To commence an action in Small Claims, the aggrieved party shall commit to writing a Complaint and file such with the Clerk of Courts, and submit a non-refundable filing fee of \$45.00. At a minimum the Complaint must state:

- (1) The name and address of all parties to the action;
- (2) The nature of the claim and reason's why the claimant seeks a judgment from the court;
- (3) State concisely the relief sought by the party filing the Complaint.
- (4) The signature and the date thereof of the person filing the Complaint.

**(B) Notice.** Upon receiving a properly completed complaint and filing fee, the Clerk of Courts shall designate a time and date for a Prehearing Conference.

**2008 Comment**

Rule 2.102 was formerly located under Rule 1.102 of LVD/2003 and prior Court Rules.

This rule is essentially the same with the exception that Subrule (B) now omits the former provision requiring that the court send notice to the involved parties in the action. While in most instances the court will send out such notices, the intent of omitting the former provisions removes the court from any required responsibility to do so.

**2022 Comment**

The former small claims filing fee of \$25.00 has been supplanted with the new required filing fee of \$45.00 pursuant to Administrative Order No. 2022-1, effective August 1, 2022.

**RULE 2.103 PREHEARING CONFERENCE.**

**(A) Purpose.** The purpose of the prehearing conference shall be to informally stipulate to a settlement of the action between both the respective parties and/or to attempt to narrow the scope of the issues. If at the conclusion of the Prehearing Conference, neither party objects, the matter shall proceed to the states of a hearing.

**(B) Nonappearance of Parties.**

(1) If the defendant fails to appear at the Prehearing Conference, a default judgment may be entered for the amount claimed in the Plaintiff's Complaint.

(2) If the plaintiff fails to appear at the Prehearing Conference, the claim may be dismissed for want of prosecution.

**2001 Comment**

Subrule (A) now includes the added provision which has been the court practice for a Prehearing Conference to immediately commence to the stages of a hearing, if neither party objects.

Subrule (B) paragraph (1) differs from its 1999 counterpart in that the former rule provided for a Prehearing Conference to commence to the stages of a hearing in the event of a failure of a Defendant to appear at a scheduled hearing. The rule in its present form allows the court to enter a default judgment for the Plaintiff as a result of non-appearance of the Plaintiff.

Subrule (B) paragraph (2) in its present form omits the prior provision allowing for the prehearing conference to proceed to the states of a hearing.

**2008 Comment**

Rule 2.103 was formerly located under Rule 1.103 of LVD/2003 and former Court Rules.

**RULE 2.104 SMALL CLAIMS HEARING.**

**(A) Notice.** Following an unsettled Prehearing Conference, the matter may immediately commence to the stages of a hearing, unless either party objects. In the event of an objection, the Clerk of Courts shall schedule the time, date, and place set for a Small Claims Hearing.

**(B) Appearance.** If the defendant fails to appear at the hearing, judgment may be entered in default against the defendant. If the plaintiff fails to appear at the hearing, the claim may be dismissed for want of prosecution. If all parties fail to appear, the claim may be dismissed or the court may order another disposition, as justice requires.

**(C) Form of Hearing.** The small claims hearing shall be conducted by either a Tribal Judge or Magistrate. At such a hearing, both parties to the action shall have a right to:

- (1) Be represented by an Attorney at their own expense;
- (2) Present any relevant evidence, testimony, and witnesses;

(3) Stipulate at any time during the hearing to a settlement conference, which will adjourn the Court of record at that time.

**2001 Comment**

Subrule (A) herein remains substantially the same with the exception of the added provision that following an unsettled Prehearing Conference, "*the matter immediately commence to the stages of a hearing unless either party objects.*"

**2008 Comment**

Rule 2.104 was formerly located under Rule 1.104 of LVD/2003 and former Court Rules.

**RULE 2.105 JUDGMENTS.**

A judgment by the Judge or Magistrate presiding over a small claims action shall be in writing after the Court has reached its finding, and must contain the specific remedy, if applicable.

**2008 Comment**

Rule 2.105 was formerly located under Rule 1.105 of LVD/2003 and former Court Rules.

This Rule in its present form remains substantially the same with the exception that the present Rule now eliminates the former requirement that the courts order a specific provision for a time period in which the non-prevailing party must satisfy relief under judgment.



**RULE 2.106 REMOVAL TO TRIAL COURT.**

A party may demand that the action be removed from the small claims division to the Trial Court division for further proceedings by:

(A) Signing a written demand for removal and filing it with the Clerk of Courts at or before the time set for hearing; or,

(B) Appearing before the Court at the time and place set for a hearing of the Small Claims action and demand removal; and,

(C) Depositing with the Clerk of Courts a non-refundable filing fee of \$50.00

**2001 Comment**

Pursuant to Administrative Order, as of January 1, 2001, Subrule (C) of this Rule now changes the applicable filing fee from \$45.00 to \$50.00.

**2008 Comment**

Rule 2.106 was formerly located under Rule 1.106 of LVD/2003 and all prior Court Rules.

**RULE 2.107 APPEALS FROM SMALL CLAIMS ACTIONS.**

(A) All decisions, orders, or judgments of the Small Claims Court Division may be appealed to the Civil Trial Division. Proceedings on appeal from the Small Claims Court Division to the Trial Court Division shall be deemed denovo and commence as provided for under the procedure set forth under the applicable provisions of this Chapter.

(B) To bring an appeal of a Small Claims action to Civil Trial Court, the appealing party must deposit with the Clerk of Court a \$50.00 non-refundable filing fee. Said appeal must be taken within 21 days after the entry of the order or small claims judgment appealed from.

(C) For the purposes of clarification, when an action is heard on appeal by the Trial Court, the Trial Court shall not lose its identity of a trial court for the purposes of the Appellate Court Rules.

**1999 Comment**

The 1999 amendment contained herein adds the provision "denovo" in LVD/ 1999 1.107(A).

**2001 Comment**

The amended provision of Subrule (B) from the former filing fee of \$45.00 to the present filing fee of \$50.00 is consistent with those provisions of Rule 1.106 of these rules.

**2008 Comment**

Rule 2.107 was formerly located under Rule 1.107 of LVD/2003 and all prior Court Rules.

**SUBCHAPTER 2.200 COMMENCEMENT OF ACTION; SERVICE OF PROCESS; PLEADINGS; MOTIONS****RULE 2.201 FORM AND COMMENCEMENT OF ACTION.**

(A) **Form of Action.** There is one form of action known as "civil action". A civil action is defined as "an action brought to enforce, redress, or protect private rights". In general they are all actions other than criminal proceedings."

**(B) Commencement of Action.** A civil action is commenced by filing a complaint with the court and pay the applicable filing fee, notwithstanding a court ordered waiver or suspension of filing fees and costs as provided for under Rule 2.004.

**2001 Comment**

Subrule (B) herein expounds upon the former corresponding Subrule in that it requires the payment of a filing fee or waiver of such, to commence a civil action under this Subchapter.

**2003 Comment**

Subrule (A) in its present form omits its 2001 corresponding provision which, in part, read, *“the key application of these rules are that the Tribe is not a party to the action.”*

**2008 Comment**

Rule 2.201 was formerly located under Rule 2.101 of LVD/2003 and former Court Rules.

**RULE 2.202 SUMMONS; DISMISSAL FOR FAILURE TO SERVE.**

**(A) Issuance.** On the filing of a complaint, the court clerk shall issue a summons to be served by an individual of the complaining party’s choice. The court may, at its discretion, aid in the serving of the summons.

**(B) Form.** A summons must be issued “In the name of the people of the Lac Vieux Desert Tribe and under the seal of the court that issued it. It must be directed to the defendant, and include:

- (1) the name and address of the court;
- (2) the names of the parties;
- (3) the file number;
- (4) the name and address of the plaintiff’s attorney, if one is used;
- (5) the defendant’s address, if known;
- (6) the date which the summons was issued;
- (7) the last date on which the summons is valid;
- (8) the time within which the defendant is required to answer or take other actions; and,
- (9) a notice that if the defendant fails to answer or take other action within the time allowed, judgment may be entered against the defendant for the relief demanded in the complaint.

**(C) Amendment.** At any time prior to service of the summons, the complaining party has the absolute right to amend or modify the summons.

**(D) Expiration and Dismissal.** All summons will automatically be dismissed, without prejudice, if the summons are not served within Forty-five (45) days after the summons was issued. A party may file for an extension of the time frame with the court, but must list appropriate reasons for the delay. A summons may also be dismissed if the summons fails to meet the appropriate requirements set forth in Subrule (B) of this Rule.

**(E) Process of Service.**

(1) Who May Serve. Process in civil actions may be served by any legally competent adult who is not a party to the action.

(2) Manner of Service. The following shall be accepted as service:

(a) Personal Service Preferred. Service shall be done by handing the summons to the individual in person unless circumstances arise that make such service impossible. If the party refuses to accept service then the sworn statement by the server indicating that an attempt was made and refused by the party will constitute appropriate service on the party.

(b) Service by Mail. In the event service cannot be made personally upon the individual who is a party to the action, service may be via certified United States Mail, return receipt requested.

(c) Service by Publication. If the physical or otherwise current mailing address of an individual who is a party to a particular action cannot be ascertained, then notice of the complaint shall be posted in an appropriate publication which is likely to be seen by the individual, at least one time.

(3) Proof of Service. Proof of service may be made by:

(a) Written acknowledgment of the receipt of a summons and a copy of the complaint dated and signed by the person to whom the service is directed.

(b) An affidavit of the server stating the time, place and manner attempted in completing the service and the grounds that the service was not successful.

(c) A receipt of certified mailing or a receipt from the publication used in posting the summons and the grounds selected in using that method.

**(F) Improper Service.** All services that fail to meet the requirements set forth herein are deemed improper and the original complaint will be considered dismissed unless service is successfully completed within the time frame, or unless at the time and date set for the matter, the Plaintiff moves the court for a continuance so as to allow another mode of service.

**1999 Comment**

LVD/1999 2.102(1) clarifies the expiration of summons not served by replacing, "within 45 days after the summons were filed" with "within 45 days after the summons were issued."

**2001 Comment**

Subrule (E) of this rule now provides as an alternative to personal service, service by certified mail, return receipt.

Subrule (F) now inserts, "... *Unless at the time and date set for the matter, the Plaintiff moves the court for a continuance so as to allow another mode of service*" is new. This provision has been inserted here by virtue of common court practice allowing for the rescheduling of a matter in which a party who has not perfected service wishes to attempt another service.

**2008 Comment**

Rule 2.202 was formerly located under Rule 2.102 of LVD/2003 and all prior Court Rules.

**RULE 2.203 ANSWER TO THE SUMMONS.**

**(A)** A defendant must serve and file an answer or take other action permitted by law or these rules within Fifteen (15) days after being served with a summons and complaint. If the defendant does not serve an answer with a responsive pleading within the time provided, and the Defendant is not represented by an Attorney or Lay Advocate, upon the discretion of the court, a plea of no contest may be entered for the Defendant as to each and every allegation requiring a response. A pleading of no contest permits the action to proceed without proof the claim, or part of the claim, to which the pleading is directed.

**(B)** If publication is used for service then the defendant has 21 days from the date of posting to file an answer or take other action permitted by law.

**(C)** If reasonable grounds exist then the court may extend the time requirements for filing an answer.

**2003 Comment**

Subrule (A) now provides for the entry of a “no-contest” plea regarding a Defendant’s Answer to a Complaint. The intent of this added provision is to allow latitude to the unrepresented Defendants in the civil division of the court.

**2008 Comment**

Rule 2.203 was formerly located under Rule 2.103 of LVD/2003 and all prior Court Rules.

**RULE 2.204 PLEADINGS.**

**(A) Definition of Pleading.** The term “pleading” includes only:

- (1) a complaint;
- (2) a cross complaint;
- (3) a counterclaim;
- (4) an answer to a complaint, cross-claim or counterclaim;
- (5) a reply to an answer.

**(B)** For the purpose of this section, the following definitions apply:

(1) “Complaint”, means the original or initial pleading by which an action is commenced. It is the original statement of what happened and includes the reasons why the court should be involved in the matter.

(2) “Cross-claim”, means a claim by one party against a co-party arising out of the transaction or occurrence that is the subject of the original action or of a counterclaim relating to any property that is the subject of the original action.

(3) “Counterclaim” mean a claim presented by a defendant in opposition to or deduction from the claim of the plaintiff. If established, such may defeat the plaintiff’s claim.

**(C)** A party may include a cross claim, a counterclaim, or both in the answer to the complaint. If a cross claim is included then service must be made upon the party that one alleges is at fault if that party is not already included in the action. If a counterclaim is included in the answer then the plaintiff has the right to respond to the counterclaim.

**2008 Comment**

Rule 2.204 was formerly located under Rule 2.104 of LVD/2003 and prior Court Rules.

**RULE 2.205 GENERAL RULES FOR PLEADINGS.**

**(A)** Pleadings to be concise and direct.

- (1) Each allegation of a pleading must be clear, concise and direct.

- (2) Inconsistent claims or defenses are not objectionable. A party may:
  - (a) allege two or more statements of fact in the alternative when in doubt about which of the statements are true;
  - (b) state as many separate claims or defenses as the party has, regardless of consistency and whether they are based on legal or equitable grounds or both.

**(B) Statement of Claim(s).** A complaint, counterclaim, or cross claim must contain the following:

- (1) A statement of the facts, without repetition, on which the pleader relies in stating the cause of action, with the specific allegations necessary to inform the adverse party of the nature of the claims the adverse party is called on to defend; and,

- (2) A demand for judgment for the relief that the pleader seeks. Said demand may only be a simple statement indicating what the party seeks from the court or the other party, be it monetary or equitable damages.

**(C) Form of Answer to Complaint, Counterclaim or Cross Claim.** As to each claim, counterclaim or cross claim, the party responding to the allegations must reply with:

- (1) An explicit admission or denial to the allegation contained within the complaint, cross claim, or counterclaim;

- (2) State that the pleader lacks knowledge or information sufficient to form a belief as to the truth of an allegation, which has the effect of a denial.

**(D) Form of Denials.** Each denial must state the substance of the matters on which the pleader will rely to support the denial. The denial must list the reasons and the grounds that the party is relying upon in denying the claim.

**(E) Effect of Failure to Deny.**

- (1) Allegations in a pleading that requires a responsive pleading, other than allegations of the amount of damage or the nature of the relief demanded, are admitted if not denied.

- (2) Allegations in a pleading that does not require a responsive pleading are taken as denied.

**(F) Defenses; Requirements that Defense be plead.**

- (1) Pleading multiple defenses. A pleader may assert as many defenses, legal or equitable or both, as the pleader has against an opposing party. A defense is not raised by being joined with other defenses.

- (2) Defenses must be plead; exceptions. A party against whom a cause of action has been asserted by complaint, cross-claim or counterclaim must assert in a responsive pleading the defenses the party has against the claim. A defense not asserted in the responsive pleading or by motion as provided by these rules is waived, except for the defenses of lack of jurisdiction over an action, and failure to state a claim on which relief can be granted.

(3) **Affirmative Defenses.** Affirmative defenses must be stated in a party's responsive pleading. Under a separate and distinct heading, a party must state the facts constituting:

(a) an affirmative defense, which may include, but is not limited to: contributory negligence; assumption of risk; payment release; satisfaction discharge; license; fraud; duress; estoppel; statute of frauds; statute of limitations; immunity granted by law; wants or failure of consideration; or that an instrument or transaction is void, voidable, or cannot be recovered by reason of statute or nondelivery;

(b) a defense that by reason of other affirmative matter seeks to avoid the legal effect of or defeat the claim of the opposing party in whole or in part;

(c) a ground or defense that, if not raised in the pleading, would be likely to take the adverse party by surprise.

**2008 Comment**

Rule 2.205 was formerly located under Rule 2.105 of LVD/2003 and prior Court Rules.

## **RULE 2.206 FORM OF PLEADINGS AND OTHER PAPERS**

**(A) Applicability.** The rules of the form, captioning, signing, and verifying of pleadings apply to all options, affidavits, and other papers provided for by these rules. However, an affidavit must be certified by oath or affirmation.

**(B) Preparation.** Every pleading must be legibly typewritten or printed in the English language.

**(C) Captions.** Every pleading must contain a caption at the beginning of the pleading including the name of the court, the name of the parties, the title of the parties (i.e. plaintiff, defendant) the case number, and the name and addresses of the attorneys, if applicable.

### **(D) Names of the Parties.**

(1) In a complaint, the title of the action must include the names of all the parties, with the plaintiff's name placed first.

(2) In other pleadings, it is sufficient to state the name of the first party on each side with an appropriate indication of other parties, such as "et al".

### **(E) Paragraphs; Separate Statements.**

(1) All allegations must be made in numbered paragraphs, and the paragraphs of a responsive pleading must be numbered to correspond to the numbers of the paragraphs being answered.

(2) The content of each paragraph must be limited as far as practicable to a single set of circumstances.

(3) Each statement of a claim for relief founded on a single transaction or occurrence or on separate transactions or occurrence, and each defense other than a denial, must be stated in a separately numbered count or defense.

**(F) Exhibits; Written Instruments.**

(1) If a claim or defense is based on a written instrument, a copy of the instrument or its pertinent parts must be attached to the pleading as an exhibit unless the instrument is:

- (a) a matter of public record of the Tribe;
- (b) in possession of the adverse party and the pleading so states;
- (c) inaccessible to the pleader and the pleading so states; or
- (d) of a nature that attaching the instrument would be necessary or impractical and the pleading so states.

**(G) Adoption by Reference.** Statements in a pleading may be adopted by reference only in another part of the same proceedings.

**2008 Comment**

Rule 2.206 was formerly located under Rule 2.106 of LVD/2003 and prior Court Rules.

**RULE 2.207 SIGNATURES OF ATTORNEYS AND PARTIES; VERIFICATION; EFFECT; SANCTIONS.****(A) Verification.**

(1) A pleading need not be verified or accompanied by an affidavit unless specifically required by a specific rule.

(2) If a pleading is required or permitted to be verified, it may be verified by oath or affirmation of the party or of someone having knowledge of the facts pleaded. Said oath or affirmation shall include the following signed and dated declaration: *I declare that the statement above is true to the best of my information, knowledge and belief.* A person who knowingly makes false statements under this oath may be found in contempt of court.

**1998 Comment**

Rule 2.107(A) in its present form is virtually the same as its counterpart, LVD II/1994 Rule 3.107 except that the former rule combines the latter rules' subs (a) and (b) into the body of subsection (2).

**2008 Comment**

Rule 2.207 was formerly located under Rule 2.107 of LVD/2003 and all former Court Rules.

**RULE 2.208 SUMMARY DISPOSITION.**

**(A) Judgment on Stipulated Facts.** The parties to a civil action may submit to an agreed upon stipulation of facts to the court. If the parties have stipulated to facts sufficient to enable the court to render judgment in the action, the court shall do so without use of a trial.

**(B) Motion.**

(1) A party may move for dismissal of, or judgment on all or part of a claim in accordance with this rule. A party against whom a defense is asserted may move under this rule for summary disposition of the defense.

(2) A motion made under this rule may be filed at any time consistent with Subrule (D) of this rule, but a party asserting a claim shall not notice the motion for hearing until at least 21 days after the opposing party was served with the pleading stating the claim.

**(C) Grounds.** The motion may be based on one or more of the following grounds, and must specify the grounds on which it is based:

- (1) The court lacks jurisdiction over the person or property;
- (2) The process issued in the action was insufficient;
- (3) The service of process was insufficient;
- (4) The court lacks jurisdiction over the subject matter;
- (5) The party asserting the claim lacks the legal capacity to sue;
- (6) Another action has been commenced between the same parties and the issues may be handled in one transaction;
- (7) The claim is barred because of release, payment, prior judgment, immunity granted by tribal constitution or agency rules, statute of limitations, statute of frauds, infancy or other disability of the moving party, or assignment or other disposition of the claim before commencement of the action;
- (8) The opposing party has failed to state a valid claim under which relief can be granted;
- (9) The opposing party has failed to state a valid defense to the claim asserted against him or her;
- (10) Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.

**(D) Time to Raise Defenses and Objections.** The grounds listed in Subrule (C) of this rule, with the exception of (1) and (4), must be raised by a separate motion to the court prior to the date of trial. Rule (C)(1) and (4) may be raised at any time up to 6 months after a final judgment of the court, by a motion to the court. A failure to file a motion in the proper time constitutes waiver of that claim.

**(E) Consolidation; Successive Motions.** A party may combine a single motion as to as many defenses or objections as the party has based upon any of the grounds under this rule. A claim will not be dismissed because the moving party raises inconsistent claims or objections.

**(F) Motion or Affidavit Filed in Bad Faith.** A party or an attorney found by the court to have filed a motion or an affidavit in violation of the provisions of this section may, in addition to the imposition of other penalties prescribed by this section, be found guilty of contempt.

**(G) Disposition by Court; Affidavit; Immediate Trial.** Upon the filing of a motion under this section, the court within its sole discretion may:

- (1) Order affidavits from all vital parties regarding the issue at hand and decide the case;
- (2) Decide the motion at that point on the record;



- (3) Order an immediate hearing on the issue to decide the merit of the motion.

**(H) Appeals of Judge's Disposition of the matter.** If the judge declines the motion of the party then the trial shall proceed upon the already agreed upon schedule of the court. A party has a right to an immediate interlocutory appeal of the judge's decision on the matter. This appeal is to be held at the earliest possible time so as to not delay the proceedings any longer than necessary. The motion for appeal is subject to the same guidelines as other appeals and motions, namely it must be based on a good faith belief and not be done to unduly burden the opposing party. One who appeals in bad faith may be held responsible for attorney fees and found in contempt.

**1999 Comment**

Rule 2.108(A) is virtually the same as its counterpart, LVD II/1994, Rule 3.107(A) except that the former rule combines the latter rules' paragraphs (1) and (2) into the body of Subrule (A).

**2008 Comment**

Rule 2.208 was formerly located under Rule 2.108 of LVD/2003 and all former Court Rules.

## **RULE 2.209 APPEARANCES.**

**(A) Notice of Appearance.** A party, an attorney or an individual, who has been admitted to practice before the Court's of Lac Vieux Desert, may appear in an action by filing a notice to that effect with the court. The party must also serve a written appearance on all persons entitled to service and file with the court proof of the same. The appearance will last until a final judgment issued by the court and any subsequent hearings concerning the particular matter before the court, and entitles the party filing to receive copies of all pleadings and papers filed with the court involving the particular matter.

**(B) Appearance Without Prior Notice.** A party, an attorney or an individual, may appear in an action before the court without prior notice, and the matter scheduled may proceed only if one of the two following conditions are met:

(1) The opposing party was served notice of appearance prior to the day of the scheduled court date; or

(2) The opposing party was not served notice of appearance, but has no objections to proceed with the matter as scheduled. An opposing party that does not waive his/her right to notice under this rule has an absolute right to have the matter before the court rescheduled.

(3) A party, an attorney or an individual is recognized as duly authorized to practice law in the courts of Lac Vieux Desert as provided for under the provisions of Subchapter 1.700 of these rules. This does not apply to instances where an individual represents himself, in propria persona.

**1999 Comment**

LVD II/1999 2.109 expands upon LVD II/1994 by adding the provisions of subrule (B).

**2001 Comment**

Subrule (A) remains substantially the same with the exception of the provision asserting Admission to Practice which reflects the 2001 adopted Subchapter 1.700 "Admission to Practice Before the Tribal Court" of these Rules.

**2003 Comment**

Paragraph (3) of Subrule (B) is new and has been added as a result of the 2001 adoption of Subchapter 1.700 concerning admission to practice before the Tribal Court.

**2008 Comment**

Rule 2.209 was formerly located under Rule 2.109 of LVD/2003 and all former Court Rules.

**RULE 2.210 AMENDED AND SUPPLEMENTAL PLEADINGS.**

**(A) Prior to Answer of Complaint.** Prior to the other party answering or changing the position of the initial complaint, the party filing the initial complaint has an absolute right to amend, change or modify the pleadings.

**(B) After Answer of Pleadings.** After an answer to the pleadings have been filed, any party wishing to modify, amend or adjust the pleading must seek the permission of the court for such modification, amendment or adjustment. The Court shall not deny a party's right to amend the pleadings one time, unless a great substantial hardship will result in allowing the certain modification, amendment or adjustment.

**2008 Comment**

Rule 2.210 was formerly located under Rule 2.110 of LVD/2003 and all former Court Rules.

**RULE 2.211 MOTION PRACTICE**

The provisions under existing Michigan Court Rule 2.119 "*Motion Practice*", regarding the procedural requirements of motion practice and procedures in this Court for the form of motions, time requirements, motions for rehearing or reconsideration, and the like are adopted and incorporated by reference.

**2022 Comment**

This rule has been adopted by virtue of Administrative Order No. 2017-002, effective August 30, 2017. The Order reads as follows: "*Whereas the 2008 LVD Tribal Court Rules are silent regarding the procedural requirements for motion practice, the LVD Tribal Court, in accordance with LVD Const. Art. V, Section 7, hereby adopts Michigan Rules of Court (MCR), Rule 2.119 Motion Practice, a copy of which is attached hereto and incorporated herein by reference, to establish motion practice and procedures in this Court for the form of motions, time requirements, motions for rehearing or reconsideration, and motion fees, etc.*"

**SUBCHAPTER 2.300 JOINER OF CLAIMS, COUNTERCLAIMS, AND CROSS-CLAIMS****RULE 2.301 GENERALLY.**

**(A) Compulsory Joinder.** In a pleading that states a claim against an opposing party, the pleader must join every claim that the pleader has against that opposing party at the time of serving the pleading, if it arises out of the same transaction or occurrence as the first action and the claim does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.

**(B) Permissive Joinder.** A pleader may join as either independent or alternate claims as many claims, legal or equitable, as the pleader has against the opposing party. The court should grant this motion if hearing all the claims in one hearing will save the court time and resources. The court should decline the motion if the joinder of claims would result in a confusion of the original claim.

**(C) Counterclaim, Exceeding Opposing Claim.** A counterclaim may, but need not, diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

**(D) Cross-Claim Against a Co-Party.** A pleading may state as a cross-claim by one party against a co-party which arises out of the transaction or occurrence that is the subject matter of the original subject matter of the original action. The cross-claim may include a claim that another party may be liable to the cross-claiming party or the entire party of the claim asserted in the action.

**(E) Failure to Join Parties in Complaints, Counterclaims, or Cross-Claims.** A failure to join a claim that, under Subrule (A) of this rule should be joined, serves to bar that claim from being brought at another time after final judgment on the merits is issued.

**(F) Separate Trials.** If the court, in its own discretion, determines that bringing the multiple claims, counterclaims, or cross-claims in the same proceeding will result in confusion of the issues, the court may order a separate hearing on the issues.

**2003 Comment**

Subrule (A) of this Rule, in its present form removes, from the existing requirements the provision which stated: “...(and) if the claim does not involve adjudication over a third party who is not a Native American or a member of the Tribe.” This Rule supplants the former provision with the provision: “...(and) does not require for its adjudication the presence of third parties over whom the court cannot acquire jurisdiction.”

Under the former provisions of Subrule (A), additional claims under the same transaction or occurrence were not barred by the “time of service” requirement if the claim involved adjudication over a third party who was is not Native American or a member of the Lac Vieux Desert Tribe. Claims involving adjudication over a third party who is a tribal member or member of another tribe were barred. The intent of these changes to Subrule (A) is to make equal requirements of compulsory joinder among parties in civil litigation, and not to remove the former differentiation of “Native American or member of the Tribe.”

**2008 Comment**

Rule 2.301 formerly was located under Rule 2.201 of LVD/2003 and all prior Court Rules.

## **RULE 2.302 JOINER OF PARTIES**

### **(A) Necessary Joinder of Parties.**

(1) Subject to the provisions of subsection two (2) of this subrule, persons having such interests in the subject matter of an action that their presence in the action is essential to permit the court to render complete relief must be made parties and align as plaintiffs or defendants in accordance with their respective interests.

(2) When persons described under subsection one (1) of this subrule have not been made parties and are subject to the jurisdiction of the court, the court shall order them summoned to appear in the action, and may prescribe the time and order of pleadings. If the court fails to have jurisdiction over the party, then the court shall proceed without the party to best of its ability.

### **(B) Permissive Joinder.**

(1) All persons may join in one action as plaintiffs if:

- (a) they assert a right to relief jointly, severally with respect to the same transaction, occurrence, or series of transactions or occurrences, and if a question of law or fact is common to all of the plaintiff’s in the particular action; or,
- (b) if their presence in the action will promote the convenient administration of justice.

(2) All persons may be joined in one action as defendants if:

- (a) there is asserted a right against them to relief jointly, severally with respect to the same transaction, occurrence, or series of transactions or occurrences, and if a question of law is common to all the defendants in the particular action.
- (b) if their presence in the action will promote the convenient administration of justice.

(3) Separate Trials. The court may enter orders to prevent a party from being embarrassed, delayed, or put to expense by the joinder of a person against whom the party asserts no claim and who asserts no orders to prevent delay or prejudice.

**2008 Comment**

Rule 2.302 was formerly located under Rule 2.202 of LVD/2003 and all prior Court Rules.

**RULE 2.303 MISJOINER AND NONJOINER OF PARTIES.**

Misjoinder of parties is not grounds for dismissal of an action. Parties may be added or removed by an order of the court or by a motion of either party. The court has the discretion to set a time frame in which all parties may be added or removed.

**2008 Comment**

Rule 2.303 was formerly located under Rule 2.203 of LVD/2003 and all prior Court Rules.

**SUBCHAPTER 2.400 DISCOVERY**

**RULE 2.401 GENERAL RULES.**

The tribal court shall have the power to set and establish an appropriate time frame for discovery as the circumstances of each case dictates. The court may also adopt particular rules for which discovery may be conducted. Any extension of the rules must be granted by the presiding judge. A failure to follow the court rules in a particular case may result in penalties by the court.

**2008 Comment**

Rule 2.303 was formerly located under Rule 2.203 of LVD/2003 and all prior Court Rules.

**RULE 2.402 SCOPE OF DISCOVERY**

**(A)** Unless otherwise provided for by the court, parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of another party, including the existence, description, nature, custody, condition, and location of books, documents, or other tangible things including the identity of person having knowledge of a discoverable matter.

**(B)** It is not grounds for objection that the information sought will be admissible at trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

**(C)** A party who claims to have privilege in refusing to answer a question must raise that objection the instant the information is sought. Failure to do so will result in a waiver of the privilege.

**(D)** Any information or work prepared with the intent of using in, or prepared in, the anticipation of trial, which constitutes strategy, tactics or other such material, is excluded from the scope of discovery.

**2008 Comment**

Rule 2.402 was formerly located under Rule 2.302 of LVD/2003 and former Court Rules.

**RULE 2.403 PROTECTIVE ORDERS**

In addition to those provisions contained under Subchapter 1.300 of these Rules, on a motion by a party or person from whom discovery is sought, the court in which the action is pending may issue any order that justice requires to protect a party or person from undue annoyance, embarrassment, oppression, or undue burden or expense. Said court order may limit the use of material, the number of parties who may see the information, and certain penalties for failing to follow the protective order. Any party having an objection concerning the information sought during discovery must file a claim with the court and state the grounds for the claim.

**2001 Comment**

Rule 2.303 remains substantially unchanged with the exception that this provision makes reference to Subchapter 1.500 *Personal Protection Orders* which has been adopted and effective herein as of January 1, 2001.

**2008 Comment**

Rule 2.403 was formerly located under Rule 2.302 of LVD/2003 and all former Court Rules.

**RULE 2.404 DEPOSITIONS.**

**(A) General Rules.** A party may obtain information during the period of discovery through the process of deposition. The Tribal Court has the power to set specific rules regarding the time in which depositions may be taken.

**(B) Scope of Deposition.** A party may seek all information, whether admissible or inadmissible in court, subject to the rules of privilege, designated to obtain information that makes the existence of any factor of the case more or less likely. Discovery should be broadly permitted in order to get a clear understanding of the circumstances of a particular matter.

**(C) Persons Before Whom Depositions May Be Taken.** A party may be required to take depositions before any individual authorized by the court to record a transcript of the proceeding or another person who has been upon by all parties and so authorized by the court.

**(D) Admissibility in Court.**

(1) Impeachment of Testimony. Depositions conducted in accordance with the provisions contained herein shall be admitted into court in order to impeach the testimony of an individual.

(2) Evidence at Trial. A deposition of an individual may be admitted into trial if the party is unavailable during trial provided that the opposing attorney had fair and just time for cross examination of testimony.

(3) Judicial Discretion. The Tribal Court has the inherent discretion of whether such testimony shall be admitted into court. If the Tribal Court determines that the credibility of the testimony is questionable then the court should deny the testimony from admittance.

**(E) Subpoena for Taking Depositions.** Upon the request of either party, the court may subpoena any individual for testimony. The subpoena may include a request the deposed party produce designated books, papers, documents, or other tangible things relevant to the subject matter of the pending action within the scope of discovery.

**1999 Comment**

LVD II/1999 Rule 2.304(C) is different from its former subrule in that the new subrule requires a designated fee for the use of court transcription services.

Subrule (F) *Answers to Depositions* of former LVD II/1994 has been omitted herein.

**2001 Comment**

Subrule (C) of LVD/2001 contains the new provision that a proceeding may be transcribed by, “another person who has been agreed upon by all parties and so authorized by the court.”

**2003 Comment**

Subrule (C) of these rules now removes the provision of taking of depositions in front of the Clerk of Courts, and eliminates the fee charged by the Court for Clerk Transcribed Depositions.

**2008 Comment**

Rule 2.404 was formerly located under Rule 2.304 of LVD/2003 and all former Court Rules.

**RULE 2.405 INTERROGATORIES OF PARTIES.**

**(A) General Rules of Interrogatories.** During the period of discovery, a party has the right send Interrogatories designated to discover information for the trial.

**(B) Admissibility.** The provisions of Rule 2.304(D) regarding the admissibility of Depositions apply to interrogatories.

**1999 Comment**

Rule 2.305(A) omits the former provision contained under LVD II/1994 which also limited the amount of questions (30) and the amount of pages (10) of the interrogatories.

Rule 2.305(B) of this text was formerly located under Subrule (C) of LVDII/1994. The former provision contained under Subrule (B) of LVDII/1994 *Answers to Interrogatories*, has been omitted which is consistent with the omission of the provision contained under Rule 3.304(F) *Answers to Depositions* of LVDII/1994.

**2008 Comment**

Rule 2.405 was formerly located under Rule 2.305 of LVD/2003 and all prior Court Rules.

**RULE 2.406 PHYSICAL AND MENTAL EXAMINATIONS.**

When the mental and physical condition of a party is in controversy, the Tribal Court may order the party to submit to a physical or mental examination. The order may be entered only on motion for good cause with notice to the person to be examined and to all parties. The Court may request an examination on its own initiative if the court determines that the information will be relevant in the determination of a certain matter. The order must specify the time, place, manner, conditions, and scope and may provide that the attorney for the person to be examined be present at the examination. Unless specifically waived in the court order, the Tribal Court shall not be responsible for any costs arising out of the examination.

**1999 Comment**

Subsections (A) and (B) of former LVDII/1994, 3.306 *Physical and Mental Examinations*, have been modified under LVDII/1999 2.306.

**2008 Comment**

Rule 2.406 was formerly located under Rule 2.306 of LVD/2003 and all prior Court Rules.

**RULE 2.407 FAILURE TO PROVIDE OR PERMIT DISCOVERY**

**(A) Motion for Order to Compel Discovery.** A party, upon reasonable notice to the other parties and all other parties and persons affected, may apply for an order compelling discovery with the Court. Grounds for compelling discovery are as follows:

- (1) If a deponent fails to answer a question propounded or submitted; or,
- (2) If the party answers a question presented in an evasive or incomplete manner.

**(B) Failure to Comply with Order.** A party who violates an order compelling discovery may be subject to sanctions by the Court. The court further has the power to award court costs for

the filing of the motion seeking sanctions for failing to comply with the order as well as other costs incurred in the process.

**1999 Comment**

LVD/1999 2.307(B) has changed form the provision contained in former LVD/1994 3.307(B) in that the subrule has been reorganized for clarity.

**2008 Comment**

Rule 2.407 was formerly located under Rule 2.307 of LVD/2003 and prior Court Rules.

## **SUBCHAPTER 2.500 PRETRIAL PROCESS**

### **RULE 2.501 SETTING OF SCHEDULE**

Upon the filing of a complaint with the court and the applicable answer to the complaint, the court may establish an appropriate time table for events to be completed.

**2008 Comment**

Rule 2.501 was formerly located under Rule 2.401 of LVD/2003 and all prior Court Rules.

### **RULE 2.502 PRETRIAL CONFERENCES.**

**(A) Time for Conferences.** At any time after the filing of an action, the court may direct that the parties to the action appear for a pretrial conference. The Court shall give reasonable notice of the scheduling of the aforementioned conference. More than one conference may be held in an action and upon approval of the court this conference may be held via telephone.

**(B) Scope of Conference.** At a conference under this rule, the court and the attorneys for the parties may consider any matters that will facilitate the fair and expeditious disposition of the action, following:

- (1) the simplification of the issues;
- (2) the necessity of additional time for discovery;
- (3) the necessity or desirability of amendments to the pleadings;
- (4) the possibility of obtaining admissions of facts and documents;
- (5) the limitation of the number of expert witnesses;
- (6) the consolidation of or separation of actions or issues for trial;
- (7) the possibility of settlement;
- (8) the possibility of mediation;
- (9) the number of witnesses to testify at trial;
- (10) the estimated length of trial;

(11) the time period of discovery and ending time periods for discovery;

(12) any other matter that may aid in the disposition of the action.

**(C) Conference Summary.** A copy of the actions taken by the court during the given pretrial conference shall be prepared by the court clerk and distributed to the parties in the action. The document shall specify the amendments reached during the conference.

**(D) Presence of Parties at Conference.** The court may direct that the attorneys to the action be present, either in person or by telephone.

**(E) Failure to Attend; Default.** A failure of a party to attend a conference meeting as so directed by the court, and without excuse by the court, may result in the dismissal of the action as well as court costs or attorney costs imposed, if applicable.

**(F) Failure to Follow Guidelines of Conference.** A party who fails to follow the guidelines and provisions of discovery will be subject to contempt of court charges and any costs incurred by the court or the complying party in the action. The party complying with the guidelines of the conference is obliged to motion the court for a hearing on this issue. Such motion shall be in good faith and subject to penalties if done in bad faith.

**1999 Comment**

Subrule (E) of this text supplants “shall result in the dismissal.....” of the former rule with “may result in the dismissal.....”

**2008 Comment**

Rule 2.502 was formerly located under Rule 2.402 of LVD/2003 and all prior Court Rules.

### **RULE 2.503 MEDIATION.**

**(A) Jurisdiction.** The court may submit for mediation any civil action in which the relief sought is primarily money damages or division of property. In all tort actions, unless the court determines that mediation will not be effective, the court shall submit the claim for mediation.

**(B) Panel of Mediation.** In civil cases sent to mediation, the court shall impanel a committee to hear the matter and make recommendations of settlement to the parties.

**(C) Duties of the Panel.** The mediation board shall review both sides of the issue and recommend an appropriate settlement. Upon the committee’s recommendation, parties have ten (10) days to determine whether or not to accept the settlement proposal. A failure of the parties to accept the recommendation or the failure of the committee to establish an appropriate remedy, will result in the continuation of the court proceeding. A failure to respond within the ten days will automatically constitute a rejection of the recommendation.

**(D) Costs and Effect of Rejection of Mediation Proposal.**

(1) Unless otherwise ordered by the court, or stipulation by the parties, all parties whose claim has been submitted for mediation shall equally pay the costs of said mediation.

(2) If a party rejects the recommendation of the mediation committee that party may be subject to costs as set by the court, of the mediation panel, if the settlement ultimately received is

within 10% of the recommendation of the committee.



**2002 Comment**

Paragraph (2) of Subrule (D) remains unchanged. Paragraph (1) of this Subrule has been inserted as a result of prior court practice of assessing costs equally among the parties in typical cases of mediation.

**2008 Comment**

Rule 2.503 was formerly located under Rule 2.403 of LVD/2003 and all prior Court Rules.

**RULE 2.504 OFFERS TO STIPULATE TO ENTRY OF JUDGMENT, CLAIMS, ISSUES AND/OR FACTS.**

**(A) Generally.** At any time prior to one week before the trial date is set, both parties have the right to enter into a written offer to stipulate to the entry of judgment for the whole or part of the claim, including interest and costs then accrued, as well as the claims to be discussed and/or the issues.

**(B) Binding Effect of Acceptance.** If both parties agree to the stipulation, the court shall order the stipulation to be binding on the whole or part of the claim. By accepting the stipulation, the parties waive any and all claims regarding that particular issue.

**(C) Rejection of Stipulation or Stipulation in Part.** If the parties refuse to enter into a stipulation then the issues, claims or facts must be established at trial. There is no penalty for rejection of the entry of a stipulation.

**2008 Comment**

Rule 2.504 was formerly located under Rule 2.404 of LVD/2003 and all prior Court Rules.

**RULE 2.505 DISMISSAL FOR LACK OF PROGRESS****(A) Grounds for Dismissal.**

(1) If after the pretrial conference, no action is taken on the matter by either party for a period of 60 days, the court has the option to notify both parties that the action will be dismissed unless some action is taken within 10 days of notification.

(2) In matters in which no action is taken by either party for a period of One (1) year or more, without further notice to the parties, the court may summarily dismiss the matter.

**(B) Rights after Notification.** After notification of the option to dismiss the action, the parties must contact the court with the progress of the action or submit good cause for the lack of progress.

**(C) Effect of Dismissal.** If the parties fail to respond within the ten day period prescribed under Subrule (1) above, the court shall order that the claim be dismissed. The court has the discretion to reinstate the matter upon a showing of good cause. Both parties may also be subject for court costs if the court deems such costs appropriate.

**2003 Comment**

Subrule (1) now breaks down into two parts. Paragraph Numbered One remains unchanged and the provisions of Paragraph Numbered Two are new and is a mechanism by which a matter may be automatically dismissed after a year of inactivity.

**2008 Comment**

Rule 2.505 was formerly located under Rule 2.405 of LVD/2003 and all prior Court Rules.

## **SUBCHAPTER 2.600 TRIALS**

### **RULE 2.601 COURT AUTHORITY OVER TRIAL STRUCTURE**

The Tribal Court shall have the ultimate authority to set the appropriate rules for the procedures throughout the trial. Included within this rule are rules regarding the opening and closing statements, examinations of witnesses and time periods for arguments. A specific rule as to a particular matter will supersede any general rule.

**2008 Comment**

Rule 2.601 was formerly located under Rule 2.501 of LVD/2003 and all prior Court Rules.

### **RULE 2.602 CONSOLIDATION; SEPARATE TRIALS**

**(A)** When actions involving a substantial and controlling common question of law or fact are pending before the court, the court may:

- (1) Order a joint hearing or trial of any or all matters in issue in the actions;
- (2) Order the actions consolidated; and/or
- (3) Enter orders concerning the proceedings to avoid unnecessary costs or delays.

**(B)** If the court determines that inconvenience will result or undue prejudice is likely to result if the issues are brought in one action, the court may order that the issues be separated and heard in separate proceedings.

**1999 Comment**

LVD II/1999 2.502 corresponds to LVD/II 1994 3.502. The current rule is reorganized from the former rule to include Subrules (A) and (B).

**2008 Comment**

Rule 2.602 was formerly located under Rule 2.502 of LVD/2003 and all prior Court Rules.

### **RULE 2.603 SUBPOENA OF WITNESSES.**

Upon the request of one party, and the paying of any set costs, the court will subpoena any witnesses that the court has personal jurisdiction over. A failure of a party properly subpoenaed to attend may result in contempt of court charges against the individual.

**2008 Comment**

Rule 2.603 was formerly located under Rule 2.503 of LVD/2003 and all prior Court Rules.

### **RULE 2.604 DIRECTED VERDICTS**

A party may move for a directed verdict at the close of evidence offered by an opponent. The motion must state specific grounds in support of the motion. If the motion is not granted, the moving party may offer evidence without having reserved the right to do so, as though the motion was never made.

**2008 Comment**

Rule 2.604 was formerly located under Rule 2.503 of LVD/2003 and all prior Court Rules.

**RULE 2.605 FINDINGS BY THE COURT**

In actions tried on the facts without a jury, the court shall find the facts specifically, state separately its conclusions of law, and direct entry of the appropriate judgment. The court may state said findings and conclusions on the record or include them in a written opinion.

**2008 Comment**

Rule 2.605 was formerly located under Rule 2.505 of LVD/2003 and all prior Court Rules.

**RULE 2.606 DISMISSAL OF ACTIONS**

A plaintiff may petition the court at any time to dismiss the action. An action so instituted, may only be dismissed by Order of the Court. The dismissal may or may not be based upon a stipulation of settlement between the parties. In instances of dismissal of actions under this rule, the Plaintiff may be liable to the court or the other party for costs if the court determines the original action to be made in bad faith.

**1999 Comment**

LVDII/1999 2.506 eliminates the provision of prior rule which states: "if the dismissal is not based on a stipulation for settlement, the plaintiff may be liable to the court or the other party for costs if the court determines the original action to be made in bad faith.

**2001 Comment**

In addition to the requirement that a dismissal of the action be only made by order of the court, this rule in its present form reinstates the 1994 liability of a party who moves the court for a dismissal of an action in bad faith.

**2008 Comment**

Rule 2.606 was formerly located under Rule 2.506 of LVD/2003 and prior Court Rules.

**SUBCHAPTER 2.700 JUDGMENTS AND ORDERS; POSTJUDGMENT PROCEEDINGS****RULE 2.701 JUDGMENTS**

**(A) Relief Available.** Except as provided in subrule (B), every judgment may grant the relief to which the party in whose favor it is rendered is entitled.

**(B) Default Judgment.** A judgment by default may not be different in kind from, nor exceed the amount of, the relief demanded in the pleadings, unless prior notice is given to the other party. In such cases the party has the right to appear and only argue the amount in excess of the original amount.

**2001 Comment**

The former corresponding provision as contained in Subrule (A) implying that the court may fashion a form of relief for a party prevailing but has not requested a particular form of relief, has purposely been omitted herein.

**2008 Comment**

Rule 2.701 was formerly located under Rule 2.601 of LVD/2003 and all prior Court Rules.

**RULE 2.702 ENTRY AND ENFORCEMENT OF JUDGMENTS.**

**(A) Date of Effect.** Upon the signing of the order of the court, said order shall be binding and enforceable upon the parties as to the rights asserted. Neither party is required to motion the court for enforcement on the order after it has been entered. However, this provision is not meant

to exclude a party to whom judgment is entered to motion the court for a supplemental judgment for installment payments within the applicable 21 days after entry as provided under 2.703 of these rules.

**(B) Failure to Follow Decision of the Court.** A party who fails to follow the decision of the court, provided no pending appeal has been filed, will be subject to contempt of court.

**2001 Comment**

Subrule (A) supplants enforcement of an order after it “has been signed” with after an order “has been entered”. Consistent with the amendments to Rule 2.703, this Subrule also specifically reserves the right of a judgment holder to move the court after 90 days of entry of the original order, for enforcement of an Order which has been entered.

**2003 Comment**

Subrule (A) now amends the period of time from “90 days after entry” to “21 days after entry.” The intent in shortening the interval between the time of entry of the judgment and post judgment installment/garnishment orders is to expedite the time period of enforcement of these judgments. The twenty-one day time period allowing the original judgment to season, corresponds with the period of time preserved to appeal an initial judgment.

**2008 Comment**

Rule 2.702 was formerly located under Rule 2.602 of LVD/2003 and all prior Court Rules.

### **RULE 2.703 DEFAULT AND DEFAULT JUDGMENT**

**(A) Entry; Notice; Effect.**

(1) If a party against whom a judgment for relief is sought has failed to plead or otherwise defend as provided by these rules, and that fact is made to appear by affidavit or otherwise, the clerk must enter the default of that party.

(2) Notice of the entry must be sent to all parties who have appeared and to the defaulted party. If the defaulted party has not appeared, the notice to the defaulted party may be served by personal service, by ordinary mail at his or her last known address, or otherwise as may be directed by the court.

(3) After default order has been entered, that party is prohibited from proceeding in the action until the default action has been set aside.

**(B) Procedure for Default Judgment.**

(1) A party may petition the court for a default judgment on the grounds that the other party has failed to respond to any pleadings in the case or has failed to respond to pleadings for a six (6) month period.

(2) The party who Petitions the court for the default judgment has the burden of serving all the parties in the action with a copy of the petition prior to the court hearing the matter.

**(C) Grounds for Setting Aside Default Judgment.** A motion to set aside a default order, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.

**2001 Comment**

Subrule (C) omits the 1999 operative, “except when grounded on lack of jurisdiction over the defendant.”

**2008 Comment**

Rule 2.703 was formerly located under Rule 2.603 of LVD/2003 and all prior Court Rules.

### **RULE 2.704 DECLARATORY JUDGMENTS**

**(A)** In a case of actual controversy within its jurisdiction, the Tribal Court may declare the rights and other legal relations of an interested party seeking a declaratory judgment, whether or not other relief is or could be sought or granted.

**(B)** The Tribal Court has the discretion of whether or not to grant such relief.

**(C)** Declaratory Judgments have the force and effect of, and are reviewable as, final judgments.

**2008 Comment**

Rule 2.704 was formerly located under Rule 2.604 of LVD/2003 and all prior Court Rules.

**RULE 2.705 MOTIONS FOR JUDGMENTS NOTWITHSTANDING VERDICT**

**(A) Motion.** Within Ten (10) days after entry of judgment, a party may move to have the verdict and judgment set aside on the grounds that:

(1) Absolutely no evidence was presented at the trial to support the conclusion of the jury;  
or,

(2) New evidence has come forth clearly and unequivocally dictating a reversal of the judgment.

**(B) New Trial.** If the court elects to grant a party's motion for judgment notwithstanding the verdict, the Tribal Court shall order a new trial on the issues unless to do so would, in the Court's discretion, be a waste of time.

**2008 Comment**

Rule 2.705 was formerly located under Rule 2.605 of LVD/2003 and all prior Court Rules.

**RULE 2.706 MOTION FOR NEW TRIALS**

**(A)** Within twenty-one (21) days of entry of the judgment, a party may motion the Court to vacate the previous entry of judgment and grant the parties a new trial on the issue. A party requesting this motion must specifically list all the reasons that this motion should be granted. Grounds for a new trial include, but are not limited to, the following:

(1) Irregularity in the proceedings of the court, jury, or an order of the court or abuse of discretion which denied the moving party a fair trial;

(2) Misconduct of the jury or the prevailing party;

(3) Excessive or inadequate damages appearing to have been influenced by passion or prejudice;

(4) A verdict or decision against the great weight of evidence or otherwise contrary to law;

(5) Material evidence, newly discovered, which could not with reasonable diligence have been discovered and produced at trial;

(6) Error of law occurring in the proceedings, or mistake of fact by the court.

**(B) Remitter and Additur of Damages.** If the court finds the sole mistake is the inadequacy or excessiveness of the verdict, it may deny a motion for a new trial but add to or subtract

from the amount of damages awarded. The court must notify the affected party prior to its order of remitter or additur of damages and permit that party an equal opportunity to respond.

**2008 Comment**

Rule 2.707 was formerly located under Rule 2.607 of LVD/2003 and all prior Court Rules.

**RULE 2.707 CORRECTION OF HARMLESS ERROR**

Upon a motion of a party or within the Court's determination, after an order or judgment has been issued, the court may modify or correct an error in the Court's original judgment. If the correction would have a substantial effect upon either of the parties, the Court's original judgment shall not be corrected.

**2008 Comment**

Rule 2.707 was formerly located under Rule 2.607 of LVD/2003 and all prior Court Rules.

**RULE 2.708 SATISFACTION OF JUDGMENT**

Upon the entry of judgment or order of the Tribal Court, the parties thereto will be issued an order from the court. The court may, from the bench, upon motion by the judgment holder, dictate a proper payment schedule of the appropriate damages or other such relief at the time of the entry of the judgment, or at a later date enter an order for periodic payments, in accordance with the applicable provisions for installment payments provided for under Rule 2.803 of this Subchapter. Upon the final payment of damages or satisfaction of the judgment, the judgement holder shall submit notification to the court that the judgment has been satisfied.

**1999 Comment**

This rule is substantially the same as former Rule 3.608 but has been reorganized herein for clarity.

**2001 Comment**

Language is added to this rule to extend the court's authority to include into its original order a schedule for periodic payments, but deliberately reserves the entry of an order for periodic payments at a later date.

**2008 Comment**

Rule 2.708 was formerly located under Rule 2.608 of LVD/2003 and prior Court Rules.

**SUBCHAPTER 2.800 PROCEEDINGS SUPPLEMENTARY TO JUDGMENT**

**RULE 2.801 RELIEF UNDER THESE RULES; MONETARY AWARD.**

**(A) Definitions.** In this rule:

- (1) "Plaintiff" refers to any judgment creditor;
- (2) "Defendant" refers to any judgment debtor;
- (3) "Garnishee" refers to the garnishee defendant;

(4) "Money Judgment" refers to a judgment for damages subject to immediate execution, as distinguished from equitable or injunctive relief.

(5) “Annuity” means any obligation to pay a stated sum, usually monthly or annually, to a stated recipient.

(6) “Per Capita” payment means those payments made or distributed to all members of the Tribe, which are paid directly from the net revenues of any gaming activity;

(7) “Periodic Payments” includes but is not limited to, wages, salary, commissions, bonuses, and other income paid to the defendant during the period of the writ; land contract payments; rent; and other periodic debt or contract payments. Periodic payments do not mean any of the following:

- (a) Interest payments.
- (b) Payments by a financial institution of interest on a deposit account;
- (c) Charges made by a financial institution automatically against an account which applies to a debt under an automatic payment authorization executed by the account owner.
- (d) Payments made by a financial institution to honor a check or draft or to comply with an account holder’s order of withdrawal of funds from an account.
- (e) Interest earned on a certificate of deposit that is paid into a deposit account.

**(B) Postjudgment Garnishments.**

(1) Periodic garnishments are garnishments of periodic payments, as provided in this rule.

(a) Unless otherwise ordered by the court, a writ of periodic garnishment served on a garnishee who is obligated to make periodic payments to the defendant is effective until the first to occur of the following events:

- (i) the amount withheld pursuant to the writ equals the amount of the unpaid judgment, interest, and costs stated in the verified statement in support of the writ;
- (ii) the expiration of 91 days after the date the writ was issued;
- (iii) the plaintiff files and serves on the defendant and the garnishee a notice that the amount withheld exceeds the remaining unpaid judgment, interest, and costs, or that the judgment has otherwise been satisfied.

(b) The plaintiff may not obtain the issuance of a second writ of garnishment on a garnishee who is obligated to make periodic payments to the defendant while a prior writ served on that garnishee remains in effect relating to the same judgment. The plaintiff may seek a second writ after the first writ expires under Subrule (B)(1)(a).

(c) If a writ of periodic garnishment is served on a garnishee who is obligated to make periodic payments to the defendant while another order that has priority under MCL 600.4012(2) is in effect, or if a writ or order with higher priority is served on the garnishee while another writ is in effect, the garnishee is not obligated to withhold payments pursuant to the lower priority writ until the expiration of the higher priority one. In the case of garnishment of earnings, the garnishee shall withhold pursuant to the lower priority writ to the extent that the amount being withheld pursuant to the higher priority order is less than the maximum that could be withheld by law pursuant to the lower priority writ. Upon the expiration of the higher priority writ, the lower priority one becomes effective until it would otherwise have expired under Subrule (B)(1)(a). The garnishee shall notify the plaintiff of receipt of any higher priority writ or order and provide the information required by subrule (H)(2)(c).

(d) For the purposes of this subsection, writs of garnishment have priority in the following order:

- (i) A garnishment resulting from an obligation of Court ordered child support.
- (ii) A levy of the state or a governmental unit of the state to satisfy a tax liability.
- (iii) Any other garnishment, in the order in which they are served.

(2) Nonperiodic garnishments are garnishments of property or obligations other than periodic payments.

**(C) Forms.** The Lac Vieux Desert Tribal Court shall publish approved forms for use in garnishment proceedings. Separate forms shall be used for periodic and nonperiodic garnishments. The verified statement, writ, and disclosure filed in garnishment proceedings must be substantially in the form approved by the Chief Judge of the Lac Vieux Desert Tribal Court.

**(D) Request for and Issuance of Writ.** The court clerk that entered the judgment shall review the request. The clerk shall issue a writ of garnishment if the writ appears to be correct, complies with these rules, and if the plaintiff, or someone on the plaintiff's behalf, make and files a verified statement that states as follows:

- (1) that a judgment has been entered against the defendant and remains unsatisfied;
- (2) the amount of the judgment; the total amount of the postjudgment interest accrued to date; the total amount of the postjudgment costs accrued to date; the total amount of the postjudgments payments made to date, and the amount of unsatisfied judgment now due (including interest and costs);
- (3) that the person signing the verified statement knows or has good reason to believe that:
  - (a) a named person has control of the property belonging to the defendant,
  - (b) a named person is indebted to the defendant, or
  - (c) a named person is obligated to make periodic payments to the defendant.

### **(E) Writ of Garnishment**

(1) The writ of garnishment must have attached or must include a copy of the verified statement requesting issuance of the writ, and must include information that will permit the garnishee to identify the defendant, such as the defendant's address, social security number, employee identification number, federal tax identification number, employer number, or account number, if known.

(2) Upon issuance of the writ, it shall be served upon the garnishee as provided in Subrule (F)(1). The writ shall include the date on which it was issued and the last day by which it must be served to be valid, which is 91 days after it was issued.

- (3) The writ shall direct the garnishee to:
  - (a) Serve a copy of the writ on the defendant as provided for in Subrule (F)(2);
  - (b) Within 14 days after the service of the writ, file with the court clerk a verified disclosure indicating the garnishee's liability (as specified in Subrule (G)(1) to the defendant and mail or deliver a copy to the plaintiff and the defendant.
  - (c) deliver no tangible or intangible property to the defendant, unless allowed by statute or court rule;
  - (d) pay no obligation to the defendant, unless allowed by statute or court rule; and,



(e) in the discretion of the court and in accordance with Subrule (J), order the garnishee either to:

- (i) make all payments directly to the plaintiff, or
- (ii) send the funds to the court in the manner specified in the writ.

(4) The Writ shall direct the defendant to refrain from disposing of:

- (a) Any negotiable instrument of title representing a debt of the garnishee (except the earnings of the defendant), or
- (b) Any negotiable instrument of title representing property in which the defendant claims an interest held in the possession or control of the garnishee.

(5) The writ shall inform the Defendant that unless the Defendant files objections within 14 days after the service of the Writ on the Defendant:

- (a) Without further notice the property or debt held pursuant to the garnishment may be applied to the satisfaction of the plaintiff's judgment, and
- (b) periodic payments due to the defendant may be withheld for as long as 91 days after the issuance of the writ and in the discretion of the court paid directly to the plaintiff.

(6) The Writ shall direct the plaintiff to serve the garnishee as provided in Subrule (F)(1), and to file a proof of service with the court.

**(F) Service of Writ.**

(1) The Plaintiff shall serve the Writ of Garnishment, a copy of the Writ for the Defendant, the disclosure form, and any applicable fees, on the Garnishee within 91 days after the date the Writ was issued in the manner provided for the service of a Summons and Complaint under Rule 2.202 of these rules.

(2) The garnishee shall, within 7 days after being served with the Writ, deliver a copy of the Writ to the Defendant or mail a copy to the Defendant at the Defendant's last known address by first class mail.

**(G) Liability of Garnishee.**

(1) Subject to the provisions of this subsection and any setoff permitted by law or these rules, the Garnishee is liable for:

- (a) All tangible or intangible property belonging to the Defendant in the Garnishee's possession or control when the Writ is served on the Garnishee, unless the property is represented by a negotiable document of title held by a bona fide purchaser for value other than the Defendant;
- (b) All negotiable documents of title and all goods represented by negotiable documents of title belonging to the defendant if the documents of title are in the garnishee's possession when the writ is served on the garnishee;
- (c) All corporate share certificates belonging to the Defendant in the Garnishee's possession or control when the Writ is served on the garnishee;
- (d) All debts, whether or not due, owing by the garnishee to the Defendant when the Writ is served on the Garnishee, except for debts evidenced by negotiable instruments or representing the earnings of the Defendant;

(e) All debts owing by the garnishee evidenced by negotiable instruments held or owned by the defendant when the writ of garnishment is served on the Defendant, as long as the instruments are brought before the court before their negotiation to a bona fide purchaser for value;

(f) The portion of the Defendant's earnings that are not protected from garnishment by law as provided in Subrule (B);

(g) All judgments in favor of the Defendant against the garnishee in force when the Writ is served on the Garnishee;

(h) All tangible or intangible property of the Defendant that, when the Writ is served on the Garnishee, the Garnishee holds by conveyance, transfer, or title that is void as to creditors of the Defendant, whether or not the Defendant could maintain an action against the Garnishee to recover the property; and,

(i) The value of all tangible or intangible property of the Defendant that, before the Writ is served on the Garnishee, the Garnishee received or held by conveyance, transfer, or title that was void as to creditors of the Defendant, but that the garnishee no longer held at the time the Writ was served, whether or not the Defendant could maintain an action against the Garnishee for the value of the property.

(2) The garnishee is liable for no more than the amount of the unpaid judgment, interest, and costs as stated in the verified statement requesting the Writ of Garnishment. Property or debts exceeding that amount may be delivered or paid to the defendant notwithstanding the garnishment.

**(H) Disclosure.** The garnishee shall mail or deliver to the court, the plaintiff, and the defendant, a verified disclosure within 14 days after being served with the Writ.

(1) Nonperiodic Garnishments.

(a) If indebted to the Defendant, the Garnishee shall file a disclosure revealing the garnishee's liability to the Defendant as specified in Subrule (G)(1) and claiming any setoff that the Garnishee would have against the Defendant, except for claims for unliquidated damages for wrongs or injuries.

(b) If not indebted to the Defendant, the Garnishee shall file a disclosure so indicating.

(c) If the garnishee is indebted to the Defendant, but claims that withholding is exempt under the law, the garnishee shall indicate on the disclosure the specific exemption.

(2) Periodic Garnishments.

(a) If not obligated to make periodic payments to the Defendant, the disclosure shall so indicate, and the garnishment shall be considered to have expired.

(b) If obligated to make periodic payments to the Defendant, the disclosure shall indicate the nature and frequency of the garnishee's obligation. The information must be disclosed even if money is not owing at the time of the service of the writ.

(c) If a writ or order with a higher priority is in effect, in the disclosure the garnishee shall specify the court that issued the writ or order, the file number of the case in which it was issued, the date it was issued, and the date it was served.

**(I) Withholding.** This subrule applies only if the garnishee is indebted to or obligated to make periodic payments to the Defendant.

(1) Except as otherwise provided in this subrule, the writ shall be effective as to obligations owed and property held by the garnishee as of the time the writ is served on the garnishee.

(2) In the case of periodic earnings, withholding shall commence according to the following provisions:

(a) For garnishees with weekly, biweekly, or semimonthly pay periods, withholding shall commence with the first full pay period after the writ was served.

(b) For garnishees with monthly pay periods, if the writ is served on the garnishee within the first 14 days of the pay period, withholding shall commence on the date the writ is served. If the writ is served on the garnishee on or after the 15<sup>th</sup> day of the pay period, withholding shall commence the first full pay period after the writ was served.

(3) In the case of periodic earnings, withholding shall cease according to the following provisions:

(a) For garnishees with weekly, biweekly, or semimonthly pay periods, withholding shall cease upon the end of the last full pay period prior to the expiration of the Writ.

(b) For garnishees with monthly pay periods, withholding shall continue until the Writ expires.

(4) At the time that a periodic payment is withheld, the garnishee shall provide the following information to the plaintiff and the defendant:

(a) the name of the parties;

(b) the case number;

(c) the date and amount withheld;

(d) the balance due on the writ.

The information shall also be provided to the court if funds are sent to the court.

(5) If funds have not been withheld because a higher priority writ or order was in effect, and the higher priority writ ceases to be effective before expiration of the lower priority one, the garnishee shall begin withholding pursuant to the lower priority writ as of the date of the expiration of the higher priority writ.

(6) A bank or other financial institution, as garnishee, shall not withhold exempt funds of the debtor from an account into which only exempt funds are directly deposited and where such funds are clearly identifiable upon deposit as exempt Social Security benefits, Supplemental Security Income benefits, Railroad Retirement benefits, Black Lung benefits, or Veterans Assistance benefits.

#### **(J) Payment.**

(1) After 28 days from the date of the service of the Writ on the garnishee, the garnishee shall transmit all withheld funds to the Plaintiff or the court as directed by the court pursuant to Subrule (E)(3)(e) of these Rules, unless notified that objections have been filed.

(2) For periodic garnishments, all future payments shall be paid as they become due as directed by the court pursuant to Subrule (E)(3)(e) of these Rules, until expiration of the garnishment.

(3) Upon receipt of proceeds from the writ, the court shall forward such proceeds to the plaintiff.

(4) Payment to the plaintiff may not exceed the amount of the unpaid judgment, interest, and costs stated in the verified statement requesting the writ of garnishment. If the plaintiff claims to be entitled to a larger amount, the plaintiff must proceed by motion with notice to the Defendant.

(5) In the case of earnings, the garnishee shall maintain a record of all payment calculations and shall make such information available for review by the plaintiff, the defendant, or the court, upon request.

(6) For periodic garnishments, within 14 days after the expiration of the writ or after the garnishee is no longer obligated to make periodic payments, the garnishee shall file with the court and mail or deliver to the plaintiff and the defendant, a final statement of the total amount paid on the writ. If the garnishee is the defendant's employer, the statement is to be filed within 14 days after the expiration of the writ, regardless of changes in employment status during the time that the writ was in effect. The statement shall include the following information:

- (a) the names of the parties and the court in which the case is pending;
- (b) the case number;
- (c) the date of the statement;
- (d) the total amount withheld;
- (e) the difference between the amount stated in the verified statement requesting the writ and the amount withheld.

(7) If the disclosure states that the garnishee holds property other than money belonging to the defendant, the plaintiff must proceed by motion (with notice to the defendant and the garnishee) to seek an appropriate order regarding application of the property to satisfaction of the judgment. If there are no pending objections to the garnishment, and the plaintiff has not filed such a motion within 56 days after the filing of the disclosure, the garnishment is dissolved and the garnishee may release the property to the defendant.

### **(K) Objections.**

(1) Objections shall be filed with the court within 14 days of the date of service of the writ on the defendant. Objections may be filed after the time provided in the Subrule but do not suspend payment pursuant to Subrule (J) unless ordered by the court. Objections may only be based on defects in or the invalidity of the garnishment proceeding itself, and may not be used to challenge the validity of the judgment previously entered.

(2) Objections shall be based on one or more of the following:

- (a) the funds or property are exempt from garnishment by law;
- (b) garnishment is precluded by the pendency of bankruptcy proceedings;
- (c) garnishment is barred by an installment payment order;
- (d) garnishment is precluded because the maximum amount permitted by law is being withheld pursuant to a higher priority garnishment or order;
- (e) the judgment has been paid;
- (f) the garnishment was not properly issued or is otherwise invalid.

(3) Within 7 days of the filing of objections, notice of the date of hearing on the objections shall be sent to the plaintiff, the defendant, and the garnishee. The hearing date shall be within 21 days of the date the objections are filed. Notice shall be sent by the Court.

- (4) The court shall notify the plaintiff, the defendant, and the garnishee of the Court's decision.

**(L) Steps After Disclosure; Third Parties; Interpleader; Discovery.**

(1) Within 14 days after service of the disclosure, the plaintiff may serve the garnishee with written interrogatories or notice the deposition of the garnishee. The answers to the interrogatories or the deposition testimony becomes part of the disclosure.

(2) If the garnishee's disclosure declares that a named person other than the defendant and the plaintiff claims all or part of the disclosed indebtedness or property, the court may order that the claimant be added as a defendant in the garnishment action under Rule 2.302 of these Rules. The garnishee may proceed under Rule 2.302 as in interpleader actions, and other claimants may move to intervene under Rule 2.302.

- (3) The Rules of Discovery apply to garnishment proceedings.

(4) The filing of a disclosure, the filing of answers to interrogatories, or the personal appearance by or on behalf of the garnishee at a deposition does not waive the garnishee's right to question the court's jurisdiction, the validity of the proceeding, or the plaintiff's right to judgment.

**(M) Determination of Garnishee's Liability.**

(1) If there is a dispute regarding the garnishee's liability or if another person claims an interest in the garnishee's property or obligation, the issue shall be tried in the same manner as other civil actions.

(2) The verified statement acts as the plaintiff's complaint against the garnishee, and the disclosure serves as the answer. The facts stated in the disclosure must be accepted as true unless the plaintiff has served interrogatories or noticed a deposition within the time allowed by Subrule (L)(1) of these Rules, or another party has filed a pleading or motion denying the accuracy of the disclosure they are denied. Admissions have the effect of admissions in responsive pleadings. The defendant and other claimants added under Subrule (L)(2) of these Rules may plead their claims and defenses as in other civil actions. The garnishee's liability to the plaintiff shall be tried on the issues thus framed.

(3) Even if the amount of the garnishee's liability is disputed, the plaintiff may move for judgment against the garnishee to the extent of the admissions in the disclosure. The general motion practice rules govern notice (including notice to the garnishee and the defendant) and hearing on the motion.

(4) The issues between the plaintiff and the garnishee will be tried by the court unless a party files a demand for a jury trial within 7 days after the filing of the disclosure, answers to interrogatories, or deposition transcript, whichever is filed last. The defendant or a third party waives any right to a jury trial unless a demand for a jury is filed with the pleading stating the claim.

(5) On the trial of the garnishee's liability, the plaintiff may offer the record of the garnishment proceeding and other evidence. The garnishee may offer evidence not controverting the disclosure, or in the discretion of the court, may show error or mistakes in the disclosure.

(6) If the court determines that the garnishee is indebted to the defendant, but the time for payment has not arrived, a judgment may not be entered until after the time of maturity stated in the verdict or finding.

**(N) Orders for Installment Payments.**

(1) An order for installment payments under Rule 2.803, suspends the effectiveness of a writ of garnishment of periodic payments for work and labor performed by the defendant from the time the order is served on the garnishee. An order for installment payments does not suspend the effectiveness of a writ of garnishment of nonperiodic payments or of an income tax refund or credit.

(2) If an order terminating the installment payment order is entered and served on the garnishee, the writ again becomes effective and remains in force until it would have expired if the installment payment order had never been entered.

**(O) Judgment and Execution**

(1) Judgment may be entered against the garnishee for the payment of money or the delivery of specific property as the facts warrant. A money judgment against the garnishee may not be entered in an amount greater than the amount of the unpaid judgment, interest, and costs as stated in the verified statement requesting the writ of garnishment. Judgment for specific property may be enforced only to the extent necessary to satisfy the judgment against the defendant.

(2) The judgment against the garnishee discharges the garnishee from all demands by the defendant for the money paid or property delivered in satisfaction of the judgment. If the garnishee is sued by the defendant for anything done under the provisions of these garnishment rules, the garnishee may introduce as evidence the judgment and the satisfaction.

(3) If the garnishee is chargeable for specific property that the garnishee holds for or is bound to deliver to the defendant, judgment may be entered and execution issued against the interest of the defendant in the property for no more than is necessary to satisfy the judgment against the defendant. The garnishee must deliver the property to the officer serving the execution, who shall sell, apply, and account as in other executions.

(4) If the garnishee is found to be under contract for the delivery of specific property to the defendant, judgment may be entered and execution issued against the interest of the defendant in the property for no more than is necessary to satisfy the judgment against the defendant. The garnishee must deliver the property to the officer serving the execution according to the terms of the contract. The officer shall sell, apply, and account as in ordinary execution.

(5) If the garnishee is chargeable for specific property and refuses to expose it so that execution may be levied on it, the court may order the garnishee to show cause why general execution should not issue against the garnishee. Unless sufficient cause is shown to the contrary, the court may order that an execution be issued against the garnishee in an amount not to exceed twice the value of the specifically chargeable property.

(6) The court may issue execution against the defendant for the full amount due the plaintiff on the judgment against the defendant. Execution against the garnishee may not be ordered by separate writ, but must always be ordered by endorsement on or by incorporation within the writ of execution against the defendant. The court may order additional execution to satisfy the plaintiff's judgment as justice requires.

(7) Satisfaction of all or part of the judgment against the garnishee constitutes satisfaction of a judgment to the same extent against the defendant.

**(P) Appeals.** A judgment or order in a garnishment proceeding may be set aside or appealed in the same manner and with the same effect as judgments or orders in other civil actions.

**(Q) Receivership.**

(1) The court may order the garnishee to delivery to a person appointed as receiver, if on disclosure or trial of a garnishee's liability, it appears that when the writ was served the garnishee possessed:

- (a) a written promise for the payment of money or the delivery of property belonging to the defendant; or,
- (b) personal property belonging to the defendant.

(2) The receiver must:

- (a) collect the written promise for payment of money or for the delivery of property and apply the proceeds on any judgment in favor of the plaintiff against the garnishee and pay any surplus to the garnishee; and,
- (b) dispose of the property in an amount greater than any encumbrance on it can be obtained, and after paying the amount of the encumbrance, apply the balance to the plaintiff's judgment against the garnishee and pay any surplus to the garnishee.

(3) if the garnishee refuses to comply with the delivery order, the garnishee is liable for the amount of the written promise for the payment of money, the value of the promise for the delivery of property, or the value of the defendant's interest in the encumbered personal property. The facts of the refusal and the valuation must be included in the receiver's report to the court.

(4) The receiver shall report all actions pertaining to the promise or property to the court. The report must include a description and valuation of any property, with the valuation to be ascertained by appraisal on oath or in a manner the court may direct.

**(R) Costs and Fees.**

(1) Costs and fees are as provided by law or these rules.

(2) If the garnishee is not indebted to the defendant, does not hold any property subject to garnishment, and is not the defendant's employer, the plaintiff is not entitled to recover the costs of that garnishment.

**(S) Failure to Disclose or to Do Other Acts; Default; Contempt.**

(1) If the garnishee fails to disclose or do a required act within the time limit imposed, a default may be taken as in other civil actions. A default judgment against a garnishee may not exceed the amount of the garnishee's liability as provided under Subrule (G)(2) of this Rule.

(2) If the garnishee fails to comply with the court order, the garnishee may be adjudged in contempt of court.

(3) In addition to other actions permitted by law or these rules, the court may impose costs on a garnishee whose default or contempt results in expense to other parties. Costs imposed shall include reasonable attorney fees and shall not be less than \$100.00.

**(T) Judicial Discretion.** On motion the court may by order extend the time for:

- (1) the garnishee's disclosure;
- (2) the plaintiff's filing of written interrogatories;
- (3) the plaintiff's filing of a demand for oral examination of the garnishee;
- (4) the garnishee's answer to written interrogatories;
- (5) the garnishee's appearance for oral examination; and,
- (6) the demand for jury trial.

**(V) Income Exempt from Garnishment.** The types of income that are exempt from garnishment, include but are not limited to:

- (1) Individual Retirement Account (IRA)- [MCL 600.6023(1)(k)];
- (2) Social Security Benefits- [41USC, Section 407];
- (3) Supplemental Security Income Benefits (SSI)- [42USC, Section 1383(d)];
- (4) Aid to Families with Dependent Children (AFDC)- [MCL 400.63];
- (5) General Assistance Benefits (GA)- [MCL 400.63];
- (6) Unemployment Compensation Benefits- [MCL 421.30];
- (7) Veterans Assistance Benefits- [38 USC, Section 3101];
- (8) Workers' Compensation Benefits- [MCL 418.821];
- (9) The first \$500.00 on deposit in a savings and loan savings account- [MCL 491.628];
- (10) Cash value or proceeds of life insurance or annuity, payable to the spouse or children of the insured- [MCL 500.2207(1)];



(11) Income benefits under the Michigan Civil Service Act-[MCL 38.40];

(12) Income benefits under the Michigan Retirement Act- [MCL 421.30];

(13) U.S. Civil Service Retirement Benefits- [5USC, Section 8346];

(14) Any payment or property made exempt from garnishment or attachment pursuant to the laws of the Lac Vieux Desert Tribe.

**(W)** Unless a particular rule under this Subchapter states otherwise, a plaintiff may otherwise obtain relief by motion or separate civil action as follows:

(1) by a creditor's bill;

(2) in aid of execution authorized by statute or court rule.

**1999 Comment**

Subrule (C) of this Rule is new and is consistent with the provisions contained under LVD II/1999 1.313(B).

**2003 Comment**

Subrule (C) of the former provisions of Rule 2.701 has now been rescinded. The result of the removal of the provisions of former Subrule (C) comes upon a finding that it was inconsistent with the application of the Lac Vieux Desert Tribal Income Allocation Plan as authorized by Tribal Council Resolution Number 94-046 and approved by the United States Department of Interior on December 14, 1994.

**2008 Comment**

Rule 2.801 was formerly located under Rule 2.701 of LVD/2003 and all prior Court Rules.

**2022 Comment**

Effective September 1, 2012, this Rule has been entirely rewritten. As a result of Administrative Order 12-001, effective September 1, 2012, the former provisions of Subrule (A), (B) and (C) of Rule 2.801 of LVD/2008 have either been entirely rescinded or added to and expanded under Rule 2.801 in its present form.

**RULE 2.802 RELIEF UNDER THESE RULES, OTHER SUCH AWARDS.**

Where the Court's judgment calls for relief other than money, such as specific performance or the return of property, the Court has the power to order the appropriate relief performed as required in the situation, which includes, but is not limited to directing the Tribal Police to obtain custody of the disputed property and turn it over to the appropriate party.

**2008 Comment**

Rule 2.802 was formerly located under Rule 2.702 of LVD/2003 and all prior Court Rules.

**RULE 2.803 INSTALLMENT JUDGMENTS**

Consistent with Rule 2.708 and Rule 2.801, a party may move for entry of an order permitting the judgment to be paid in installments in accordance with and under such terms as established by the Court. Unless stipulated to by both parties at the time of the entry of the original judgment, after 90 days from the date of entry of the original order, upon proper motion, the court may enter a supplemental order of periodic payments garnishing the judgment creditor's wages, and/or other sources of income.

**2001 Comment**

The substance of this rule in its present form remains unchanged, except that this rule, as opposed to its corresponding 1999 rule, now omits the operative that a party must move the court for installment payments prior to a money judgment.

**2003 Comment**

The form which the court may enter a supplemental order of periodic payments garnishing wages from the date of the original judgment has been shortened from the 2002 allowance of 45 days to 21 days.

**2008 Comment**

Rule 2.803 was formerly located under Rule 2.703 of LVD/2003 and all prior Court Rules.

## CHAPTER 3. CRIMINAL PROCEDURE

Effective December 27, 1994  
Including Amendments Received Through  
September 1, 2022

*[This chapter was formally located under Chapter 4 of LVD II/1994]*

### SUBCHAPTER 3.000 GENERAL PROVISIONS

#### RULE 3.001 SCOPE; APPLICABILITY OF CIVIL RULES

**(A) Scope of Rules.** The rules in this section govern matters of procedure in criminal cases brought forth in the name of the People of Lac Vieux Desert Band of Lake Superior Chippewa Indians, before the Tribal Court. Unless otherwise specified in a particular rule, the rules apply for crimes classified as misdemeanors and felonies.

**(B) Juvenile Matters.** The rules of this chapter also apply to juveniles tried as an adult in Tribal Court and also apply to juveniles brought in the Juvenile Division of Tribal Court unless contradicted by the provisions of Chapter 5, *Juvenile Offender Procedure*. The Court may further modify a certain rule herein, upon prior notice to the parties, if such modification is in the best interest of the juvenile and the community.

**(C) Applicability of Civil Rules.** The provisions of the rules of civil procedures apply to cases governed by this chapter, except:

- (1) as otherwise provided by rule or statute;
- (2) when it clearly appears that they apply to civil actions only; or,
- (3) when a statute or court rule provides a like or different procedure.

**(D) Rules and Statutes Superseded.** The rules in this chapter supersede all prior court rules and any statutory procedure pertaining to and inconsistent with a particular provision provided for in this chapter.

#### 1999 Comment

LVD I/1990 pertained solely to Criminal Procedure and was incorporated into the Lac Vieux Desert Criminal Statutes. Its procedural replacement, LVD II/1994, reorganized its counterpart and without comment, either amended, repealed, or added to certain provisions of the Criminal Procedure contained in LVD I/1990. Under Chapter 3 of LVD II/1999, in some instances, certain provisions of LVD I/1990 have been reinstituted. Where applicable those provisions have been so noted.

**RULE 3.002 PURPOSE AND CONSTRUCTION**

**(A) Purpose of Rules.** These rules are intended to promote a just determination in every criminal proceeding. They are to be construed to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay.

**(B) Construction of Rules.** Words not otherwise defined herein are deemed to be strictly construed with a plain simple meaning. Where used throughout these rules, any terms that denote one gender are deemed to include the other gender.

**RULE 3.003 DEFINITIONS**

For the purposes of these rules:

**(A) “Prosecutor”** includes any lawyer or designated individual prosecuting a criminal case on behalf of the Tribe, whether or not employed by the Tribe;

**(B) “Advocate”** means any person who may not be a licensed attorney and who has been authorized by the Lac Vieux Desert Tribal Court to serve as a representative of a Defendant in a particular action.

**(C) “Court Officer” or “Judicial Officer”** includes a Judge, Magistrate, Clerk of Court, Prosecutor, Tribal Police Officer, and Probation Officer, authorized by the Tribe to perform their particular functions in Tribal Court;

**(D) “Felony”** means an offense for which the offender, upon conviction may be punished by a fine not to exceed Five Thousand (\$5,000.00) Dollars and court costs, or a jail term not to exceed One (1) year, or both;

**(E) “Misdemeanor”** when used under these rules means an offense for which the offender, upon conviction, may be punished by a fine not to exceed Five Hundred (\$500.00) Dollars and court costs, or a jail term not to exceed Ninety (90) days, or both;

**(F) “Civil Infraction”** means an offense for which the offender, upon conviction, may be punished by a fine not to exceed Two Hundred (\$200.00) Dollars and court costs.

**1999 Comment**

Rule 3.003 substantially expands upon the applicable provision for definitions as found under LVD II/1994. Namely, Subrules (D) through (F) have been inserted which are also provided for under 2-1-3 through 2-1-5 of the Lac Vieux Desert Criminal Statutes.

**RULE 3.004 STATUTE OF LIMITATIONS**

**(A) Misdemeanor and Civil Infractions.** No prosecution shall be maintained pursuant to the provision of these rules unless the prosecution shall have been commenced by the issuance of a complaint within One (1) year of the commission of the alleged offense. Such period of time shall be tolled for all periods during which a defendant shall remain outside of the territorial jurisdiction of the court for the purpose of avoiding prosecution. The burden of proving that a defendant has removed himself from the territorial jurisdiction of the court for the purpose of avoiding prosecution shall be on the prosecution.

**(B) Felony Charges.** Unless specifically provided for by statute, there shall be no limitations upon the time the prosecution has to initiate felony charges and issue a criminal complaint.

**2022 Comment**

Subrule (A) incorporates entirely the provisions of 1-1-6 of the Criminal Procedure provided for in LVD I/1990, as such relates to Misdemeanors and Civil Infractions. Subrule (B) addresses Felony Charges which were silent under the provisions of 1-1-6 of LVD I/1990.

**RULE 3.005 SPEEDY TRIAL**

**(A) Right to a Speedy Trial.** The defendant and the People are entitled to a speedy trial and to a speedy resolution of all matters before the court.

**(B) Priorities in Scheduling Criminal Cases.** The trial court has the responsibility to establish and control a trial calendar. In assigning cases to the calendar, and insofar as it is practicable:

- (1) the trial of criminal cases must be given preference over the trial of civil cases; and,
- (2) the trial of defendants in custody and of defendants whose pretrial liberty presents unusual risk, must be given preference over other criminal cases.

**(C) Untried Charges; 180 Day Rule.** Excepting as otherwise provided herein, the prosecutor must make a good faith effort to bring a criminal charge to trial within One Hundred Eighty (180) days of the following:

- (1) the time from which the prosecutor knows that the person charged with the offense is incarcerated in a jail or is detained in a local facility awaiting incarceration or jail; or,
- (2) the time at which the defendant knows or has reason to know that a criminal charge is pending against him, which includes, but is not limited to, when the defendant is aware that a complaint has been filed with the prosecutor or the court, or from the time the Defendant is issued a Law Enforcement Citation.

**(D) Failure of Prosecutor to Follow Right to Speedy Trial.** In cases covered under this rule, the defendant is entitled to have the charged dismissed with prejudice if the prosecutor fails to make a good faith effort to bring the charge to trial within the particular specified time. A motion for dismissal made under the 180 day rule may be made by either party, or by the court, sua sponte.

**1999 Comment**

Subrule (C) of the former Court Rule of LVD II/1994 providing for delays in Felony and Misdemeanor cases and the remedy of personal recognizance release has been omitted herein.

**2001 Comment**

Paragraph (2) of Subrule (C) in its present form now amends the former 90 day rule to 180 days and now also includes: "from the time the Defendant is issued a Law Enforcement Citation."

**2003 Comment**

Subrule (D) of Rule 3.004 now specially provides that any party, including the court on its own motion, may move for dismissal under the 180 Day Rule.

**2022 Comment**

This Rule was formerly located under Rule 3.004 of LVD/2008 and prior court rules.

**RULE 3.006 RIGHT TO ASSISTANCE OF A LAWYER/ADVOCATE; ADVICE; WAIVER.**

**(A) Advice of Right.** At the arraignment on the warrant or complaint, the court must advise any defendant whom the court has criminal jurisdiction over, the entitlement to be represented by an

attorney or to the court defense advocate's assistance, if the court has an appointed one, at all subsequent court proceedings, where the Tribe is not an alleged victim of the crime. For the purposes of this provision, "Tribe" as used in this context means a distinct Tribal entity, and not the Community as a whole.

**(B) Appointment or Waiver of a Defense Advocate.** If the Tribe has an appointed Advocate, the court shall appoint an advocate to represent the defendant's interest where the Tribe is not an alleged victim of the crime. The defendant shall reserve the right to waive his or her right to the advocate at any time. The court shall accept this waiver unless the court, in its discretion, determines that the defendant is mentally, physically or emotionally unable to understand and appreciate the nature of the proceedings, the offense or the punishment thereto. The court shall not accept a defendant's waiver of counsel without first:

- (1) advising the defendant of the charge, the maximum possible prison sentence for the offense, and any mandatory minimum sentence required by law; and,
- (2) offering the defendant the opportunity to consult and/or retain a lawyer or advocate.

**(C) Advice of Subsequent Proceedings.** The record of each subsequent proceedings must affirmatively show that the court advised the defendant of the right to the Tribal Court Advocate's assistance and/or the Defendant's right to retain the services of an Attorney, and that, if applicable, the defendant waived that right. A waiver of the right to either an advocate or attorney's assistance in any previous hearings, does not constitute such a waiver in any subsequent hearings on the same matter.

**(D) Unanticipated Conflict of Interest.** If, in a case of joint representation, a conflict of interest arises at any time, including at trial, the lawyer or advocate must immediately inform the court. If the court agrees that a conflict has arisen, it must afford one or more of the defendants the opportunity to retain separate counsel. The court should on its own initiative inquire into any potential conflict that becomes apparent, and take such action as the interest of justice require.

**(E) Scope of Trial Lawyer's Responsibility.** The responsibilities of the trial lawyer or advocate appointed to represent the Defendant include(s):

- (1) Representing the Defendant in all trial court proceedings including sentencing;
- (2) Filing of interlocutory appeals the lawyer deems appropriate;
- (3) Responding to any pre-conviction appeals by the prosecutor; and,
- (4) Unless an appellate lawyer has been retained, filing of post-conviction motions, including but not limited to, motions for new trial, for directed verdict of acquittal, to withdraw plea(s).

**1999 Comment**

The changes of this rule from the corresponding Rule 4.005 of LVD II/1994 have come as a result of Tribal Council Resolution 99-021, dated May 5, 1999.

Subrule (A) in its present form supplants the corresponding rule engendered under Rule 4.005 of LVD II/1994. While that rule formerly provided the Defendant an absolute entitlement to a Court appointed Advocate in all criminal proceedings at no cost to the Defendant, the language of the Subrule (A) in its present form provides for a Court appointed Advocate where a Tribal Entity is not an alleged victim to the particular crime.

Subrule (B) "Appointment or Waiver of a Defense Advocate" is consistent with Subrule (A) in that it mandates the court to appoint an Advocate "where the Tribe is not an alleged victim of the crime."

The provision of Subrule (D) of the former Rule 4.005 of LVD II/1994 “Multiple Representation” has been omitted under these rules and has been supplanted with the provision for unanticipated conflicts of interest which was formerly located under Subrule (E) of LVD II/1994.

**2001 Comment**

Subrule (A) now clearly specifies that any person/defendant, regardless of tribal affiliation, is entitled to the assistance of the defense advocate in criminal proceedings.

**2008 Comment**

This Rule now omits the requirement that the Court appoint a Defense Advocate, if so requested by the Defendant. The current change in the language of this rule from the former LVD/2003 Court Rule, and all prior court Rules, results from the Tribe no longer providing the services of a deliberate Defense Advocate. The 2007 modifications of this Rule, however, reiterates the right of the Defendant to obtain the services of a Lawyer/ Defense Advocate, at his or her own expense, at any stages of the proceedings.

**2022 Comment**

This Rule was formerly located under Rule 3.005 of LVD/2008 and prior court rules.

### **RULE 3.007 ASSIMILATION OF CRIMES**

**(A) Criminal Code Provisional Omissions.** Any crime, or otherwise act or omission which, although not made punishable by the Lac Vieux Desert Criminal Code, would otherwise be punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, may be prosecuted in the Lac Vieux Desert Tribal Court of a like offense and subject to a like punishment.

**(B) Charging Documents.** All charges assimilated under this rule shall identify the assimilated charge and assimilated offense code.

**2022 Comment**

This Rule is consistent with the provisions of 1-1-11 of LVD I/1990 and 2-1-6 of the Lac Vieux Desert Criminal Codes, which provides: “In accordance with USC Code Title 18 Section 12, whoever within or upon any of the places now existing or hereafter reserved or acquired as provided in Section Seven of Title 18, is guilty of any act or omission which, although not made punishable if committed or omitted within the jurisdiction of the State, Territory, Possession, or District in which such place is situated, by the laws thereof in force at the time of such act or omission, shall be guilty of a like offense and subject to a like punishment.

## **SUBCHAPTER 3.100 PRELIMINARY PROCEEDINGS**

### **RULE 3.101 THE COMPLAINT**

**(A) Definition and Form.** A complaint is a written accusation that a named or described person has committed a specified criminal offense. At a minimum, the complaint must include:

(1) The name, date of birth, and address of the accused. If the accused is a minor, the Complaint must also give the minor’s parent(s), guardian, or custodial care giver’s addresses;

(2) The complaint must also include the substance of the accusation against the accused and the name and statutory citation of the offense.

**(B) Signature and Oath.** The complaint must be signed and sworn to before the prosecuting attorney and law enforcement officer who can swear or affirm that the facts recited in the complaint, and relied on for the charge(s) in the complaint, are true and accurate to the best of the officer’s knowledge and belief.

**1999 Comment**

Subrule (A) preserves the provision of LVD I/1990 1-2-1(d) regarding the substance of the complaint in criminal matters.

**2003 Comment**

Paragraph (1) of Subrule (A) now expands upon the minimum requisites of a complaint. Paragraph (2) of Subrule (A) remains unchanged.

**2022 Comment**

Effective April 6, 2016 by virtue of Administrative Order 2016-001, Subrule (B) has been amended. In accordance with LVD/2008, Subchapter 3.100 et seq., and the *Lac Vieux Desert Code of Criminal Procedure*, §1-2-1(c), all criminal complaints to be filed with and authorized by the LVD Tribal Court “must be made on oath and affirmation.” This requires that a criminal complaint filed with the Court must be sworn out to the Court by a law enforcement officer who can swear or affirm that the facts recited in the complaint, and relied on for the charge(s) in the complaint, are true and accurate to the best of the officer’s knowledge and belief.

**RULE 3.102 ARREST ON A WARRANT**

**(A) Issuance of Warrant.** The court must issue an arrest warrant, or a summons if presented with a proper complaint and if the court finds probable cause to believe that the accused committed the alleged offense.

**(B) Probable Cause Determination.** A finding of probable cause may be based on hearsay evidence and rely on factual allegations in the complaint, affidavits from the complainant or others, and/or the testimony of a sworn witness adequately preserved to permit review, or any combination of these sources.

**(C) Contents of Warrant; Court’s Subscription.** A warrant must:

- (1) Contain the accused’s name, if known, or an identifying name or description;
- (2) Describe the offense charged in the complaint;
- (3) Command a peace officer or other person authorized by law to arrest and bring the accused before a judicial officer or the judicial district in which the offense allegedly was committed or some other designated court; and
- (4) Be signed by the Court.

**(D) Execution and Return of the Warrant.** Only a peace officer or other person authorized by law may execute an arrest warrant. On execution or attempted execution of the warrant, the officer must make a return on the warrant and deliver it to the court before which the person arrested is to be taken.

**RULE 3.103 SUMMONS INSTEAD OF ARREST**

**(A) Issuance of Summons.** If the prosecutor so requests, the court may issue a summons instead of an arrest warrant. If an accused fails to appear in response to a summons, the court on its own initiative or upon request, may issue an arrest warrant.

**(B) Form.** A summons must contain the same information as an arrest warrant, except that it should summon the accused to appear before a designated court at a stated time and place.

**(C) Service and Return of Summons.** Service should be made promptly to give the accused adequate notice of the appearance date. The person serving the summons must make a return to the court. A summons may be served on or before the date and time of the hearing, by:

- (1) Personally delivering a copy to the named individual; or
- (2) Leaving a copy with a person of suitable age and discretion at the individual's home or usual place of abode; or
- (3) Mailing a copy via registered mail to the individual's last known address.

**2001 Comment**

Subrule (C) adds the provision that proof of service/non-service must be returned to the court on or before the time of the scheduled hearing.

**RULE 3.104 VENUE**

**(A) Generally.** The place at which the authority of the Lac Vieux Desert Tribal Court shall be exercised, unless otherwise indicated in this subchapter, or further empowered by formal resolution by the Lac Vieux Desert Tribal Council shall be within the exterior boundaries of the Lac Vieux Desert Tribal Reservation.

**(B) Change of Venue.**

(1) Generally. A defendant wishing to have his or her case tried in a different location other than the one authorized by this rules, shall motion the court for a change of venue. In the motion, the reasons for the change of venue, at a minimum, must contain the following criteria:

- (a) That there is such prejudice in the location where the case is to be tried that the defendant cannot obtain a fair and impartial trial there; or,
- (b) Another location is much more convenient for the parties and witnesses than the intended place of trial, and the interests of justice require a transfer of location.

(2) Time for Motion to Change Venue. A proper motion for change of venue shall be made before a jury is impaneled, or in cases where there is no jury, before a proper hearing is held and evidence is received.

**1999 Comment**

Subchapter 3.800 pertaining to venue, which has been omitted under LVD II/1994, is substantially the same as Section Fifteen of LVD I/1990.

**2022 Comment**

Rule 3.104 was formerly contained in its entirety of Subchapter 3.800 of LVD/2008. This rule in its present form combines LVD/2008 Rules 3.801 and Rule 3.802 into this present Rule.

**SUBCHAPTER 3.200 BOND HEARINGS, ARRAIGNMENT ON THE  
WARRANT OR COMPLAINT**

**RULE 3.201 BOND HEARING**

**(A) Time for Bond Hearing.** The Judge may hold a bond hearing after an individual is placed under arrest and prior to the arraignment or as part of the arraignment process.



**(B) Purpose of Bond Hearing.** The bond hearing is a quasi judicial proceeding where the judge sets a monetary amount, paid by the arrested individual, to secure the arrested individual's presence at subsequent court proceedings.

**(C) Nature of Hearing.** Traditional formal requirements of any other court proceedings do not apply. A judge may issue a bond based upon a police report, or other documents filed associated with the matter which the accused has been jailed.

**(D) Posting of Bond.** Upon the posting of the bond, the arrested individual shall be released from custody. If the arrested individual is unable to post bond that individual shall be held in custody until arraignment or the next associated proceeding.

**(E) Judicial Discretion in Setting Bond.** The judge shall have the discretion as to whether to hold a bond hearing separate from an arraignment. Only the setting of a bond that violates the cruel and unusual punishment clause of the Tribal Constitution shall be grounds for appeal.

**1999 Comment**

The provision contained under Subrule (E) of this rule for an appeal with respect to the setting of a bond that violates the cruel and unusual punishment clause, refers to Article X(g) of the Tribal Constitution.

**2003 Comment**

Subrule (E) of this Rule remains substantially unchanged and has been reworded for clarity.

**2022 Comment**

Subrule (D) now adds the language, "...or the next associated proceeding" as associated with the holding in custody a Defendant who is unable to post bond.

### **RULE 3.202 TIME FOR ARRAIGNMENT**

Unless released beforehand, or otherwise given an opportunity to post bond, an arrested person must be taken without unnecessary delay before the court for arraignment in accordance with the provisions of these rules.

**2003 Comment**

This rule now provides, as an operative of unnecessary delay, that the individual be given an opportunity to post bond.

**2022 Comment**

Rule 2.302 was formerly located under Rule 2.203 of LVD/2008.

### **RULE 3.203 ARRAIGNMENT PROCEDURE; JUDICIAL RESPONSIBILITIES**

The court, at the time of arraignment must:

**(A)** Inform the accused of the nature of the offense charged, and its maximum possible prison sentence and any mandatory minimum sentence required by law;

**(B)** If the accused is not represented by an attorney/advocate at the arraignment, advise the accused that:

- (1) the accused has a right to remain silent;
  - (2) anything the accused says orally or in writing can be used against the accused in court;
  - (3) the accused has a right to have a lawyer present during any questioning consented to;
- and,

(4) if the accused does not have the money to hire an attorney, an advocate will be provided by the court.

**(C)** Advise the accused of the right to hire an attorney at his or her own expense, at all subsequent court proceedings and the right of a court appointed Attorney or Lay Advocate, if the Defendant cannot afford one, to represent him or her;

**(D)** Set a date within a reasonable time for the hearing and inform the accused of the date;

**(E)** Determine what form of pretrial release, if any, is appropriate.

**(F)** The court may not question the accused about the alleged offense nor require that the accused enter a plea. If the accused is unable or unwilling to enter a plea, the court shall enter a not guilty plea on behalf of the Defendant.

**1999 Comment**

Paragraph 4 of Subrule (B) in its present form, corresponds with Rule 3.005 of this Chapter in that it provides for a court appointed Advocate if the "Tribe is not an alleged victim of the Crime." The former provision as found under Paragraph 4, Subrule (B), Rule 4.203 of LVD II/1994 solely provided that if the accused did not have the money to hire an attorney, an advocate would be appointed by the court. This rule in its present form purposely omits any provision for the appointment of an advocate on the grounds of indigency.

Subrule (C) as amended, corresponds with the language throughout this Chapter with the added provision for a court appointed Advocate if the "Tribe is not an alleged victim of the Crime."

**2022 Comment**

Subrule (C) as amended, rescinds the corresponding LVD/2008 Subrule (C) rule which formerly provided the language associated with the appointment of representation, "... (and) if the Tribe is not an alleged victim of the crime."

Subrule (F) is new and adopts the language under Subrule (E) of LVD/2008 which provided: "That the court not question the accused about the alleged offense nor require that the accused enter a plea."

### **RULE 3.204 PRETRIAL RELEASE**

**(A) Right to Bail.** Except in situations of the most serious nature, a person charged with a crime is entitled to:

(1) Be released on his or her own recognizance; and/or,

(2) Be released upon certain conditions; and/or

(3) Be released on money bail.

**(B) Release on Defendant's own Recognizance.** A defendant must be released upon his or her own recognizance unless the court decides that a recognizance release will not assure his or her appearance.

**(C) Conditional Release.** If the court decides that the defendant cannot be released on his or her own recognizance, the court may release the defendant on any condition(s) necessary to assure his or her appearance.

**(D) Money Bail; Satisfaction of Money Bail.**

(1) If the court decides that the defendant cannot be released on his or her own recognizance or conditionally, then money bail with or without conditions may be required to assure his or her appearance.

(2) If the court finds that the defendant's appearance cannot otherwise be assured, it may require the defendant to post a surety bond or cash in the full amount of the bail. In making its determination the court shall take into consideration the factors listed in Subsection (E) of this Rule.

(3) In lieu of cash, the court has the option of accepting property or other such cash equivalent valued in an equal amount to the cash.

**(E) Decision; Statement of Reasons.** In deciding which release to use and what terms and conditions to impose, the court shall consider available information on:

- (1) the length of the defendant's residence in the community;
- (2) employment status and history and financial condition;
- (3) family ties and relationships;
- (4) prior criminal record, including any record of prior release on recognizance or on bail;
- (5) record of appearance or nonappearance at court proceedings or flight to avoid prosecution;
- (6) the identity of responsible members of the community who would vouch for the defendant's reliability;
- (7) The nature of the offense presently charged and the apparent probability of conviction and the likely sentence, insofar as these factors are relevant to the risk of willful failure to appear.

It is not considered a reversible error, in and of itself, if the judge fails to expressly state one of these factors on the record.

**(F) Termination of Money Bail.** If the conditions of the bail are not satisfied, regardless of whether the Defendant post bail or regardless of whether another individual posted bail for the Defendant, then the court shall consider the bail forfeited and the defendant may be held liable for contempt of court. If the conditions of bail are met and the defendant properly appears for trial or next scheduled proceeding, and the Defendant does not violate any condition of the bail or laws of the Tribe, 10% of the face value of the money bail shall be retained by the court, and the court:

- (1) Shall return the bond in full without assessing the above 10% of the face value of money bail, if the Defendant is found not guilty; or,

(2) If found guilty, may apply the bond, less the above 10% face value retained by the court, to the balance of fines and costs imposed.

**1999 Comment**

Rule 3.204 is substantially the same except for the new provision contained under Subrule (F), Subsection (2) providing for the application of the bond to the particular balance of fines and court costs imposed, which is consistent with the courts past practice.

**2001 Comment**

Subrule (F) in its present form now includes the provision which allows the court to foreit bail regardless of whether the Defendant actually posted bail or another individual posted bail for the Defendant's benefit.

**2003 Comment**

Subrule (F) of Rule 3.204 now provides for the assessment and retention of 10% of the face value of Money Bail in cases where the Defendant is convicted of the crime for which Bail is associated.

**2022 Comment**

Subrule (D)(2) now rescinds the former provision that gave the Defendant the option of choosing surety or cash bond

## **SUBCHAPTER 3.300 PRELIMINARY EXAMINATION**

### **RULE 3.301 GENERAL**

The purpose of a preliminary examination is to provide another judicial determination of the existence of probable cause to believe both that an offense has been committed and the defendant committed the applicable offense. In accordance with this rule, preliminary examinations shall be held separately only in conjunction with felony offenses. In cases of lower court misdemeanor offenses, and civil infractions, probable cause shall be determined by offer of proof at arraignment. For lower court misdemeanors and civil infractions, the party may request a preliminary hearing to be held separately.

**1999 Comment**

Rule 3.301 includes the applicable provision of LVD I/1990 distinguishing certain classifications of crimes and the time for which preliminary examinations should be taken, which has been omitted under Rule 4.301 of LVD II/1994.

**2022 Comment**

By virtue of Administrative Order 2016-0001, effective April 6, 2016, Rule 3.301 of LVD/2008 has been amended to now include language which conforms with the provisions of Lac Vieux Desert Code of Criminal Procedure § 1-7-2.

### **RULE 3.302 RIGHT TO PRELIMINARY EXAMINATION**

A Defendant in a criminal action has the right to request a preliminary examination to be heard before the court. A failure to request a preliminary examination constitutes a waiver of said right.

### **RULE 3.303 TIME FOR EXAMINATION**

A preliminary examination must be held at the earliest possible date that is convenient for both parties. A delay in scheduling a preliminary examination does not constitute an automatic dismissal of the action. A Defendant who delays in scheduling a preliminary examination may lose his or her right to the preliminary examination.

### **RULE 3.304 RESULTS OF EXAMINATION**

If the court determines that probable cause exists in that an offense was committed and that the defendant committed the offense, the Defendant shall be bound over for trial. If probable cause

does not exist then the charges against the Defendant shall be dismissed. A finding that probable cause exists shall not be interpreted to indicate that the Defendant is guilty of the offense.

### **RULE 3.305 RULES OF EVIDENCE**

Traditional rules of evidence shall apply during the preliminary examination. The court has the discretion to admit evidence during the examination for the purposes of determining if probable cause exists. An admittance or denial of evidence at a preliminary examination is not applicable to an admittance or denial of evidence at trial.

## **SUBCHAPTER 3.400 JOINER OF OFFENSES AND DEFENDANTS**

### **RULE 3.401 PERMISSIVE JOINER OF CHARGES**

(A) Two or more defendants may be charged in the same complaint if they are alleged to have participated in the same act or transaction constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately.

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

(C) If it appears that a defendant or the Lac Vieux Desert Tribe is prejudiced by a joinder of offense or other defendant for trial, the court may order separate complaints and may order a separate trial or provide such other relief that justice requires.

#### **1999 Comment**

Rule 3.401 mirrors LVD I/1990 1-10-1, and replaces former Rules 4.501 through 4.504 of LVD II/1994.

#### **2022 Comment**

Rule 3.401 was formerly located under Rule 3.501 of LVD/2008.

## **SUBCHAPTER 3.500 MENTAL COMPETENCY HEARING**

### **RULE 3.501 TIME AND FORM OF MOTION**

The issue of the defendant's competence to stand trial or to participate in other criminal proceedings may be raised at any time during the proceedings against the defendant. The issue may be raised by the court before which said proceedings are pending or being held, or by motion of a party. Unless the issue of the defendant's competency arises during the course of the proceedings, a motion raising the issue of the defendant's competence must be made in writing. If the competency issue arises during the course of the proceedings, the court may adjourn the proceeding, or, if the proceeding is the defendant's trial, the court may, consonant with double jeopardy considerations, declare a mistrial.

#### **2022 Comment**

Rule 3.501 was formerly located under Rule 3.601 of LVD/2008.

**RULE 3.502 ORDER FOR EXAMINATION**

Upon a showing that the defendant may be incompetent to stand trial, the court must order the defendant to undergo an examination by a certified or licensed examiner of appropriate training to reach the conclusion of competency to stand trial. A defendant ordered to appear for such examination must attend the examination or be subject to contempt of court charges.

**2022 Comment**

Rule 3.502 was formerly located under Rule 3.602 of LVD/2008.

**SUBCHAPTER 3.600 PLEAS****RULE 3.601 AVAILABLE PLEAS**

**(A) Possible Pleas.** Subject to the rules of this chapter, a defendant may enter a plea of not guilty, guilty, nolo contendere, guilty but mentally ill, or not guilty by reason of insanity. If the defendant refuses to plead or stands mute, or if the court refuses to accept the defendant's plea, the court must enter a not guilty plea on the record. A plea of not guilty places in issue every material allegation in the information and permits the defendant to raise any defense otherwise waived.

**(B) Pleas that require the Court's Consent.** A defendant may enter a plea of nolo contendere only with the consent of the court.

**(C) Pleas that require the Consent of the Court and the Consent of the Prosecutor.** A defendant may enter the following pleas only with the consent of the court and the prosecutor:

(1) A defendant who has asserted an insanity defense may enter a plea of guilty but mentally ill or a plea of not guilty by reason of insanity. Before such a plea may be entered, the defendant must comply with the examination required by law.

(2) A defendant may enter a conditional plea of guilty, nolo contendere, guilty but mentally ill, or not guilty by reason by insanity. A conditional plea entitles the defendant to withdraw the plea if a specified pretrial ruling was overturned on appeal. The ruling or rulings as to whether the defendant reserves the right to appeal must be specified orally on the record or in writing and made a part of the record.

**(D) Pleas of Lessor Charges.** The court may not accept a plea to an offense other than the one charged without the consent of the prosecutor.

**2022 Comment**

Rule 3.601 was formerly located under Rule 3.701 of LVD/2008.

**RULE 3.602 PLEAS OF GUILTY AND NOLO CONTENDERE**

The court may not accept a plea of guilty or nolo contendere unless it is convinced that the plea is understood, voluntary, and accurate. Before accepting a plea of guilty or nolo contendere, the court must ensure the following:

**(A) Ensuring an Understanding of the Plea.** The court must advise the defendant and determine that the defendant understands:

(1) The nature of the offense to which the defendant is pleading. The court is not obligated to explain the elements of the offense, or possible defenses.

(2) If the plea is accepted, the defendant waives the rights the defendant would have at a trial, including the right:

- (a) to be tried by a jury;
- (b) to be tried by the court without a jury;
- (c) to be presumed innocent until proven guilty;
- (d) to have the prosecutor prove beyond a reasonable doubt that the defendant is guilty;
- (e) to have the witnesses against the defendant appear at the trial;
- (f) to question the witnesses against the defendant;
- (g) to have the court order any witnesses the defendant has for the defense to appear at the trial;
- (h) to remain silent during the trial;
- (i) to not have that silence used against the defendant; and,
- (j) to testify at the trial if the defendant wants to testify.

**(B) A Voluntary Plea.**

(1) The court must ask the prosecutor and the defendant's counsel whether they are in agreement with an applicable plea.

(2) If there is a plea agreement, the court must ask the prosecutor or the defendant's counsel what the terms of the agreement are and confirm the terms of the agreement with the respective parties.

(3) If there is a plea agreement and its terms provide for the defendant's plea to be made in exchange for a specific sentence, disposition or a prosecutorial sentence recommendation, the court may:

- (a) Reject the agreement; or
- (b) accept the agreement after having considered the presentence report, in which event it must sentence the defendant to the sentence agreed to or recommended by the prosecutor; or
- (c) attempt the agreement without having considered the presentence report; or
- (d) take the plea agreement under advisement.

(4) The Court must ask the defendant:

- (a) whether anyone has promised the defendant anything, or whether anyone has promised anything beyond what is contained in the plea agreement;
- (b) whether anyone has threatened the Defendant ; and,
- (c) whether it is the defendant's own choice to plead guilty.

**(C) Accurate Plea**

(1) If the defendant pleads guilty, the court, by questioning the defendant, must establish support for a finding that the defendant is guilty of the offense charged or the offense to which the defendant is pleading.

(2) If the defendant pleads nolo contendere, the court may not question the defendant as to participation in the crime.

**RULE 3.603 PLEA OF GUILTY BUT MENTALLY ILL**

Before accepting a plea of guilty but mentally ill, the court must examine the psychiatric reports prepared and hold a hearing that establishes support for a finding that the defendant was mentally ill, but not insane, at the time of the offense to which the plea is entered. The reports must be made a part of the record but are to be treated as confidential and not be kept in the public legal case file.

**1999 Comment**

Rule 3.703 expands upon its counterpart, LVD II/1994 Rule 4.703 in that it adds the provision for the confidential treatment of mental health records.

**2022 Comment**

Rule 3.603 was formerly located under Rule 3.703 of LVD/2008

**RULE 3.604 PLEA OF NOT GUILTY BY REASON OF INSANITY**

**(A) Advise to the Defendant.** Before accepting a plea of not guilty by reason of insanity, the court must comply with the requirements contained in 3.602.

**(B) Additional Advise Requirement.** For the purposes of this rule, after complying with the appropriate requirements, the court must further advise the defendant, and determine whether the defendant understands, that the plea may result in the defendant's commitment for diagnostic examinations, which may result in the defendant's commitment for an indefinite period of time.

**(C) Factual Basis.** Before accepting a plea of not guilty by reason of insanity, the court must examine the psychiatric reports prepared and hold a hearing that establishes support for findings that:

- (1) the defendant committed the acts as charged; and,
- (2) a reasonable doubt exists about the defendant's legal sanity at the time of the offense.

**(D) Report of Plea.** After accepting the defendant's plea, the court must forward to the individual entity responsible for the diagnostic examination a full report, in the form of a settled record, of the facts concerning the crime to which the defendant plead and the defendant's mental state at the time of the crime.

**1999 Comment**

Rule 3.704(B) preserved the provision of former LVD II/1994 Rule 4.704(B) requiring a diagnostic examination but rescinds the former provision requiring such examination to be held at the center of forensic psychiatry for up to 60 days.

Subrule (D) rescinds the provision of LVD II/1994, Rule 4.704(D) requiring reports to be forwarded specifically to the center for forensic psychiatry, and also deletes the requirement of the court to determine the mental state of the defendant at the time of the crime.

**2022 Comment**

Rule 3.604 was formerly located under Rule 3.704 of LVD/2008.



**RULE 3.605 WITHDRAWAL OR VACATION OF PLEA BEFORE ACCEPTING SENTENCE**

**(A) Withdrawal Before Acceptance.** The defendant has a right to withdraw any plea until the court accepts the plea on the record.

**(B) Withdrawal Before Sentence.** On the defendant's motion or with the defendant's consent, the court in the interest of justice may permit an accepted plea to be withdrawn before sentence is imposed unless withdrawal of the plea would substantially prejudice the prosecution because of reliance on the plea. If the Defendant's motion is based on an error in the plea proceeding, the court must permit the defendant to withdraw the plea if it would otherwise be so required under these rules.

**(C) Vacation of Plea Before Sentence.** On the prosecutor's motion, the court may vacate a plea before sentence is imposed if the defendant has failed to comply with the terms of the plea agreement.

**2022 Comment**

Rule 3.605 was formerly located under Rule 3.705 of LVD/2008.

**RULE 3.606 CHALLENGING PLEA AFTER SENTENCE****(A) Motion to Withdraw Plea.**

- (1) A motion to withdraw a plea may be filed within 30 days after entry of judgment.
- (2) If a claim of appeal has been filed, a motion to withdraw a plea may only be filed in accordance to such provisions set forth in the Appellate Court Rules.
- (3) If the defendant fails to file a timely claim of appeal, the defendant may file a motion to withdraw the plea within the time for filing an application for leave to appeal.
- (4) If the defendant is no longer entitled to appeal by right or leave, the defendant may seek relief in accordance with the procedure set forth under the post-adjudication procedures.

**(B) Remedy.** If the trial court determines that there was an error in the plea proceeding that would entitle the defendant to have the plea set aside, the court must give the advise or make the inquiries necessary to rectify the error and then give the defendant the opportunity to elect to allow the plea and sentence to stand or to withdraw the plea. If the defendant elects to allow the plea and sentence to stand, the additional advise given and inquiries made become part of the plea proceeding for the purposes of further proceedings, including appeals.

**(C) Reservation of Issues.** A defendant convicted on the basis of a plea may not raise on appeal any claim of noncompliance with the requirements of the rules in this subchapter, or any other claim that the plea was not an understanding, voluntary, or accurate one, unless the defendant has moved to withdraw the plea in the trial court, raising as a basis for withdrawal the claim sought to be raised on appeal.

**2022 Comment**

Rule 3.606 was formerly located under Rule 3.706 of LVD/2008.

**RULE 3.607 EFFECT OF WITHDRAWAL OR VACATION OF PLEA**

If a plea is withdrawn by the defendant or vacated by the trial court or an appellate court, the case may proceed to trial on any charges that had been brought or that could have been brought against the defendant if the plea had not been entered.

**2022 Comment**

Rule 3.607 was formerly located under Rule 3.707 of LVD/2008

**SUBCHAPTER 3.700 PROBATION**

*[Reorganized and Expanded on April 5, 2002]*

*[This Subchapter was formerly located under Subchapter 3.400 of LVD/2008]*

**RULE 3.701 IMPOSITION OF PROBATION**

**(A) Generally.** At the time of the imposition of criminal sentencing, the court may impose a term of probation and place the Defendant under the charge and supervision of a probation officer, subject to stated conditions, in which the convicted person is released into the community in lieu of banishment from the community and/or imprisonment. Probation shall not be considered a matter of right, but rests on the sound discretion of the court.

**(B) Orders of Probation.** An order committing a person to probation, at a minimum must state:

- (1) The length in terms of days, months or years, the Defendant is to be placed on probation.
- (2) That the probationer not violate any Tribal, State or Federal law.
- (3) That the probationer shall inform the Court of any changes of the probationer's address.
- (4) That except in cases where the probationer is not required to report, the probationer must report to the court and/or to the Court through its duly appointed probation officer as often as is deemed necessary by the Court under the circumstances of the case.
- (5) Imposition of a fine, court costs, and restitution, if any, to be paid by the probationer.
- (6) That violation(s) of any of the terms and conditions of probation may subject the probationer to immediate arrest, detention, and incarceration.
- (7) The imposition of other lawful terms and conditions of probation as the circumstances of the case require or warrant or as in the Court's judgment are proper to best serve the public interest.

**(C) Definition.** A “term of probation” means any form of alternative sentence involving terms and conditions, including, but not limited to, ordinary probation, delays of prosecution, delays of sentence, deferments, and alternative dispositions.

**2002 Comment**

Rule 3.401 in its present form replaces the former 2001 Court Rule 3.401 *Issuance of Warrant; Summons*.

**2022 Comment**

Rule 3.701 was formerly located under Rule 3.401 of LVD/2008.

This Subchapter was formerly entitled “Probation Revocation” under LVD/2008.

This rule has been restructured and adopted, effective May 5, 2014 pursuant to Administrative Order 2014-0002.

Subrule (C) is new, adopted, effective May 5, 2014

Administrative Order 2014-0002 provides the following footnote: *(Rule 3.701 et seq.) gives the Court broad discretion pursuant to LVD Code of Criminal Procedure, 1-26-4, in the imposition, control and supervision of its orders of probation. In accordance with its codified authority to control and supervise probation, and as provided in these rules, the Court is authorized to supervise its probation orders, and if during a probation period the sentencing Court determines that the probationer is likely again to engage in an offensive or criminal course of conduct or that the public good requires revocation of the probation order, the Court may revoke probation. Probation Orders are revocable in any manner the court that imposed probation considers applicable either for a violation or attempted violation of a probation term or condition or for any other type of antisocial conduct of action on the probationer's part for which the Court determines that revocation is proper in the public interest.*

Pursuant to Rule 3.701(B)(7), a law enforcement officer may arrest a probationer without a warrant when the officer has probable cause to believe that the probation has violated a term or condition of probation.

### **RULE 3.702 EXTENSION OR TERMINATION OF PROBATION AND DISCHARGE OF PROBATIONER**

**(A) Extension of Probation.** In addition to extending the probation period pursuant to this Subchapter, probation may be extended if fines, Court costs, or restitution is not paid in full on or before the probation termination date. The Court may extend the probation period on its own motion by issuing an order of extended probation, or prior to the extension of probation issue to the probationer an order to show cause why the fines, Court costs, or restitution have not been paid.

**(B) Termination of Probation/Discharge.**

(1) Upon termination of the probation period provided for in this Subchapter, the probation officer shall report said termination to the Court, and report whether the probation complied with the terms and conditions of probation. Upon receipt of the report, the Court may discharge the probationer from probation or extend the probation period as the circumstances require. When the probation is discharged from probation, entry of the discharge shall be made in the Court record, and the probationer shall be entitled to a copy of the discharge order.

(2) The failure of the probation officer to make a report pursuant to this rule, on or before the expiration of the probation period, has no effect on the relation of the probationer to the Court, and the Court may issue a probation discharge sua sponte.

**2022 Comment**

Rule 3.702 engenders the corresponding amended Rule 3.406 of LVD/2008.

The 2014 Comment of Administrative Order 2014-002, reads as follows: *(Rule 3.702), as amended by virtue of Administrative Order 2014-002, was former Rule 3.406 of LVD/2008. The change was made out of preference of the Court to reorganize the Probation Subchapter, grouping its rules by subject matter. For instance, as here, the imposition of probation (Rule 3.801) is followed by the extension of termination and discharge from probation (Rule 3.802), which, in turn, is followed by the more adversarial subject of probation violations and revocation.*

### **RULE 3.703 PROBATION VIOLATION/ REVOCATION.**

**(A) Issuance of Summons; Warrant.** On finding probable cause to believe that a probationer has violated a term or condition of probation, the court may:

(1) Issue a motion or petition and summons in accordance with this Subchapter for the probationer to appear for arraignment on the alleged violation; or,

(2) Issue a warrant for the arrest of the probationer. An arrested probationer must promptly be brought before the court for arraignment on the alleged violation. The court may exercise its discretion when determining whether probable cause exists to believe that the probationer has violated a term or condition of probation.

**(B) Motion and Summons/Petition; Contents.** The motion and summons or petition must contain the following:

(1) The name and last known address of the probationer, and the court case number.

(2) The nature of the charges that if proven would constitute a violation of the terms and conditions of probation, and the dates of the incidences that are the basis of the charges.

(3) An Order to Appear before the Court on a stated date and time.

**(C) Arraignment on the Charge.** At the arraignment on the alleged probation violation, the court must:

(1) Ensure that the probationer receives written notice of the alleged violation(s);

(2) Advise the probationer that:

(a) The probationer has a right to contest the charge at a hearing; and,

(b) The probationer is entitled, at his or her own expense, to an attorney or lay advocate's assistance at the hearing and all subsequent court proceedings.

(3) Subject to Subrule (D), set a reasonably prompt hearing date or postpone the hearing.

**(D) Scheduling of Postponement of Hearing.** The hearing of a probationer held in custody for an alleged probation violation must be held within Ten (10) days after the arraignment or the court must order the probationer released from that custody pending the hearing. If the alleged violation is based on a criminal offense that is a basis for a separate criminal prosecution, the Court may postpone the hearing for the outcome of that prosecution.

**(E) Continuing Duty to Advise of Right to Assistance of an Attorney or Lay Advocate.** Even though a probationer charged with a probation violation has proceeded pro per, at each subsequent proceeding the court must advise the probationer of his or her right to be represented by an attorney or lay advocate at his or her own expense.

**(F) Violation Hearing.**

(1) Conduct of Hearing. The evidence against the probationer must be disclosed to the probationer. The probationer has the right be present at the hearing, to present evidence, and to

examine and cross-examine witnesses. The court may consider only evidence that is relevant to the alleged violation, but it need not apply the rules of evidence except those pertain to privileges. The Lac Vieux Desert Tribe has the burden of proving a violation a preponderance of evidence.

(2) **Judicial Findings.** At the conclusion of the hearing, the court must find the facts specifically, state separately its conclusions of law, and direct entry of the appropriate judgment. The Court statement of its findings and conclusions may be on the record or in a written opinion made part of the record.

**(G) Pleas of Guilty.** The probationer may, at the arraignment or afterward, plead guilty to the violation. Before accepting a guilty plea, the Court, speaking directly to the probationer and receiving the probationer's response, must:

(1) Advise the probationer that by pleading guilty the probationer is giving up the right to a contested hearing and, if the probationer is proceeding without legal representation, the right to an attorney's or lay advocate's assistance at his/her own expense; and,

(2) Advise the probationer of the maximum possible jail sentence for the offense; and,

(3) Ascertain that the plea is understandingly, voluntarily, and accurately made; and,

(4) Establish factual support for a finding that the probationer is guilty of the alleged violation.

**(H) Sentencing.** If the Court finds that the probationer has violated a term or condition of probation, or if the probationer pleads guilty to a violation, the Court may continue probation, modify the conditions of probation, extend the probation period, or revoke probation. In choosing any of these dispositions, the Court may impose a sentence of incarceration, or impose any other sentence which may have been suspended in the Court's disposition of the order of probation. If the probation order is revoked the Court may proceed to sentence the probationer in the same manner and to the same penalty as it might have done if the probation order had never been made. The Court may not sentence the probationer to jail without have complied with the provisions of Rule 4.219 of these Court Rules.

**2022 Comment**

As a result of the revisions pursuant to Administrative Order No. 2014-0002, Rule 3.703, now combines and incorporates, and is a stylistically improved version of the former 2008 Court Rules 3.402 *Probation Revocation*, Rule 3.403 *Arraignment on Probation Violation*, and Rule 3.405 *Probation Violation Hearing*.

**RULE 3.704 APPEAL OF PROBATION VIOLATION CONVICTION.**

**(A)** In a case involving a sentence of incarceration under Rule 3.803 (H), the Court must advise the probationer on the record, immediately after imposing sentence, that:

(1) The probationer has a right to appeal, if the underlying conviction occurred as a result of a trial; or,

(2) The probationer is entitled to file an application for leave to appeal, if the underlying conviction was the result of a plea of guilty or nolo contendere.

**(B)** In a case that involves a sentence other than incarceration under Rule 3.803(H), the Court must advise the probationer on the record, immediately after imposing sentence, that the probationer is entitled to file an application for leave to appeal.

**2022**

Rule 3.704 is new and was adopted, effective, May 5, 2014 by virtue of Court Administrative Order No. 2014-0002. This Rule has replaced in numeration former Rule 3.404 of LVD/2008 entitled "Preliminary Examinations" which are no longer provided for under this Subchapter.

## **SUBCHAPTER 3.800 DEFERRED ADJUDICATION**

*[Adopted, August 1, 2022 pursuant Administrative Order No. 2022-3]*

### **RULE 3.801 GENERALLY.**

In the event a defendant has been found guilty, or plea of guilt has been accepted and the court may delay sentencing to give the defendant an opportunity to prove to the court his or her eligibility for probation or other leniency compatible with the ends of justice and the defendant's rehabilitation, such as participation in the Healing to Wellness Court or any like diversionary program available. Upon successful completion of the terms of deferred adjudication, the underlying charges will be dismissed without prejudice.

### **RULE 3.802 PRE-DEFERRED ADJUDICATION; GENERALLY.**

**(A)** Before the entry of an order deferring adjudication, the defendant shall be advised of his or her rights as an accused and shall execute, as a condition of receiving a deferred adjudication, a statement that contains:

(1) An acknowledgement of his/her rights;

(2) An acknowledgment and waiver of the right to testify, the right to a speedy trial, the right to call witnesses to testify, the right to present evidence in his or her own defense, and the right to a jury trial;

(3) A stipulation to the admissibility and sufficiency of the facts contained in the criminal complaint;

(4) A plea of guilty, no contest, or responsibility to the underlying charge(s).

(5) If applicable, the Defendant shall execute the necessary authorizations to allow any treatment facilities to report to the Court and Prosecuting Attorney.

**(B)** It shall be in the Court's sole discretion whether to grant or deny a petition for deferred adjudication.

**RULE 3.803 DIVERSIONARY PROGRAMS**

**(A) Generally.** As a condition of certain deferred adjudications, the Court may require the enrollment and completion of diversionary programs, such as the Healing to Wellness Court. In addition to the requisites of Rule 3.802, those entering the Healing to Wellness Court shall cooperate with all investigations and examinations by all associated treatment facilities and Healing to Wellness Staff, in the development of a Treatment Plan.

**(B)** The Healing to Wellness Case Coordinator and/or Case Manager shall be responsible for filing with the court a case specific Treatment Plan for the Defendant. A copy of the treatment plan shall be included in the Defendant's court file, which shall then be removed from the regular court files and placed in a special court deferred adjudication file.

**RULE 3.804 EVIDENCE; USES AND ADMISSIBILITY.**

If the entry into a diversionary program is not approved or is withdrawn before approval, evidence pertaining to or resulting from the petitioner and/or treatment facility investigation, examination, evaluation shall be available for use in any trial on the charges and for the purposes, after a conviction, in determining sentence.

**RULE 3.805 VIOLATION OF TERMS OF DEFERRED ADJUDICATION.**

**(A) Violation Hearing.** If a Defendant who has been granted a deferred adjudication fails or neglects to carry out and fulfill any term or condition of the diversionary program treatment plan or the court's terms of probation, the court, upon receiving such a report, shall hold a hearing to determine whether the Defendant should be removed from deferred adjudication. At the hearing, evidence shall be taken of the Defendant's alleged failure to comply with probation/treatment plan and the Defendant shall have the right to confront witnesses and to present evidence in his or her own behalf.

**(B) Violation Hearing Disposition.** The court shall either order that the petitioner continue with the treatment plan/terms of probation or be removed from deferred adjudication. If removed from deferred adjudication, the court shall enter the inceptive plea of guilty and render the appropriate sentence in a manner consistent with the Lac Vieux Desert Criminal Codes.

**RULE 3.806 DISMISSAL OF CHARGES**

Upon proof of successful completion of deferred adjudication probation/diversionary program requirements, the court shall dismiss, with prejudice, the charges pending against the Defendant.

## CHAPTER 4. TRIALS

Effective December 27, 1994  
Including Amendments Received Through  
September 1, 2022

*[This Chapter was formally located under Subchapter 4.800 and Chapter 5 of LVD II/1994]*

### SUBCHAPTER 4.000 GENERAL PROVISIONS

#### **RULE 4.001 SCOPE; APPLICABILITY.**

The rules in this section govern matters of procedure in both criminal trials and civil trials and should be read consistently with Chapters 2 and Chapters 3 with respect to Civil and Criminal matters.

#### **RULE 4.002 EFFECT OF IRREGULARITIES.**

No departure from the form of procedures prescribed under this Chapter with respect to trial, no error nor mistake in connection therewith, shall render such trial or any resultant verdict to be invalid unless it shall be shown that the Defendant suffered actual prejudice thereby.

**1999 Comment**

Rule 4.002 herein is substantially the same as 1-16-1 of LVD I/1990, which had been omitted under its replacement, LVD II/1994.

#### **RULE 4.003 SUBPOENA; NOTICE TO APPEAR OF WITNESSES.**

**(A) General.** For the purposes of this chapter, the phrase Subpoena and Notice of Appearance to any individual shall be construed so as to mean one and the same when reference is made to the document issued in the name of the court by either the Clerk of Courts or a Tribal Judge, commanding an individual to appear before the Court at a specified date and time.

**(B) Form.** Any Subpoena or otherwise Notice of Appearance, or if applicable, Subpoena Duces Tecum, issued by the court, at a minimum shall contain the following information:

(1) Set for the name of the court and identify the action in which the Subpoena/Notice to Appear was issued;

(2) Clearly state the time, date and location where the witness is required to appear; and,

(3) In the event a Subpoena Duces Tecum is issued, specify as possible the types of documents which are required to be produced before the court.



**(C) Service.** In Civil matters, service of all court directed notices shall be in a manner consistent with the provisions of Rule 2.102 herein; and in Criminal matters, service of all court directed notices shall be in a manner consistent with the provisions of Rule 3.103 of these Rules.

**1999 Comment**

Rule 4.003 was modeled after Rule 1-16-2 of LVD I/1990 and adds to that former provision with the interchangeable titles of Subpoena and Notice to Appear.

Subrule (B) omits the former provision requiring the payment of mileage and attendance of any particular witness called under this rule.

**2001 Comment**

Subrule (C) is new and has been inserted here to provide consistency with the applicable Criminal and Civil provisions.

### **RULE 4.004 CONTINUANCE OF TRIALS.**

**(A)** Notwithstanding the Court's authority to continue any particular scheduled trial without cause; for good cause shown, any party to a particular actions shall be entitled to continuances for trials for reasonable periods of time.

**(B)** unless the court so specifies, the party whose motion for continuance has been granted, shall be responsible for serving upon all other parties the Notice of Rescheduling, with proof thereof, in accordance with the provisions of this rule.

**1999 Comment**

This rule mirrors Rule 1-16-5 of LVD I/1990, which has been omitted under the applicable section of LVD II/1994.

**2002 Comment**

Subrule (A) is identical to its 2001 counterpart. Subrule (B) has been added by virtue of court practice, specifying the responsibility of the moving party to perfect notice of a continued matter upon all other parties.

### **RULE 4.005 DEATH, ILLNESS, OR DISABILITY OF JUDGE**

**(A)** In the event that a judge assigned to preside over a trial, or a matter set for trial, shall die, become ill, or for any other reason be unable to proceed with the trial, consistent with the procedure of Rule 1.703, the Court shall find and reassign another judge for the Trial of the case.

**(B)** In the event the judge assigned and presiding over a trial, or a matter set for trial, shall die, become ill, or for any other reason be unable to proceed with the trial, once another judge is assigned, all pre-trial rulings, and evidentiary trial rulings made by the initial judge shall stand and remain effective during proceedings before a subsequent judge.

**1999 Comment**

Rule 4.005 is substantially the same as Rule 1-16-6 of LVD I/1990 except that it refers to Rule 2.005 of this text providing for disqualifications of Judges.

### **RULE 4.006 CORRECTIONS AND APPEAL OF SENTENCE**

**(A) Authority to Modify Sentence.** The Court may correct an invalid sentence, but may not modify a valid sentence after it has been imposed except as provided by law.

**(B) Time for Filing Motion.**

(1) A motion for re-sentencing may be filed within 30 days after entry of the judgment.

(2) If a claim of appeal has been filed, a motion for re-sentencing may only be filed in accordance with the procedure set forth in these rules.

(3) If the defendant fails to file a timely claim of appeal, the defendant may file a motion for re-sentencing within the time for filing an application for leave to appeal.

(4) If the defendant is no longer entitled to appeal by right or by leave, the defendant may seek relief pursuant to the procedure set forth in these rules.

#### **RULE 4.007 NEW TRIAL**

**(A) Time for Making Motion.** A motion for a new trial may be filed within 30 days after entry of the judgment. If a claim of appeal has been filed the motion for the new trial must be included in the claim of appeal.

**(B) Reasons for Granting.** On the defendant's motion, the court may order a new trial on any ground(s) that would support appellate reversal of the conviction or because it believes that the verdict has resulted in a miscarriage of justice. The court must state its reasons for granting or denying a new trial orally on the record or in a written ruling made a part of the record.

**(C) Trial Without Jury.** If the Court tried the case without a jury, it may, on granting a new trial and with defendant's consent, vacate any judgment it has entered, take additional testimony, amend its findings of fact and conclusions of law, and order the entry of a new judgment.

#### **RULE 4.008 CORRECTING MISTAKES.**

**(A) Clerical Mistakes.** Clerical mistakes in judgments, orders, or other parts of the record, including errors arising from oversight or omission may be corrected by the court at any time on its own initiative or on motion of a party.

**(B) Substantive Mistakes.** After giving the parties an opportunity to be heard, and provided it has not yet entered judgment in the case, the court may reconsider and modify, correct, or rescind any order it concludes was erroneous.

**(C) Correction of Record.** If a dispute arises as to whether the record accurately reflects what occurred in the trial court, the court, after giving the parties the opportunity to be heard, must resolve the dispute and, if necessary, order the record to be corrected.

### **SUBCHAPTER 4.100 TRIALS WITHOUT JURY**

[This subchapter adopted effective June 1, 1997]

#### **RULE 4.101 RIGHT TO TRIAL BY JURY OR BY THE COURT.**

In criminal matters that carry the possible penalty of imprisonment, the defendant has the right to be tried by a jury, or may, with the consent of the prosecutor and approval by the court, elect to waive the right and be tried before the court without a jury. Pursuant to Rule 4.102 of this Subchapter, a defendant must specifically request a trial by jury.

**RULE 4.102 WAIVER OF JURY TRIAL BY THE DEFENDANT.**

**(A) Time of Waiver.** The court may not accept a waiver of trial by jury until after the defendant has had or waived an arraignment and has been offered an opportunity to consult with the court appointed advocate or an attorney.

**(B) Waiver and Record Requirements.** Before accepting a waiver, the court must advise the defendant in open court of the right to a trial by jury. The court must also ascertain by addressing the defendant personally, that the defendant understands the right and that the defendant voluntarily chooses to give up that right and to be tried by the court.

**RULE 4.103 TRIAL BY JUDGE IN WAIVER CASES.**

When trial by jury has been waived, the court with jurisdiction must proceed with the trial. The court must find the facts specifically, state separately its conclusions of law, and direct entry of the appropriate judgment. The court must state its findings and conclusions on the record or in a written opinion made a part of the record.

**SUBCHAPTER 4.200 JURY TRIALS**

[This Subchapter was formally located under Chapter 5 of LVD II/1994]

**RULE 4.201 APPLICABILITY.**

**(A)** The rules in this subchapter govern jury trial procedure in all civil and criminal proceedings in the Tribal Courts of Lac Vieux Desert, except in the matter of small claims proceedings where there is no provision for trial by jury.

**(B)** Consistent with Rule 1.001, for the purpose of this Subchapter, Small Claims proceedings are defined as those civil matters where the monetary remedy does not exceed \$3,500.00.

**1999 Comment**

Subrule (B) replaces former Rule 5.001(B) of LVD II/1994, which provided that (the) "monetary remedy (does) not exceed \$1,000.00".

**2022 Comment**

Consistent with the provisions of Rule 2.101 of these rules, Subrule (B) now amends the former small claims monetary remedy from \$2,500.00 to \$3,500.00, effective August 1, 2022 pursuant to Administrative Order No. 2022-1.

**RULE 4.202 CRIMINAL JURY TRIALS.**

**(A)** Pursuant to Section 10 of the Indian Civil Rights Act of 1968, the court shall not deny to any accused person of an offense punishable by imprisonment, the right, upon request, to a trial by jury. Such demand, to be considered a valid jury demand, and one thus undeniable to the accused, must be made either by:

(1) A demand for jury trial made by the defendant in open court prior to the date of the trial;  
or

(2) In writing, not less than Five (5) days before the trial is scheduled to commence.

**(B)** A criminal defendant may elect to waive his right to trial by jury if such waiver is made:

(1) Prior to the start of the criminal trial; and,

(2) The presiding judge determines such a waiver was made intelligently and with an understanding of the consequences; and,

(3) The defendant either states to the affirmative on the record or in writing that he/she knowingly and voluntarily waives the right to trial by jury.

**1999 Comment**

Rule 4.202 is substantially the same as Rule 5.002 of LVD II/1994 except that Paragraph Three of Subsection (B) of this new rule provides that the defendant must state on the record a waiver of the right to trial by jury, whereas the former rule provided solely for a written form of waiver of the right to trial by jury.

The rule in this form reiterates the waiver requirement as found in the preceding Rule 4.102.

**RULE 4.203 CIVIL JURY TRIALS**

Civil cases, other than probate or domestic matters, may be tried by a jury if the following conditions are met by either party seeking trial by jury:

**(A)** By filing a written request for jury trial not less than Twenty (20) days before the trial date; and,

**(B)** By paying a non-refundable filing fee of \$100.00 which shall accompany the written request for jury trial; and,

**(C)** If the presiding judge, at his or her sole discretion, determines there is cause for trial by jury.

**2001 Comment**

Subrule (B) in its present form changes the filing fee for a Civil Jury Demand from the former \$20.00 to the present filing fee of \$100.00.

**RULE 4.204 CIVIL/CRIMINAL ELIGIBILITY FOR JURY DUTY**

**(A) Criminal Jury Trials.** In criminal jury trials, any member of the Lac Vieux Desert Band of Lake Superior Chippewa Indians who is at least 18 years of age, and who has not been convicted of a felony or misdemeanor within the past two (2) years, or civil infraction within the past one (1) year, shall be eligible to be a juror. He/she must not be a judge, any other officer or otherwise employee of the Tribal Court; and/or a member of the then sitting Executive Branch of Tribal Government (Tribal Chairperson, Vice-Chairperson, Treasurer or Secretary), and/or a member of the then sitting Legislative Branch of Government (Tribal Council).

**(B) Civil Jury Trials.** In civil jury trials, any member of the Lac Vieux Desert Band of Lake Superior Chippewa Indians who is at least 18 years of age, shall be eligible to be a juror and who has not been convicted of a felony or misdemeanor within the past two (2) years, or civil infraction within the past one (1) year. He/she must not be a party to the particular action, nor be a Judge, nor any other officer or otherwise employee of the Tribal Court; and/or a member of the then sitting Executive Branch of Tribal Government (Tribal Chairperson, Vice-Chairperson, Treasurer or Secretary), and/or a member of the then sitting Legislative Branch of Tribal Government (Tribal Council).

**(C) Jury Area.** Associated with both Criminal and Jury Trials, each eligible juror must be a resident of the following:

- (1) Any of the following Michigan Counties: Gogebic, Iron, Dickinson, Ontonagon, Houghton, or Baraga; or
- (2) Any of the following Wisconsin Counties: Vilas, Oneida, Forest or Florence.

**2022 Comment**

Amendments to Rule 4.204 are effective August 19, 2022 by virtue of Administrative Order 2022-4. The changes have been promulgated as a result of staff memo Chief Judge directive dated July 14, 2016, which have been court practice since that time.

Subrule (A) now amends the 2008 Court Rule regarding juror eligibility from convictions within ten years to now two years, and also now includes the provision that an eligible juror not have conviction less than one year for civil infractions. This amendment now adds consistency to the provisions contained in this subrule's counterpart of Chapter One- Criminal Procedure Code, 1-18-2.

**RULE 4.205 JURY LIST**

A list containing not less than Thirty (30) persons who shall be eligible jurors shall be prepared by the Tribal Clerk of Court. The list of jurors shall contain, at a minimum the following information:

- (1) The name of the eligible juror; and
- (2) The address of each eligible juror; and,
- (3) The age, if ascertainable of each juror.

**RULE 4.206 JURY SELECTION; PERSONAL HISTORY QUESTIONNAIRE.**

**(A)** In both civil and criminal matters, upon the demand for trial by jury, not less than Fifteen (15) eligible jurors shall be selected by lot by the Clerk of Courts from the jury list.

**(B)** Upon the selection of the Fifteen (15) eligible jurors, the Court Clerk shall direct each prospective juror to complete a juror personal history questionnaire and return it to the court with Ten (10) days. The questionnaires must be kept on file a minimum of three years from the time they are filled out. The only persons allowed to examine these questionnaires are:

- (1) The presiding judge;
- (2) The Clerk of Court;
- (3) Parties to actions in which the prospective juror(s) may be called to serve and/or their Attorney/Advocate.

**(C)** Refusal to answer the questions on the questionnaire, or answering the questionnaire falsely, is contempt of court.

**1999 Comment**

Rule 4.204(A) modifies the former provision of Jury Selection as found under Rule 5.102(A) of LVD II/1994 regarding the selection of prospective jurors. This new rule now provides that the court clerk shall select the 15 eligible jurors by lot, instead of the Judge selecting the 15 eligible jurors as contained under the provision of the former rule.

**RULE 4.207 POWER TO SUMMONS JURORS FOR COURT ATTENDANCE.**

The Clerk of Tribal Courts, or the Tribal Police, shall summon jurors for Court attendance in the manner directed by the judge to whom the action in which jurors are being called for service is

assigned. At a minimum, the summons directing the jurors for court attendance shall contain the following:

- (A) The name and address of the juror being summoned;
- (B) The reason for being summoned; and,
- (C) The date, time and place for which the prospective juror is required to appear.

#### **RULE 4.208 POWER TO EXCUSE PERSONS FROM JURY DUTY.**

(A) Only the Judge assigned to hear the civil or criminal matter before him shall have the power to excuse persons from jury duty on account of sickness, disability, or for other good causes.

(B) Persons who have been excused from jury duty are subject to selection for other actions to be tried during their term of eligibility as provided for in this Subchapter.

#### **RULE 4.209 IMPANELING THE JURY**

(A) Once the Juror Personal History Questionnaire has been returned to the Clerk of Court as prescribed under Rule 4.206, the Clerk of Court shall calendar a date for the impanelment of the actual jury who will hear the case and summons each prospective juror who received notice and a Juror Questionnaire.

(B) At the proceedings, Six (6) prospective jurors shall be called before the court at the time for examination. The remainder of the prospective jurors shall be in a separate room while voir dire of those jurors for examination takes place.

#### **(C) Peremptory Challenges and Challenges for Cause.**

(1) Peremptory Challenge. In criminal matters, the Prosecution and Defense, and in civil matters, the Plaintiff and Defendant, shall each be allowed Two (2) peremptory challenges. For the purposes of this rule, a peremptory challenge is a challenge to a particular juror for which no reason need be stated by the challenging party. If either party “passes” this challenge of a particular juror, and fails to exercise a peremptory challenge at the time of his turn, the challenge is deemed waived. A peremptory challenge excuses that juror from any further jury service in the matter before the court.

(2) Challenge for Cause. In criminal and civil matters, for the purposes of this section, a challenge for cause shall be deemed to mean an objection from either opposing side to the presiding judge, that a certain prospective juror not be allowed to be a member of the jury because of specific causes or reasons. If a challenge for cause is sustained by the presiding judge, the individual juror is excused from any further jury service pending the matter before the court. The following are among specific causes and reasons for juror disqualification:

- (a) is not qualified to be a juror;
- (b) Is related as only a spouse, parent, brother, or sister to any of the parties to the action;
- (c) Is biased for or against a party or attorney;

- (d) Shows a state of mind that will prevent the person from rendering a just verdict, or has formed a positive opinion on the facts of the case or on what the outcome will be;
- (e) Has been subpoenaed as a witness in the particular action;
- (f) Has already sat on a trial of the same issue;
- (g) Is the guardian, conservator, ward, landlord, tenant, employer, employee, partner or client of a party or an attorney;
- (h) Is or has been a party adverse to the challenging party or attorney in a civil action, or has complained of, or has been accused by that party in a criminal prosecution;
- (i) Has a financial interest in the outcome of the action.

(3) Each party is allowed Two (2) peremptory challenges. For the purposes of this Rule:

(a) Two or more parties of the same side are considered a single party, and as such are allowed two challenges without cause.

(b) When multiple parties with adverse interests are aligned on the same side, two peremptory challenges are allowed to each party represented by a different attorney, and the court may allow the opposite side a total number of peremptory challenges not exceeding the total number of peremptory challenges allowed to multiple parties.

**(D) Order of Turns.** In criminal matters, the prosecution and then the defense, and in civil matters the plaintiff and then the defendant alternates in the questioning and exercising of challenges. Upon examination of a particular juror, and if no peremptory challenges or challenges for cause have been exercised by either party, that particular prospective juror becomes an impaneled juror. This same process continues until a total of Seven (7) jurors have been picked of the original Fifteen (15) persons. The last (Seventh) person picked shall be deemed an alternate juror. The alternate juror shall sit with the impaneled jury during the trial for which they are called upon to hear, but may not discuss nor deliberate with the impaneled jury, unless in the course of the trial the alternate juror replaces an impaneled jury member, then becoming a juror in fact.

**1999 Comment**

This Rule is the combination of former Rules 5.105 and 5.106 of LVD II/1994.

**RULE 4.210 OATH TO JURY.**

After the last juror is impaneled, the judge shall administer the following Oath: *Please raise your right hands and answer by saying 'I do'. Do you and each of you solemnly swear to decide the case before you according to the evidence presented and instructions that will be given by the court? By the power vested in me on behalf of the Tribal Court of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, you are now recognized as the impaneled jury and the trier of fact in the particular matter before us. Before recessing at this time until the commencement of the action, you are hereby instructed to not speak with anyone about the pending matter, nor be influenced by any outsider conversation regarding this matter. If anyone should try to influence your decision outside this court, you are to report this incident at once to myself, the judge, or the clerk of courts.*

**1999 Comment**

This Rule was adopted by virtue of court practice, effective June 1, 1997.

**RULE 4.211 SELECTION OF JURY FOREMAN**

**(A)** Once the jury has been selected, the jury shall select one member of the impaneled jury to serve as their jury foreman. If the jury is unable to choose a foreman, the presiding judge shall appoint one member of the jury to serve as its foreman.

(B) The jury foreman is to serve as a liaison between the jury and the court in the deliberation process. The jury foreman is an equal to the rest of the jurors and his/her only extra-ordinary duty is to bring before the court any questions the jury has in their deliberations, and once the verdict is reached, to submit that verdict in the name of the jury to the court.

#### **RULE 4.212 INSTRUCTIONS TO THE JURY.**

(A) **Preliminary Instructions.** Before the evidence is taken, the court may give such preliminary instructions regarding the duties of the jury, trial procedure, and the laws and customs applicable to the case as the court deems necessary to enable the jury to understand the proceedings and the evidence. At any time during the course of the trial, the judge may give further instructions to the jury as he/she deems necessary.

(B) **Final Instructions.** Just prior to the deliberations of the jury, the judge shall give the jury its final instructions. The final instructions shall include, but not be limited to, the questions involved in the case and the rules of law applicable to the case.

(C) **Special Instructions.** The parties to the action may request the court to include special instructions not less than seven (7) days before the action is commenced. The court shall consider these requests and inform the parties to this action prior to the commencement of trial at the judge's discretion.

(D) **Addendum to Jury Instructions.** Once the jury is in deliberation, the court may issue further instructions to the jury if the jury so requests, through it jury foreman.

(E) All matters relating to proposed instructions, or objections thereto, shall be heard outside the presence of the jury.

##### **1999 Comment**

Rule 4.212 differs from its counterpart, Rule 5.108 of LVDII1994 in that this new rule in its present form specifically lists the types of jury instructions. Rule 4.212 also incorporates in whole, the former Rule 5.202 of LVD II/1994

#### **RULE 4.213 JURY DELIBERATIONS**

At the conclusion of the court's instructions, the jury shall retire for deliberation. The jury's deliberations shall be private and uninterrupted, and no person shall communicate with the jury except by usual inquiry of the court during the course of their deliberations.

#### **RULE 4.214 JURY VIEW**

(A) At the court's own initiative, or on a motion by either party the court may order the jury to be transported as a group in the custody of a tribal police officer to the place or property where the material event occurred.

(B) During the jury view there shall be no communication concerning the matters involved in the trial between the jurors, or between the jurors and any other person.

(C) The court may order the parties requesting the jury view to pay the expenses of the view.



**RULE 4.215 EXHIBITS TAKEN INTO DELIBERATION**

**(A)** Upon retiring for deliberation, the jury may take with it all written instructions provided by the court, if any, and any exhibits introduced and received in evidence.

**(B)** Jurors shall not be permitted, absent the express permission of the court, to take notes of testimony during the trial or take such notes into the place of deliberation.

**RULE 4.216 MOTION FOR DIRECTED VERDICT OF ACQUITTAL**

**(A) Before Submission to Trier of Fact.** After the prosecutor/plaintiff has rested its case in chief and before the defendant presents proofs, the court on its own initiative may, or on the defendant's motion, direct a verdict of acquittal on any charged offense when there exists absolutely no evidence to support the charge. The court may not reserve decision on the defendant's motion. If the defendant's motion is made after the defendant presents proofs, the court may reserve decision on the motion, submit the case to the trier of fact, and decide the motion before or after the jury has completed its deliberations.

**(B) After Trier of Fact Verdict.** After a verdict, the defendant may file an original or renewed motion for directed verdict of acquittal in the same manner as provided for filing for a new trial.

**(C) Conditional New Trial.** If the court grants a directed verdict of acquittal after the jury has returned a guilty verdict, it must also conditionally rule on any motion for a new trial by determining whether it would grant the motion if the directed verdict of acquittal is vacated or reversed.

**(D) Explanation of Rulings on Record.** The court must state orally on the record or in a written ruling made a part of the record its reasons for granting or denying a motion for a directed verdict of acquittal and for conditionally granting or denying a motion for a new trial.

**1999 Comment**

This rule is essentially the same as former Rule 4.802 of LVD II/1994.

**RULE 4.217 VERDICT**

**(A) Civil Action.** In a civil action, the jury shall bring a verdict for the plaintiff or for the defendant. If the jury is unable to reach a unanimous verdict, the verdict may be rendered by concurring vote of at least four (4) of the six (6) jurors.

**(B) Criminal Action.** In a criminal action, the jury shall bring a verdict of guilty or not guilty. The verdict must be a unanimous decision by all jury members.

**(C)** In either civil or criminal matters, if the number of jurors is less than required, the jury must be sent out for further deliberations.

**(D)** Return of verdict shall be announced to the court by the jury foreman upon the completion of deliberation.

**(E) Several Defendants.** If two or more defendants are jointly on trial, the jury at any time during its deliberations may return a verdict with respect to any defendant as to whom it has agreed. If the jury cannot reach a verdict with respect to any one defendant, the court may declare a mistrial on that defendant.

**(F) Poll of Jury.** Before the jury is discharged, the court on its own initiative or upon motion by either party, may have each juror polled in open court as to whether the verdict announced is that juror's verdict. If polling discloses the jurors are not in agreement, the court may: (1) discontinue the poll and order the jury to retire for further deliberations; or, (2) either with the defendant's consent or after determining the jury is deadlocked or that some other manifest necessity exists, declare a mistrial and discharge the jury.

#### **RULE 4.218 JUDGMENT**

Upon receiving the verdict in either Criminal or Civil actions, the judge shall render a judgment in accordance with such verdict and existing law. Within Seven (7) days after sentencing, the court must date and sign a written judgment of sentence that, at a minimum, includes:

- (1) The title and file number of the case.
- (2) The defendant's name.
- (3) The crime for which the defendant was convicted.
- (4) The defendant's plea.
- (5) The name of the Defendant's Attorney, if applicable.
- (6) The jury's verdict or the finding of guilty by the court.
- (7) The term of sentence.
- (8) The conditions incident to the sentence.

#### **1999 Comment**

This Rule was formally located under Rule 4.805 of LVD II/1994.

#### **RULE 4.219 SENTENCING**

In criminal matters, prior to passing sentence upon a defendant, the court may, but is not mandated to, consider the following information:

- (1) Recommendations of the Prosecuting Attorney and Defense Attorney/Advocate;
- (2) Suggestions of the Defendant;
- (3) Recommendations of the victim of the offense;
- (4) Reports from mental health and substance abuse counselors;
- (5) The nature of the offense, the seriousness and damage involved;

- (6) The economic status of the Defendant and their ability to satisfy the particular judgment;
- (7) Any other relevant information unique to the particular facts and circumstances.

## CHAPTER 5. JUVENILE OFFENDER PROCEDURE

Effective December 27, 1994  
Including Amendments Received Through  
September 1, 2022

*[This Chapter was formally located under Chapter 6 of LVD II/1994]*

### SUBCHAPTER 5.000 GENERAL PROVISIONS

#### RULE 5.001 SCOPE; DEFINITION

**(A) Scope of Rules.** The procedure under this Chapter governs all Juvenile Criminal matters within the jurisdiction of the Lac Vieux Desert Juvenile Court Division.

**(B) Definitions.**

(1) “Delinquent Act” means an act which, if committed by an adult, would be a crime under the Tribal Code;

(2) “Detention” means the placement of a minor in a physically restrictive facility;

(3) “Juvenile Offender” means a person who commits a delinquent act prior to his or her Eighteenth (18) birthday.

#### RULE 5.002 PROCEDURE.

**(A) Complaint.** A complaint may be filed with the court by a law enforcement officer or by a person who has knowledge of the facts alleged. The complaint shall be signed by the person who filed the complaint. At a minimum, the complaint shall contain:

(1) Citation to the specific provision(s) of this code which gives the court jurisdiction over the proceedings.

(2) Citation to the tribal criminal code provision which the minor is alleged to have violated;

(3) Name, age, and address of the minor who is the subject of the complaint, and names and addresses of the child’s parent(s), guardian(s), or other custodial care givers, if known;

(4) A concise statement of the facts upon which the allegations are based, including the date, time and location at which the alleged act(s) occurred; and,

(5) A list of witnesses known to the person who files the complaint at the time the complaint is filed.

**(B) Petition.** Proceedings under this code shall commence upon the filing of a petition on behalf of the tribe. The petition shall include:

- (1) The name, birth date and address of the minor;
- (2) The names and addresses of the minor's parent(s), and/or legal guardian or custodian;
- (3) Citation to the specific provisions of this code which gives the court jurisdiction of the proceedings;
- (4) Citation to the tribal criminal code provisions which the minor is alleged to have violated;
- (5) If the minor is in detention or shelter care, the place of detention or shelter care and the time he/she was taken into custody;
- (6) A statement of facts which brings the minor within the jurisdiction of the court; and,
- (7) A list of witnesses known to the tribe upon filing the petition.

**(C) Pick Up Order.** The court may enter an order in the form of a warrant, directing that a minor be taken into custody if:

- (1) The court finds probable cause to believe the minor committed the delinquent act alleged in the complaint and that there is probable cause to believe that the minor child will fail to appear for a hearing on the matter; or,
- (2) If the minor child is not taken into custody, that he/she is likely to endanger himself/herself or others.

**(D) Custody.** A minor may be taken into custody by a law enforcement officer if:

- (1) The office has reasonable grounds to believe a delinquent act has been committed and that the minor has committed the delinquent act; or,
- (2) A pick up order, pursuant to Subrule (C) of this Rule has been issued for the minor.

**2022 Comment**

Subrule (C) now supplants the reference to arrest warrants with pick up orders.

**RULE 5.003 DELINQUENT ACT ARRAIGNMENTS.**

For misdemeanor charges and all other charged offenses that would be considered a criminal offense if committed by an adult the juvenile must be arraigned on those charges. The proceedings shall be conducted to ensure the following:

**(A) Advice of Rights.** Advise the Juvenile-Defendant of the following:

*(1) To admit the allegations in the complaint or deny the allegations in the complaint, or to stand mute. If you stand mute, a denial of the allegations will be entered. You may plead no contest with the permission of the court. (If you admit the allegations or plead no contest and your plea is accepted, you will give up the rights listed in item (4).*

*(2) To have a trial, called an Adjudicatory Hearing, by the judge.*

*(3) To have the assistance of an attorney or lay advocate at your own expense.*

*(4) If you have a trial (Adjudicatory Hearing), you have the following rights:*

*(a) To call witnesses to testify for you at the hearing. You may get an order signed by court to require witnesses to appear in court.*

*(b) To see, hear, and question all witnesses against you at hearing.*

*(c) To be a witness for yourself or to remain silent. If you choose not to be a witness on your own behalf, the prosecuting attorney may not comment on your refusal to testify, and your refusal to testify will not be held against you.*

*(d) To be presumed innocent until proven guilty beyond a reasonable doubt.*

*(5) If you admit the allegations in the complaint or plead no contest and your plea is accepted you will not have a trial (Adjudicatory Hearing) of any kind and will give up your rights listed in item (4).*

*(6) If you are now on probation or parole and you admit the allegations or plead no contest, or a finding of guilty is made by the judge at trial (Adjudicatory Hearing), it may result in a violation of your probation or parole.*

*(7) If you admit the allegations or plead no contest, or you are found guilty by the judge, you will be found to be a Juvenile Offender (a person who commits a delinquent act prior to his or her Eighteenth (18) birthday); and the court may make the following dispositions (sentences) for any term until you reach the age of Eighteen (18) :*

*(a) Place you on probation, subject to conditions set by the court; or*

*(b) Place you in an institution or with an agency designated by the court.*

*(8) An appeal to the LVD Court Appellate Division may be taken within 21 days from the date of disposition. You also have the right to ask a federal court to review the tribal court's action by way of a writ of habeas corpus.*

**(B) Post Adjudicatory Hearing Release.** Regardless if post adjudicatory hearing release is in-home placement or out-of home placement of the juvenile-defendant, the court may impose additional conditions of release.

#### **2022 Comment**

Rule 5.003 has added pursuant to court practice and the provisions of LVD Children's Code II, Section 29, "Juvenile Offender Procedure".

## **SUBCHAPTER 5.100 DUTIES OF AGENCIES.**

### **RULE 5.101 LAW ENFORCEMENT DUTIES; TAKING INTO CUSTODY**

A law enforcement officer who takes a minor into custody, pursuant to this Chapter, shall proceed as follows:

**(A)** Explain the following rights to any minor taken into custody prior to questioning:

- (1) That the minor has a right to remain silent;
- (2) That anything the minor says can be used against the minor in court; and,
- (3) That the minor has the right to the presence of an Attorney/Advocate during the questioning.

**(B)** Release the minor to the minor's parent(s), legal guardian, or custodian and give such counsel and guidance as may be appropriate, unless shelter care or detention is necessary because:

- (1) The minor is in danger of injury; and/or,
- (2) The minor is under influence of alcohol or any other controlled substances;
- (3) The minor will not cease illegal conduct and release is likely to result in injury to the minor or others; and/or,
- (4) The minor's parent(s), guardian or custodian cannot be physically located.

**(C)** If the minor is not released, an officer shall make immediate and recurring efforts to notify the minor's parent(s), guardian or custodian to inform them that the minor has been taken into custody and inform them of their right to be present with the minor until a determination of the need for shelter care or detention is made by an Indian Child Welfare Committee member.

(1) If the minor is not released, the minor shall be taken, as soon as is practicable, to the tribe's Indian Child Welfare Act caseworker for assistance with placement in detention or shelter care.

(2) Child Advocate. At all stages of the proceedings hereunder, the minor shall have the services of the child advocate. The child advocate, in criminal proceedings, may also serve as the minor's criminal defense advocate.

**1999 Comment**

Rule 5.101(C)(2) omits the provision for the child advocate, "... If the minor so requests" as such appears in the former Rule 6.101(C)(2) of LVD II/1994. The intent of the omission under this new rule is to ensure that the child advocate to be available for the child regardless of an expressed request on the part of said child.

**2001 Comment**

Paragraph (2) of Subrule (C) now deliberately provides that the child advocate may also represent the minor as the criminal defense advocate.

**2003 Comment**

Paragraph (4) of Subrule (B) is new. It has been added to include shelter care in those instances where the parent, guardian or custodian cannot be physically located.

**RULE 5.102 INDIAN CHILD WELFARE COMMITTEE DUTIES.**

**(A) General Authority.** When an Indian Child Welfare Act Committee member has filed the complaint or is assisting a law enforcement officer, the member shall:

(1) Not place the minor in detention unless a complaint has been filed in accordance with this chapter or unless the court has ordered that minor be taken into custody pursuant to the provisions of any other chapter of these rules.

(2) If the minor's parent(s), legal guardian or custodian has not been contacted, make immediate and recurring efforts to inform them that the minor has been taken into custody and release the minor to the parent(s), legal guardian or custodian, unless detention or shelter care is immediately necessary to prevent injury to the minor or others, or to prevent illegal conduct which the parent(s), legal guardian or custodian cannot in all likelihood prevent.

(3) if the minor is not released to his/her parent(s), legal guardian, or custodian, place the minor in detention or shelter care pending the preliminary inquiry; and,

(4) If the minor is not released to his/her parent(s), legal guardian, or custodian, explore alternative pre-adjudication custody arrangements, as soon as practicable, and prepare temporary care and custody recommendations for presentation at the preliminary inquiry.

### **(B) Detention and Shelter.**

(1) A minor alleged to be a juvenile offender may be detained, pending a court hearing according to the following order of preference:

- (a) A foster care home on the reservation that has been approved by the Indian Child Welfare Act Committee;
- (b) A foster care facility on the reservation that has been approved by the Indian Child Welfare Act Committee;
- (c) A private family home on the reservation that has been approved by the Indian Child Welfare Act Committee;
- (d) A licensed foster care home off the reservation that has been approved by the Indian Child Welfare Act Committee;
- (e) A licensed foster care facility off the reservation that has been approved by the Tribe;
- (f) A private family home off the reservation that has been approved by the Tribe;
- (g) Any other facility suited for housing juveniles in Gogebic County, Michigan or any next closest County.

#### **1999 Comment**

"...facility suited for housing juveniles" as contained in (B)(1)(g) replaces "detention facility" as contained under the former Rule 6.102(B)(1)(g).

## **SUBCHAPTER 5.200 PRELIMINARY INQUIRY**

### **RULE 5.201 PLACE IN DETENTION**

If a minor is placed in detention or shelter care prior to the initial court intake, the court shall conduct a preliminary inquiry within Seventy-two (72) hours for the purpose of determining:

- (A)** To arraign the minor and accept a plea to the alleged delinquent act, and/or
- (B)** Whether probable cause exists to believe the minor committed the alleged delinquent act; and,



**(C) Whether continued detention or shelter care is necessary pending further proceedings.**

**2002 Comment**

The former time requirement for preliminary inquiry of 48 hours has now been changed to 72 hours.

**2003 Comment**

This Rule has been reorganized so that Subrule (B) in its present form was Subrule (A) and the present Subrule (C) was Subrule (B) in the former Court Rules. Subsequent to a Probable Cause Hearing, this Rule under Subrule (A) now provides initially for an arraignment of the minor on the alleged delinquent act(s).

### **RULE 5.202 TIME FOR INQUIRY**

**(A) Release of Minor.** Upon a plea of not-guilty, directly after the arraignment on the charges of the alleged delinquent act, or at another designated time, the court shall conduct a preliminary inquiry for the sole purpose to determine whether probable cause exists to believe the minor committed the alleged delinquent act(s).

**(B) Parent, Legal Guardian, Custodian not present.** If the minor's parent(s), legal guardian, or custodian is not present at the preliminary inquiry, the court shall make an inquiry into what efforts have been made to notify and to obtain the presence of the parent(s), legal guardian, or custodian. If it appears that further efforts are likely to produce the appearance of the minor's parent(s), legal guardian, or custodian, the court shall recess for not more than twenty four (24) hours and direct the presenting officer to make continued efforts to obtain the presence of these parties. If it does not appear that further efforts are likely to produce the parent(s), legal guardian or custodian, or if it appears that they are unwilling to provide effective support or guidance to the minor during the pendency of the juvenile offender proceedings, the court shall appoint a guardian ad litem to serve until final adjudication and disposition of the complaint.

**2003 Comment**

Subrule (A) now makes reference to the arraignment which was not included in prior versions of this rule. This subrule now omits the former requirement that a preliminary inquiry must be held within Five (5) days after receipt of the juvenile complaint.

### **RULE 5.203 TESTIMONY**

In any juvenile offender proceedings, the court may hear testimony concerning:

**(A)** The circumstances that gave rise to the complaint or the taking of the minor into custody; and,

**(B)** The need for detention or shelter care.

### **RULE 5.204 COURT DETERMINATION; ADJUDICATORY HEARING**

**(A) Detention.** If the court finds that probable cause exists to believe the minor committed the delinquent act, the minor and his or her parent(s), legal guardian or custodian shall be ordered to appear at an adjudicatory hearing on a date and at a time set by the court. The minor shall be released to his/her parent(s), legal guardian, or custodian unless the alleged act is serious enough to warrant detention or shelter care; and,

(1) There is reasonable cause to believe that the minor will run away and/or be unavailable for future proceedings; or,

(2) There is reasonable cause to believe that the minor will commit a serious act causing damage to persons and property.

**(B) Release.** The court may release a minor pursuant to this rule to a relative or other responsible adult tribal member who is the parent(s), legal guardian or custodian for the minor consents to the release.

**1999 Comment**

Subrule (A) of this Rule has been amended to require that the “parent(s), legal guardian, or custodian” also be ordered to appear along with the minor in the event probable cause exists to believe the subject minor committed the delinquent act.

**2003 Comment**

Subrule (B) now omits the provision that a minor who is ten years of age or older, must consent to release to his or her parent(s), legal guardian, or custodian.

**RULE 5.205 RECOMMENDATION BY INDIAN CHILD WELFARE COMMITTEE.**

**(A) Probable Cause Found.** Upon a finding that probable cause exists to believe that the minor committed the alleged delinquent act and that there is a need for detention or shelter care, the court may take into consideration recommendations prepared by the Indian Child Welfare Act Committee.

**(B) Probable Cause Not Found.** If probable cause to believe the minor committed the alleged delinquent act is not found, the complaint shall be dismissed and the minor released.

**(C) Investigation; Time.** Investigation by the Indian Child Welfare Act Committee or its delegate shall be made within Forty-eight (48) hours of the preliminary inquiry or the release of the minor to the minor’s parent(s), legal guardians, or custodian, to determine whether the interests of the minor and public require that further action be taken. Upon the basis of the investigation, the Indian Child Welfare Act Committee may:

(1) Suggest to the minor and the minor’s parent(s), legal guardian, or custodian that they appear for an informal conference, if the allegations to the complaint are admitted.

(2) Recommend that the tribe file a petition for a formal adjudicatory hearing. If the minor is in detention or shelter care, the petition shall be filed no later than forty-eight (48) hours after the presenting officer receives the committee’s recommendations. If the minor has been previously released to his/her parent(s), legal guardian, or custodian, or relative or another responsible adult, the petition shall be filed within Ten (10) days; or,

(3) Request that the Tribe transfer the proceedings to the adult division of the court pursuant to Subchapter 5.300 of these rules.

**2008 Comment**

Subrule (A) is substantially the same as the former subrule except that in its present form this subrule now does not require as an absolute that the court take into consideration recommendations by the Indian Child Welfare Act Committee.

**SUBCHAPTER 5.300 TRANSFER TO ADULT DIVISION OF THE COURT**

**RULE 5.301 PETITION FOR TRANSFER.**

The Tribe, Children’s Advocate, or the minor’s parents or legal guardians may file a petition requesting the court to transfer the minor to the adult division of the court if the minor is Sixteen (16)

years of age or older and is alleged to have committed an act that would have been considered a crime if committed by an adult.

**2003 Comment**

Rule 5.301 now deliberately includes the Children's Advocate or the minor's parents or legal guardians to those who may petition to transfer.

**RULE 5.302 HEARING; DETERMINATION OF TRANSFER**

**(A)** The court shall conduct a hearing to determine whether jurisdiction of the minor should be transferred to the adult division of the court.

(1) The transfer hearing shall be held not more than Ten (10) days after the petition is filed.

(2) Written notice of the transfer hearing shall be given to the minor and the minor's parent(s), legal guardian, or custodian and Children's Advocate prior to the hearing.

**(B) Indian Child Welfare Committee Investigation.** Prior to the hearing, the court may direct the Indian Child Welfare Committee, or any other suitable agency, to conduct an investigation and prepare a written report for the court as to the appropriateness of transfer of the youth from the juvenile to adult division of Tribal Court.

**2003 Comment**

Subrule (A)(2) now adds the Children's Advocate to those entitled to notice of transfer.

**2008 Comment**

The requirement of former Subrule (B) that the Indian Child Welfare Act Committee investigate and prepare written reports as to all transfers of juveniles to the adult division of Tribal Court has now been eliminated, and now is reworded as an option available for the court.

**RULE 5.303 FACTORS CONSIDERED BY THE COURT**

The following factors shall be considered in determining whether to transfer jurisdiction of the minor to the adult division of the court:

**(A)** The nature and seriousness of the offense allegedly committed by the minor; and,

**(B)** The minor's age, mental and physical condition, past record of offenses, and responses to previous court efforts at rehabilitation.

**RULE 5.304 TRANSFER**

**(A) Circumstances.** The court may transfer jurisdiction of the minor to the adult division of the court if the court finds clear and convincing evidence that both of the following circumstances exist:

(1) There are no reasonable prospects for rehabilitating the minor through resources available to the court; and,

(2) The offense allegedly committed by the minor is serious and constitutes a substantial danger to the public.

**(B) Final Transfer Order.** When a minor is transferred to the adult division of the court, the court shall issue a written transfer order containing reasons for the order. The transfer order constitutes a final order for purposes of appeal.

**SUBCHAPTER 5.400 INFORMAL ADJUSTMENT CONFERENCE****RULE 5.401 ALTERNATIVES TO FILING PETITION**

**(A)** The Indian Child Welfare Act Committee or its designee, may hold an informal conference with the minor, the child advocate, and minor's parent(s), legal guardian or custodian to discuss alternatives to the filing of the petitioner, if:

- (1) The admitted facts bring the case within the jurisdiction of the court;
- (2) An informal adjustment of the matter would be in the best interest of the minor and the tribe; and,
- (3) The minor and the minor's parent(s), legal guardian, or custodian voluntarily consents to an informal adjustment conference after they have received an explanation of their rights.

**(B)** This section does not authorize the Indian Child Welfare Committee or its designee to compel involuntary action of the parties involved.

**RULE 5.402 INDIAN CHILD WELFARE RECOMMENDATION TO COURT**

**(A) Committee Recommendations.** At the informal adjustment conference, the Indian Child Welfare Committee or its designee, may recommend that the court:

- (1) Refer the minor and the minor's parent(s), legal guardian or custodian to a community agency for assistance;
- (2) Order terms of supervision calculated to assist and benefit the minor, which regulate the minor's activities and are within the ability of the minor to perform; and/or,
- (3) Accept an offer of restitution if voluntarily made by the minor.

**(B) Disposition Agreement.**

(1) The Indian Child Welfare Act or its designee shall set forth in writing the conference finding and the disposition agreed to by the parties. The report shall be made available to the court, the minor, child advocate, the minor's parent(s), legal guardian, or custodian and the tribe.

(2) Any disposition arranged through the informal adjustment procedure of this Rule shall be concluded within Six (6) months.

(3) The Indian Child Welfare Committee or its delegate shall review the minor's progress every Thirty (30) days. If, at any time after the initial Thirty (30) day period, the committee concludes that positive results are not being achieved, the committee shall recommend that the tribe file a petition pursuant to the applicable provisions of this Chapter.

**(C) Admission of Statements.** No statement made during the informal hearing may be admitted into evidence at an adjudicatory hearing or any other proceeding against the minor under this Chapter.

## **SUBCHAPTER 5.500 ADJUDICATORY HEARING**

### **RULE 5.501 PURPOSE.**

The court shall conduct an adjudicatory hearing for the sole purpose of determining the guilt or innocence of a minor. Such hearing shall be closed to the general public

### **RULE 5.502 PRE-TRIAL COURT FINDINGS**

**(A)** If the minor admits the allegations of the petition, the court shall proceed to the disposition hearing only if the court finds:

(1) The minor fully understands his/her rights as set forth in this chapter and fully understands the potential consequences of his/her admission(s);

(2) The minor voluntarily, intelligently and knowingly admits to all facts necessary to constitute a basis for court jurisdiction; and,

(3) The minor has not, in his/her admission to the allegations, set forth facts which if found to be true constitutes a defense to the allegations.

**(B) Testimony.** The court shall hear the testimony concerning the circumstances which gave rise to the complaint.

**(C) Schedule a Disposition Hearing.** If the allegations of the petition are sustained by proof beyond a reasonable doubt, the court shall find that the minor is a juvenile offender and schedule a disposition hearing.

**(D)** A finding that a minor is a juvenile offender shall constitute a final order for the purposes of appeal.

### **RULE 5.503 ADJUDICATORY HEARING CONTINUANCES; CIRCUMSTANCES.**

Continuances of an adjudicatory hearing may be granted upon:

**(A)** Motion of the minor for good cause shown;

**(B)** Motion of the tribe, or the child's advocate, the material evidence or witnesses are unavailable, and/or a finding by the court that the presenting officer has exercised due diligence to obtain the evidence or appearance of witnesses, and reasonable grounds exist to believe that the evidence will become available or that the witnesses will appear; or,

(C) By all other Order(s) of the Court.

**2003 Comment**

This rule remains substantially the same with the exception that Subrule (B) now specifically provides that the child's advocate may move the court for a continuance.

**RULE 5.504 PREDISPOSITIONAL REPORT**

**(A) Indian Child Welfare Committee Report.** The Indian Child Welfare Committee or its delegate shall prepare a written report describing all reasonable and appropriate alternative dispositions.

**(B) Contents.** The report shall contain a detailed explanation of the necessity for the proposed disposition plan and its benefits to the minor.

(1) The report shall contain a specific plan for the care of, and assistance to the minor designed to resolve the problems presented in the petition.

(2) If the report recommends placement of the minor somewhere other than the minor's parent(s), legal guardian or custodian, it shall state the specific reasons underlying its placement recommendation.

**(C) Preference to Disposition Alternatives.** Preferences shall be given to the disposition alternatives as contained under Rule 5.401 of this Chapter. The alternative of the least restrictive of the minor's freedom, consistent with the interests of the Tribe, shall be selected.

**(D) Time; Submitting Report.** The Indian Child Welfare Committee, or its delegate, shall present the predisposition report to the court, the minor's representative, and presenting officer, at least One (1) day before the disposition hearing.

**SUBCHAPTER 5.600 DISPOSITION HEARING**

**RULE 5.601 DISPOSITION GENERALLY.**

**(A) Time.** A disposition hearing shall take place not more than ninety (90) days after the adjudicatory hearing.

**(B) Testimony.** The court shall take testimony and receive evidence concerning the proper disposition at the hearing.

**(C) Consideration of Predisposition Report.** The court shall consider the predisposition report submitted by the Indian Child Welfare Committee, or its delegate. Prior to the hearing, the affected parties shall be given an opportunity to review all reports and supporting documentation. During the hearing, the parties shall have the opportunity to controvert the factual contents and the conclusions of any reports. Further consideration shall be given any alternative predisposition report(s) prepared by the minor's counsel, if applicable.

**(D) Disposition Order.** Unless specifically stated in the order, the disposition order constitutes a final order for the purposes of appeal.

**1999 Comment**

Rule 5.601(D) expounds upon the former Rule 6.601 of LVD II/1994 by inserting, “Unless specifically stated in the (court’s) order”.

**2001 Comment**

With reference to the provisions of Subrule (A), the time limit for a dispositional hearing has now been extended from the former time period of 60 days to 90 days.

**RULE 5.602 DISPOSITION ALTERNATIVE**

If the minor has been found to be a juvenile offender, the court may make the following dispositions for any term until the minor reaches the age of Eighteen (18) years of age:

- (A)** Place the minor on probation, subject to conditions set by the court; or,
- (B)** Place the minor in an institution or with an agency so designated by the court.

**RULE 5.603 MODIFICATION OF DISPOSITION ORDER**

**(A) When Court may Modify.** A disposition order of the court may be modified, for good cause, upon a showing of a change of circumstance. Only the court may modify a disposition order at any time, upon motion of the following:

- (1) The Child Advocate on behalf of minor;
- (2) The minor’s parent(s), legal guardian, or custodian; or,
- (3) The Indian Child Welfare Committee; or
- (4) The Tribal Prosecutor.

**(B)** If the modification involves a change of custody, the court shall conduct a hearing pursuant to Chapter 6 of these Rules.

**1999 Comment**

Subrule (A)(1) amends Rule 6.603 of LVD II/1994 to now include, “...the Child Advocate on behalf of the minor....” As opposed to the former rule providing modification of the disposition upon a motion made by the minor.

**2003 Comment**

The provision under Paragraph (4) of Subrule (A), is new and now specifically includes the Tribal Prosecutor to those who may move the court for Modification of a Disposition Order.

**RULE 5.604 DISPOSITON REVIEW**

A hearing to review a disposition order shall be conducted as follows:

**(A)** The court shall review the performance of the minor, the minor’s parent(s), legal guardian, or custodian, and review the reports of the tribe and other persons providing assistance to the minor and the minor’s family.

**(B)** In determining whether to modify the disposition, the procedures prescribed under this chapter shall apply.

(C) If the request for review of disposition is based upon an alleged violation of a court order, the court shall not modify its disposition order unless it finds clear and convincing evidence of the violation.

## **SUBCHAPTER 5.700 REHEARING AND APPEALS OF JUVENILE OFFENDER ORDERS**

### **SUBCHAPTER 5.701 REHEARING; TIME AND GROUNDS**

A party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within 21 days after the decision of disposition or supplemental disposition. The court may entertain an untimely motion for good cause shown. A motion will not be considered unless it presents a matter not previously presented to the court, or presented but now previously considered by the court, which, if true, would cause the court to reconsider the case.

#### **2003 Comment**

The time period for filing of a written motion for rehearing has now been shortened from the former 30 days to 21 days. The intent of this change is to add consistency with the 21 day provision time period for appeals.

### **RULE 5.702 NOTICE; RESPONSE BY PARTIES**

All parties must be given notice of the motion. Any response by the interested parties must be in writing and filed with the court and opposing parties within Seven (7) days after notice of the motion.

#### **1999 Comment**

This rule combines former LVD II/1994 Rules 6.702 and 6.703.

### **RULE 5.703 PROCEDURE**

The Judge may affirm, modify, or vacate the decision previously made in whole or in part, on the basis of the record, the memoranda prepared, or a hearing on the motion, whichever the court in its discretion finds appropriate for the case.

### **RULE 5.704 HEARINGS**

The court need not hold a hearing before ruling on a motion. Any hearing conducted shall be in accordance with the rules for dispositional hearings. The court shall state the reasons for its decision on the motion on the record or in writing.

### **RULE 5.705 STAY.**

The court, upon motion by any concerned party, or upon the court's own initiative, may stay an order pending a ruling on any motion for rehearing.

#### **1999 Comment**

This rule expounds upon LVD II/1994, Rule 6.706 in that the language, "upon motion by any concerned party, or upon the court's own initiative..."

### **RULE 5.706 APPEALS**

[Effective, February 1, 2001]

All appeals from Juvenile Offender Orders shall be taken in a manner consistent with the applicable provisions of Chapter 11 of these rules.



## CHAPTER 6. CHILDREN'S COURT PROCEDURES

Effective December 27, 1994  
Including Amendments Received Through  
September 1, 2022

*[This Chapter was formally located under Chapter 7 of LVD II/1994]*

### SUBCHAPTER 6.000 GENERAL PROVISIONS

#### RULE 6.001 SCOPE; DEFINITIONS

##### **(A) Applicability; Scope; Definitions.**

(1) The procedure in the children's division of the Lac Vieux Desert Tribal Court is governed by this Chapter, unless in conflict with any applicable provisions of Chapter 5, and/or unless the rules in this Chapter provide otherwise.

(2) The court and its officers shall proceed in a manner so as to safeguard procedural rights and the proper interests of the child, the child's parents, guardians, or custodian, and the community of Lac Vieux Desert, subject, but not limited to the following:

(a) Each child coming within the jurisdiction of the Court shall receive care, guidance and control, preferably in the child's own home, that is consistent to the child's welfare and the best interests of the Tribe.

(b) When a child is removed from the control of his or her parents, guardians, or custodian, the court shall secure for the child care as nearly as possible equivalent to the care which should have been given by the child's parents, guardian, or custodian and being consistent with protection of procedural rights.

##### **(B) Definitions.**

(1) "Child" means a person who is less than Eighteen (18) years of age and has not been emancipated by order of the court of competent jurisdiction.

(2) "Child born out of Wedlock" means a child conceived and born to a woman who is unmarried from the conception to the birth of the child, or a child determined by judicial notice or otherwise to have been conceived or born during a marriage but who is not the issue of that marriage.

(3) "Child-in-need-of-care" means one or more of the following:

(a) A child who has no parent(s), guardian, or custodian available and willing to care for him or her;

(b) A child who has suffered or is likely to suffer a physical injury, inflicted upon that child by other than accidental means;

(c) A child whose parent(s), guardian or custodian has not provided adequate food, clothing, shelter, medical care, education, or supervision necessary for his or her health and well being;

(d) A child who has been sexually abused;

(e) A child who has committed delinquent acts as a result of parental pressure, guidance, approval or failure to properly supervise;

(f) A child who has been emotionally abused or emotionally neglected;

(g) A child who is born addicted to alcohol, or any other controlled substance, or who is exposed to a controlled substance.

(4) "Custodian" means a person, other than a parent or guardian, to whom legal custody of the child has been given.

(5) "Guardian" means a person assigned by a court of law, other than a parent, having the duty and authority to provide care and control of a child as set forth under Chapter 2-25 of the Lac Vieux Desert Children's Code II.

(6) "Children's Advocate" means a person appointed by the court to appear on behalf of, and represent the best interests of, a minor child.

**2001 Comment**

Paragraph (6) of this Rule adding "Children's Advocate" to the definitions is new.

### **RULE 6.002 JURISDICTION**

**(A) Scope.** The jurisdiction of the Lac Vieux Desert Children's Court shall be civil in nature and shall include the right to issue all orders necessary to insure the safety and well-being of children, including those that have been declared Ward's of the Children's Court. The Children's Court shall also have the power to enforce subpoenas and orders of restriction, fines of contempt, confinement, banishment from the lands of Lac Vieux Desert, and other orders as appropriate.

**(B) General Jurisdiction.** The Lac Vieux Desert Tribal Children's Court shall have jurisdiction specifically, but not limited to, the following persons:

(1) An enrolled member of the tribe under the age of Eighteen (18) years;

(2) A person under the age of Eighteen (18) years who is eligible for enrollment in the tribe;

(3) A child of an enrolled member of the tribe or another Native American Indian Tribe as defined in Section 1(c)(19) of the Lac Vieux Desert Children's Code II, including adopted children;

(4) A non-Indian child residing within the exterior boundaries of the reservation and in the home of an enrolled member of either the Lac Vieux Desert Tribe or any other Indian Tribe;

(5) Any person causing the child to come within the jurisdiction of this Chapter;

(6) An Indian or non-Indian residing on the reservation who is pregnant or abusing alcohol or any other controlled substance.

**(C) Jurisdiction Over Extended Family.**

(1) Where the Children's Court asserts jurisdiction over a person who falls under the jurisdiction as provided for in this Rule, the court shall also have jurisdiction over the person's extended family residing in the household whenever the court deems it appropriate.

(2) The Lac Vieux Desert Children's Court shall have jurisdiction over any adult whose behavior causes or tends to cause the child to come within or remain within the jurisdiction of the court. Jurisdiction requires that such person be provided notice and an opportunity for a hearing.

**(D) Continuing Jurisdiction.** Once the court asserts jurisdiction over a person or child under this rule, the court may retain jurisdiction over that person even if he/she leaves the physical boundaries of the Lac Vieux Desert Reservation.

**1999 Comment**

The present language of Subrule (A) expands the former provision in that it now reads to include "the right to issue all orders necessary to ensure the safety and well being of (all) children," whereas the former provision, within the text, provided only for children who were declared wards of the court.

**2001 Comment**

Included within the restrictive orders contained under Subrule (A), now is added the mechanism of banishment.

**RULE 6.003 TRANSFER OF JURISDICTION.**

**(A) Application of the Indian Child Welfare Act.** The Lac Vieux Desert Children's Court may apply the policies and procedures as set forth under the Indian Child Welfare Act, 25 U.S.C. 1901-1963, where they do not conflict with the provisions of the Lac Vieux Desert Children's Code, II.

**(B) Transfer to State Court or Other Tribal Court.** In any proceeding before the Children's Court, the court may transfer the proceedings to an appropriate state court or another tribal court where the state or another Indian Tribe has a significant interest in the child and the transfer would be in the best interest of the child.

**(C) General Transfer from Courts.**

(1) The Children's Tribal Court may accept or decline, under the procedures set forth in these Court Rules, such transfers of child welfare cases from other federal, state, or tribal courts.

(2) Court orders of other tribal courts involving children over whom the children's court could take jurisdiction shall be recognized if the children's court has determined:

(a) That the other Tribal Court exercised proper subject matter and personal jurisdiction; and,

(b) That due process was accorded all interested parties participating in the other tribal court proceeding.

**SUBCHAPTER 6.100 TAKING INTO CUSTODY****RULE 6.101 TEMPORARY CUSTODY WITH COURT ORDER.**

**(A) Investigative Orders; Orders for Examination.** If it appears to the court on filing a duly sworn complaint, application, petition, supplemental petition, or petition for revocation of probation; or through the gathering of physical evidence, examinations or evaluations of a child, parent, guardian, or custodian, by a physician, dentist, psychologist, or psychiatrist, together with further proofs the court may require, that there are reasonable grounds to believe that:

- (1) The conditions or surroundings in which the child is found, endanger the child's health, morals, or welfare;
- (2) The child is eluding or is being illegally detained or concealed from the parent, guardian or other person or entity entitled to custody; or,
- (3) Conditions exist which would provide authority for the issuance of a warrant if the child were an adult.

**(B) Authority to Remove.** The court may immediately issue an order to the person having custody or control of the child, directing that person to appear at a specified time and place for preliminary hearing as provided by Section 17 of the Lac Vieux Desert Children's Code II. The Court may include in the order a direction that tribal police or another person authorized to enter the premises as required for purposes of effecting the order, and bring the child, parent, guardian, or custodian, or both, before the court, or effect temporary placement of the child pending the preliminary hearing.

**2002 Comment**

The substance of Subrule (A) remains the same but has been reworded for clarity.

**RULE 6.102 TEMPORARY CUSTODY WITHOUT COURT ORDER.****(A) When permitted:**

(1) A child may be taken into protective custody without a court order by a law enforcement officer or the tribe's protective services worker if such persons have probable cause to believe the child is a child-in-need-of-care, and:

- (a) Failure to remove the child may result in a substantial risk of death, serious injury, or serious emotional harm; or,
- (b) The parent, guardian, or custodian is absent and it appears, from the circumstances, that the child is unable to provide for his or her own basic needs of life; and, no satisfactory arrangements have been made by the parent, guardian, or custodian to provide for such necessities and no alternative arrangements except removal are available to protect the child.

(2) If grounds for removal are corrected, the child may be returned to the parent, guardian, or custodian, by the entity originally authorizing the removal or by the protective service worker.

**(B) Notification to Parents, Guardian, or Custodian; Record of Notice.** When the person authorized to remove the child as provided for under this rule, takes a child into custody, the officer shall notify the parent, guardian, or custodian if one of them can be located as provided for in Section 12 of the Lac Vieux Desert Children's Code II. A written record of the names of the persons notified and the manner and time of notification or reasons for failure to notify must be preserved and furnished to the court.

## **SUBCHAPTER 6.200 COURT INTAKE PROCEDURE**

### **RULE 6.201 FILING COMPLAINT OR PETITION**

#### **(A) Persons Authorized to File Petition.**

(1) A complaint must be filed or a petition submitted by the party seeking to invoke the court's jurisdiction.

(2) Generally, any adult person over the age of Seventeen (17) years may file a petition with the children's court alleging that a child is a child-in-need-of-care. If criminal charges are filed against a juvenile, then any person may file a criminal complaint to initiate court involvement.

(3) Nothing in this section shall preclude law enforcement or protective services personnel from taking emergency action under Rule 6.102 of this Chapter of Section 11 of the Lac Vieux Desert Children's Code II.

#### **(B) Form of Complaint or Petition.**

(1) In Juvenile Criminal matters, the Complaint shall be of the same general form as provided for under Rule 5.002.

(2) The Petition for child-in-need-of-care shall include:

- (a) The name, birth date, sex, residence and tribal affiliation of the child;
- (b) The basis for the Court's Jurisdiction;
- (c) The specific allegations which cause the child to be a child-in-need-of-care;
- (d) A plain and concise statement of the facts upon which the allegation of child-in-need-of-care is based, including the date, time and location at which the alleged facts occurred;
- (e) The names, residences and tribal affiliation of the child's parents, guardians or extended family and of all former care givers, if known; and,

(f) If the child is placed outside of the home, the address of the physical placement, and the facts necessitating the placement and the date and time of the placement.

**1999 Comment**

The language of Subrule (B)(1) is modified from that contained in LVD II/1994, 7.201(B) to the extent that this provision regarding Criminal Juvenile Complaints or Petitions mirrors the requirements of Rule 5.002(A).

**RULE 6.202 NOTICE AND SERVICE OF SUMMONS**

**(A) General.** Unless a person must be summoned as provided for in the following subsection (B) of this rule, a party shall be given notice of a proceeding in Children's Court either verbally or in writing by the Clerk of the Children's Court.

**(B) Summons.**

(1) In a Children's Court proceeding, the summons shall be issued and served on the parent or the person with whom the child resides, if other than a parent or court-ordered custodian, directing such person to appear with the child for trial. The court may direct that the child's appearance in court is unnecessary.

(2) In a proceeding for termination of parental rights, the summons must be issued and the served on the parent and the person with whom the child resides, if other than a parent or a court-ordered custodian, for hearing on a petition seeking the termination of parental rights. The court may direct that the child's appearance is unnecessary.

(3) Contents. The summons shall direct the person to whom it is addressed to appear with the child (unless the child's appearance has been excused) at a time and place specified by the court and must:

- (a) Identify the nature of the hearing;
- (b) Have a copy of the petition attached to the summons.

(4) Manner of Serving Summons. A summons required under this section must be served by delivering the summons to a party personally, excepting the following:

(a) If personal service of the summons is impracticable or cannot be achieved, the court may direct that it be served by registered or certified mail or general mail, addressed to the last known address of the party.

(b) If the court finds service cannot be made because the whereabouts of the person to be summoned has not been determined after reasonable effort, the court may direct any manner of substitute service, including publication.

(c) If personal service of the summons is impracticable or cannot be achieved, the court may direct that it be served in a manner reasonably calculated to provide notice.

(5) Time of Service.

(a) A summons shall be served at least Fourteen (14) days before a hearing on a petition to terminate parental rights and Seven (7) days before all other hearings under this chapter.

(b) If service is by publication, the published notice shall appear in a newspaper in the county where the party resides, if known, and if not known, in a publication that serves Gogebic County. The published notice must appear one or more times Fourteen (14) days before the hearing.

**(C) Notice of Hearing.**

(1) Persons Entitled to Notice. The court shall insure that the following persons are notified of each and every proceeding:

- (a) The Parent or Parents, if Parental Rights have not been terminated;
- (b) The Attorney for the parent;
- (c) The child and the advocate for the child;
- (d) The legal guardian or custodian other than the parent, if any;
- (e) The Petitioner;
- (f) The responsible child placement agency, if different from the Petitioner;
- (g) The guardian ad litem of a party appointed pursuant to this chapter;
- (h) Any and all other person the court may direct to be notified.

(2) General. Notice of Hearing must be given in writing at least Seven (7) days prior to the hearing except as provided under Subsection (C)(3) and (C)(4) of this Rule.

(3) Preliminary Hearing. When a child is placed, reasonable efforts shall be made to notify the parents of the child or extended family as soon as the hearing is scheduled, and the notice may be in person, in writing, on the record, or by telephone.

(4) Termination Proceedings. Notice of Hearing on a Petition to Terminate Parental Rights must be given in writing at least Fourteen (14) days before the hearing.

(5) When a party fails to appear in response to a notice of hearing, the court may order the party's appearance by summons or subpoena.

**(D) Subpoenas.** The Attorney or Advocate for a party, or the court on its own motion, may cause a subpoena to be served on a person whose testimony or appearance is desired.

**(E) Waiver of Service.** A person may waive notice of hearing or service of process either in writing or on the record.

**(F) Subsequent Notices.** After a party's first appearance before the court, subsequent notice of proceedings and pleadings shall be served on that party, or if the party has an attorney or advocate, on the attorney or advocate for that party. At the court's own discretion, a waiver of notice of hearing, pursuant to subsection (E) of this rule, may constitute a waiver of all other notices of hearings of further future proceedings that may follow.

**(G) Putative Fathers.**

(1) In matters where the minor has no identifiable father, the court shall take initial testimony to determine the identity and address of the natural father.

(2) If the court finds probable cause to believe that an identifiable person is the natural father of the minor, the court shall direct that the notice be served on the person in the manner as provided in this rule. The notice shall include the following information:

- (a) That a petition has been filed with the court;

(b) The time and place of the hearing at which the natural father is to appear to express his interest, if any, in the minor; and,

(c) A statement that failure to attend the hearing will constitute a denial of interest in the minor, a waiver of notice for all subsequent hearings, a waiver of a right to appointment of an attorney, and could result in termination of any parental rights.

(3) After the notice to the putative father, the court may conduct a hearing and determine that:

(a) The putative father has been personally served or served in some other manner which the court finds to be reasonable so as to provide notice to the putative father. In such an event, the court may proceed in the absence of the putative father.

(b) A preponderance of the evidence establishes that the putative father is the natural father of the minor and justice requires that he be allowed Fourteen (14) days to establish a relationship; provided that the court decides the interests of justice so require, it shall not be necessary for the mother of the minor to join in an acknowledgment.

(c) There is probable cause to believe that another identifiable person is the natural father of the minor. In that event, the court shall proceed with respect to the other person in the same manner as provided under rule.

(d) If after diligent inquiry, the identity of the natural father cannot be determined, the court shall publish notice at least once in a manner so as to alert a person who may be the father of the child. In the event of publication, the court shall cause to have published notice of hearing at least One (1) time in a newspaper in Gogebic County, at least Fourteen (14) days before said hearing.

#### 1999 Comment

Subrule (B)(4)(c) combines Sub (c) and (d) of former LVD II/1994.

Subrule (B)(5)(b) now specifies Gogebic County as the place of publication where residence is unknown. The former provision of LVD II/1994 stated "... Where the action is pending."

Subrule (D) deletes the provision of LVD II/1994 which formerly provided for advanced fees for service.

Subrule (F) remains substantially the same as the former provision, except that now, this subrule in its amended form includes the provision for waiver of notice of hearing, and waiver of all subsequent hearings.

### **RULE 6.203 PRELIMINARY HEARING**

#### **(A) Time of Hearing after Youth is Initially Placed by Court Order.**

(1) If the child has been released to his/her parent, guardian, or custodian, the Court shall conduct a preliminary hearing Seven (7) days after the filing of the petition, or as soon thereafter as the matter can be heard by the court.

(2) If the child is placed in out of home placement, the court shall conduct a preliminary hearing by the end of the second working day following the placement for the purposes of determining:

(a) Whether probable cause exists to believe the child is a child-in-need-of care; and,

(b) Whether the home conditions continue to present a substantial risk of harm to the child's life, physical health or mental well-being and whether any alternatives except removal of the child is reasonably available to adequately safeguard the child from such risk.

(3) If the child's parent, guardian, or custodian is not present at the preliminary hearing, the court shall make inquiry into what efforts have to be made to notify and/or obtain the presence of the parent, guardian, or custodian, the court shall recess for not more than 48 hours and direct the



petitioner to make continued efforts to obtain the presence of the child's parent, guardian, or custodian. The preliminary hearing may be conducted in the absence of the parent, guardian, or custodian.

(4) The court shall read the allegations in the petition in open court, unless waived and shall advise the parent, guardian, or custodian of the right to have counsel represent them, at their own expense, and their right to a Bench Trial on the allegations contained in the petition. The court shall allow the parent, guardian, or custodian, an opportunity to deny or admit the allegations and/or make a statement of explanation.

(5) The court shall hear the testimony concerning:

- (a) The circumstances that gave rise to the petitioner; and,
- (b) The need for continued placement.

(6) If probable cause to believe the child is a child-in-need-of-care is not found, the petition shall be dismissed and the child released to the care and custody of his/her parent, guardian, or custodian.

(7) If the court finds that probable cause exists to believe that the child is a child-in-need of-care, the court:

(a) Shall order the parent, guardian, or custodian to appear at an adjudicatory hearing on a date and time set by the court; and,

(b) May release the child to the custody of either of the child's parent's, guardian, or custodian under such reasonable terms and conditions as are necessary for either the physical or mental well-being of the child; or

(c) May order placement of the child with a parent, guardian, or custodian after hearing, and if it is determined that both of the following conditions exist:

(i) Custody of the child with a parent, guardian or custodian presents a substantial risk of the well-being and no provision for service or other arrangement except removal of the child is reasonably available to adequately safeguard the child from such risk.

(ii) Conditions of custody of the child away from a parent, guardian or custodian are adequate to safeguard the child's health and welfare.

(8) The court may at any time after conducting a preliminary hearing at which time probable cause to proceed upon a petition is found, order any involved child, parent, guardian, or custodian to undergo a physical, mental or psychological examination by a qualified professional.

**1999 Comment**

This rule mirrors LVD II/1994, Rule 7.203 except for amendments to certain time periods. (A)(1), as amended now provides for a preliminary hearing to be conducted "Seven (7) days after the filing of the petition or as soon thereafter as can be heard by the court." The former provision provided the preliminary hearing to be held "within Seven (7) days after the filing of the petition." (A)(2) now changes the former provision which required a preliminary hearing to be held by noon on the second working day of the court.

**RULE 6.204 ADJUDICATORY HEARING**

**(A) General.**

(1) The court shall conduct an adjudicatory hearing for the purpose of determining whether the child is a child-in-need-of-care.

(2) The general public shall be excluded from the proceedings and only the parties, their council or advocate, witnesses, and other such persons determined necessary or useful to the proceedings by the court shall be admitted.

**(B) Time for Adjudicatory Hearing following Preliminary Hearing.**

(1) The adjudicatory hearing shall commence as soon as possible, but no later than Forty-Five (45) days after the petition is filed with the court.

(2) Continuances of an adjudicatory hearing may be granted by the court only:

- (a) Upon stipulation of the parties;
- (b) Where process cannot be completed;
- (c) The court finds the testimony of a presently unavailable witness is needed;
- (d) For other good cause shown.

**(C) Evidence.**

(1) The formal rules of evidence shall not apply at any point during proceedings under this Chapter. All relevant and material evidence which the court deems reliable and trustworthy may be admitted at the trial and may be relied upon by the court to the extent of its probative value.

(2) The parties shall be afforded an opportunity to examine and convert written reports received by the court and shall be allowed to cross-examine individuals who made the reports when those individuals are reasonably available.

(3) The court may rely upon conference telephone or other electronic devices that permit all those appearing or participating to hear and speak to each other.

(4) If the allegations of the petition are sustained by a preponderance of the evidence, the court shall find the child to be child-in-need-of-care and schedule a dispositional hearing. The court may also enter orders of further discovery, evaluation and assessment and other orders to protect the child.

(5) If the allegations of the petition are not sustained, the court shall dismiss the matter and release the minor child.

**1999 Comment**

This rule remains substantially unchanged except for the deletion of the provision formerly contained under Subrule (B)(2)(d) which provided for a continuance of "one time only for a period of 14 days at a parent's request...."

**RULE 6.205 DISPOSITIONAL HEARING**

**(A) Applicability; Scope.**

(1) A dispositional hearing shall be conducted to determine measures to be taken by the court with respect to a minor properly within its jurisdiction and, when applicable, against any adult, once the court has determined, following trial, a plea of admission or no contest that the minor comes within its jurisdiction.

(2) The dispositional hearing may be held immediately after the adjudication. The interval, if any, between the adjudicatory hearing and the dispositional hearing shall be within the discretion of the court. If the dispositional hearing is not held immediately after the adjudicatory hearing, notice of hearing may be given on the record in the presence of the parties or in accordance with Rule 6.202 of this Chapter.

**(B) Proposed Case Plan.**

(1) The Indian Child Welfare Act Committee, or its delegate, shall prepare a written report describing all reasonable and appropriate alternative dispositions, including reports of the child protection team and the protective service worker. The report shall contain a specific plan for care of, assistance to, the minor and/or the minor's parents, guardian, or custodian designed to resolve any identified problem presented in the petition.

(2) The report shall contain a detailed explanation of the necessity for the proposed disposition plan and its benefits to the child.

(3) If the report recommends placement of the child somewhere other than the child's parent, guardian or custodian, it shall state the specific reasons underlying its placement recommendations.

(4) The Indian Child Welfare Act Committee, or its delegate, shall present the case plan to the court, the child advocate, and the presenting officer, at least Three (3) days before the dispositional hearing.

**(C) Dispositional Review Hearing.**

(1) The Dispositional Order shall be reviewed at the discretion of the court but at one (1) time within Six (6) months following the initial dispositional order.

(2) Notice of Review Hearing shall be provided on the record or in a manner provided for under 6.202 of this Chapter.

(3) At the Review Hearing the court shall review on the record the compliance with the case service plan prepared and the previous orders of the court, including:

(a) Services provided or offered to the child and his/her parents, guardian, or custodian, and whether the parent, guardian, or custodian has complied with and benefited from those services.

(b) Visitation of the child. If visitation did not occur or was infrequent, the court shall inquire as to the reason why visitation did not occur or was infrequent.

(4) After review of the case service plan, the court shall determine the extent of progress made toward alleviating or mitigating the conditions that caused the child to become and to remain a child-in-need-of-care. The court may modify any part of the case plan including, but not limited to, the following:

(a) Prescribing additional services that are necessary to rectify the condition that caused the child to become a child-in-need-of-care.

(b) Prescribing additional actions to be taken by the parent, guardian, or custodian to rectify the conditions that caused the child to become or remain a child-in-need-of care.

(5) At a review hearing, the court shall determine the continuing necessity and appropriateness of the child's placement and shall order the return of the child to the custody of the parent, continue the dispositional order, modify the dispositional order, or enter a new dispositional order.

(6) If the child remains in placement, the court shall determine at the dispositional hearing and at each review hearing whether the cause should be reviewed before the next review hearing required under this Rule. In making this determination, the court shall consider, but not be limited to, both of the following:

(a) The parent's ability and motivation to make necessary changes to provide a suitable environment for the child.

(b) Whether there is a reasonable likelihood that the child may be returned to his or her home prior to the next review hearing required under this Rule.

(7) Unless waived, if not less than Seven (7) days notice is given to all parties prior to the return of a child to his or her home, and no party requests a hearing within the Seven (7) days, the court may issue an order without a hearing permitting the appropriate placing agency to return the child to his or her home.

(8) An agency report filed with the court shall be accessible to all parties to the action and may be offered into evidence.

**1999 Comment**

Subrule (A)(2) in its present form deletes the former provision which required a dispositional hearing be held not more than 35 days after the initial placement of a child.

Subrule (C)(1) changes the former subrule which had provided a review hearing to be held, "at least once every 6 months." The rule, as now amended provides for a review hearing, "at least one time within 6 months following the initial review hearing."

**RULE 6.206 PERMANENCY PLANNING HEARING**

**(A) Purpose of Hearing.** A permanency planning hearing shall be conducted to review the status of the child and progress being made toward the child's return to his or her natural parents or to some other permanent home and environment.

**(B) Time for Permanency Planning Hearing.** If the child remains adjudicated a child-in-need-of-care and parental rights to the child has not been terminated, the court shall conduct a permanency planning hearing not more than Eighteen (18) months after entry of the order of disposition and every Eighteen (18) months thereafter, so long as the child remains a child-in-need-of-care. A permanency planning hearing may be combined with a disposition review hearing under Rule 6.205 of this Subchapter.

**(C) Return of Child to Parent.** If the parental rights to the child have not been terminated and court determines at a permanency planning hearing that the return of the child would not cause a substantial risk of harm to the child's life, physical health, or mental well-being, the court shall order the child returned to his or her parents.

**(D) Social Services; Proposal of Alternative Placement Plans.**

(1) If the court determines at a permanency planning hearing that the child should not be returned to his or her parent, the tribal social services shall propose one of the following alternative permanent placement plans:

- (a) The child be placed permanently with a relative within the primary service area of the tribe.
- (b) The child be placed permanently with a relative who is outside the primary service area of the tribe.
- (c) The child remain in long-term foster or residential care.
- (d) A petition for Guardianship under these rules be filed by the current caretaker of the child, or tribal social services.
- (e) A petition to terminate parental rights be filed by the tribal social services.

(2) In determining whether the return of the child would cause a substantial risk of harm to the child, the court shall review the failure of the parent to substantially comply with the terms and conditions of the case service plan and dispositional orders of the court as evidence the return of the child to his or her parent would cause a substantial risk of harm to the child's life, physical health, or mental well-being.

(3) If the court determines that the child should not be returned to his or her parents, the court shall order permanent placement with a relative, long term foster or residential care, or continue the child in placement for a limited period so as to allow the filing of petitions.

## **SUBCHAPTER 6.300 TERMINATION OF PARENTAL RIGHTS**

### **RULE 6.301 APPLICABILITY; SCOPE.**

**(A)** The purpose of this Subchapter is to provide for the voluntary and involuntary termination of the parent-child relationship and for the substitution of parental care and supervision by judicial process.

**(B)** This Subchapter shall be construed in a manner consistent with the philosophy that the family unit is of most value to the community and the individual family members when the unit remains united and together, and that termination of the parent-child relationship is of such vital importance that it should be used only as a last resort when, in the opinion of the court, all efforts have failed to avoid termination and it is in the best interests of the child concerned to proceed under this Subchapter.

### **RULE 6.302 VOLUNTARY AND INVOLUNTARY TERMINATION OF PARENTAL RIGHTS.**

#### **(A) Grounds for Involuntary Termination.**

(1) The court may terminate the parental rights of a parent to a child adjudicated a child-in-need-of-care if the court finds, beyond a reasonable doubt, one or more of the following:

- (a) The child has been deemed abandoned under either of the following circumstances:

(i) The parent of a child is unidentifiable and/or has deserted the child for twenty-eight (28) days or more, and has not sought custody of the child during that period. A parent shall be deemed unidentifiable if the parent's identity cannot be ascertained, and/or if the parents' physical location cannot be ascertained.

(ii) The parent of the child has abandoned the child without providing for his/her support or without communication for a period of Six (6) months. The failure to provide support or to communicate for a period of at least Six (6) months shall be presumptive evidence of the parent's intent to abandon the child.

(b) The child or a sibling of the child has suffered physical injury or sexual abuse under either of the following circumstances:

(i) A parent's act caused the physical injury or physical or sexual abuse and the court finds that there is reasonable likelihood that the child will suffer from the injury or abuse in the foreseeable future if placed in the parent's home.

(ii) A parent who had the opportunity to prevent the physical injury or sexual abuse and failed to do so. If the court finds that there is a reasonable likelihood that the child will suffer injury or abuse in the foreseeable future if placed in the parent's home.

(c) The parent was a respondent in a proceeding in the Children's Court, under this Chapter of the Lac Vieux Desert Children Code II, twelve or more months have lapsed since the issuance of an initial dispositional order, and the court, beyond a reasonable doubt finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.

(ii) Other conditions exist that cause the child to be a child-in-need-of-care, and the child has received recommendations to rectify those conditions, and those conditions have not been rectified by the parent after the parent has received notice following a hearing, and after the parent has been given a reasonable opportunity to rectify the conditions, and there appears no reasonable likelihood that the conditions will be rectified within a reasonable time considering the age of the child.

(d) A parent is unable to provide proper care and custody for a period in excess of One (1) year because of mental deficiency or mental illness, without a reasonable expectation that the parent will be able to assume care and custody of the child within a reasonable length of time considering the age of the child.

(e) The parent of the child is convicted of a felony of a nature as to prove the unfitness of the parent to have future custody of the child or if the parent is imprisoned for over Two (2) years and the parent has not provided for the child.

(f) Parental rights to one or more sibling of the child have been terminated due to serious and chronic neglect or physical or sexual abuse, and prior attempts to rehabilitate the parents have been unsuccessful.

### **(B) Voluntary Relinquishment of Parental Rights**

(1) Parental rights may be voluntarily terminated by a parent in writing, if signed by the parent in the presence of a Notary Public or in the presence of an officer of the court. Relinquishment shall not be accepted or acknowledged by the court prior to ten (10) days after the birth of the child.

(2) The court shall ensure that the parent understands the consequences of the voluntary termination prior to approving it. A parent who wishes to relinquish his/her parental rights shall be provided an interpreter if he/she does not understand the English language.

**1999 Comment**

Subrule (A)(a)(i) now clarifies and differentiates between an "unidentifiable parent" and a parent whose physical location is unknown.

Subrule (B)(1) expands upon the former provision to now allow a parent to sign a voluntary termination of parental rights before a Notary Public. The former provision stated that the parent must sign the voluntary waiver in the presence of the court.

**RULE 6.303 POST TERMINATION PROCEDURE**

**(A) Termination at Initial Disposition.** If a petition to terminate parental rights to a child have been filed, the court may enter an order terminating parental rights under Subrule (B) of this Rule at the initial dispositional hearing.

**(B) Termination of Parental Rights; Order.**

(1) An order terminating parental rights under this Rule may not be entered unless the court makes its findings of fact, states its conclusions of law, and includes that statutory basis for the order. Brief, definite and pertinent findings and conclusions on the contested matters are sufficient.

(2) The court may state the findings of fact and conclusions on the record or include them in a written opinion. If the court does not issue a decision on the record following a hearing, it shall file its decision within Twenty-eight (28) days after the taking of final proofs.

**(C) Advise of Right to Appeal.**

(1) Immediately upon entry of an order concerning the involuntary termination of parental rights, the court shall advise the respondent parent orally or in writing that the parent is entitled to appellate review of the order concerning the involuntary termination of parental rights within Twenty (21) days of the entry of the Order.

(2) Appellate review of an order involuntarily terminating parental rights shall be by right. The clearly erroneous standard shall be used in reviewing the findings of the Children's Court of Appeal from an order terminating parental rights.

**(D) Post Termination Review Hearings.** If a child remains a ward of the court following the termination of parental rights to the child, the court shall conduct a review hearing at least every twelve months to review the progress toward permanent placement of the child. The court shall make its findings as to whether reasonable efforts have been made to establish permanent placement for the child and may enter such orders as it considers necessary in the best interest of the child.

**(E) Child's Continued Right to Benefits.** An order terminating the parent-child relationship shall not disentitle a child to any benefit due the child from any third person, agency, state or federal government, nor shall any action under this Subchapter be deemed to affect any rights and benefits that the child derives from the child's descent as a member of any federally recognized Indian Tribe.

**2001 Comment**

Paragraph (1) of Subrule (C) in its present form inserts that an appeal terminating Parental Rights must be made within Twenty-one days of the entry of the order.

**2022 Comment**

Subrule (C) now specifies the advice of right to appeal involuntary termination of parental right matters which precludes and differentiates between voluntary termination of parental right matters.

**SUBCHAPTER 6.400 ADOPTION PROCEDURES****RULE 6.401 EFFECTIVE DATE**

The Rules under this subchapter become effective December 17, 1994. They govern all adoption proceedings brought on or after that date, and all further proceedings then pending, and shall remain in effect until amended or modified by certification of the Chief Tribal Judge and/or approval of the Lac Vieux Desert Tribal Council.

**2001 Comment**

This rule replaces the former 1999 Rule 6.401 which was entitled "Intent of the Tribe". The former 1999 Rule 6.401 "Intent of the Tribe" remains engendered throughout these rules and as a result of stylistic changed in the 2001 Rules, former Rule 6.401 has been entirely omitted.

Former 1999 Rule 6.401 read as follows: *The Tribal Council and the Tribal Court firmly believes that the children of the Tribe are the Tribe's greatest natural resource and both the Tribal Council and the Tribal Court will take every step possible to protect this natural resource. Alternatives to Adoption shall be pursued to their fullest extent prior to seeking an adoption proceeding. When an adoption is necessary, first preference for the adoption shall be with an extended family member, then a tribal member, then a non-tribal member of Native American status, and finally all others.* The 1999 Rule stylistically changed, but embodies the synthesis of the 1994 version of "Intent of Tribe" which has been listed under Subrules (A) through (I) and in style the former was read as though it were a resolution.

**RULE 6.402 GUARDIANSHIP PREFERRED OVER ADOPTION**

The Tribal Court shall encourage guardianship proceedings in all matters rather than adoptions. Adoptions shall only be considered upon a showing, on the record that a guardianship proceeding will not be a workable alternative.

**RULE 6.403 WHO MAY ADOPT.**

**(A)** The following persons are eligible to adopt a child:

- (1) A husband and wife jointly, or either if the other spouse is a parent of the child;
- (2) An unmarried person who is at least Eighteen (18) years of age;
- (3) In cases where a child's parents are unmarried, the child's natural father;
- (4) Two unmarried persons cohabitating together for a substantial period of time as a married couple.

**(B)** Consistent with Subrule (A) of this Rule, the Court shall give preference in the order listed for adoption:

- (1) An extended family member, whether enrolled, eligible for enrollment or not with this Tribe or any other Federally Recognized Indian Tribe.
- (2) An enrolled member of the Tribe or an individual or couple eligible for enrollment;
- (3) A Native American from another Federally Recognized Indian Tribe;
- (4) A community member of Lac Vieux Desert, not considered an extended family member;
- (5) All other individuals.



**RULE 6.404 ADOPTION PROCEDURE**

**(A) Petition for Adoption.** Upon receipt of a Petition for Adoption, and paying the applicable filing fee of \$100.00, the Clerk of Courts shall set a date for an initial hearing not later than Sixty (60) days of filing and cause to serve the notice of hearing upon the following persons:

- (1) The petitioner(s);
- (2) The child's guardian, custodian or foster care provider;
- (3) The natural parents (if their parental rights have not been terminated);
- (4) The immediate family of the minor child;
- (5) The Indian Child Welfare Act Committee;
- (6) The Tribal Council, by and through its Tribal Chairman.

**(B) Consent.**

- (1) The consent of the following shall be sought in any adoption proceeding:
  - (a) The child if the child is Twelve (12) years or older;
  - (b) The parent or parents if living and if their parental rights have not been terminated, including the adjudicated or acknowledged father of child born out of wedlock, whose parental rights have not been terminated;
  - (c) Maternal and Paternal Grandparents of the child;
  - (d) The brothers and sisters of the minor child, if over the age of Eighteen (18) years;
  - (e) The written agreement of the Lac Vieux Desert Indian Child Welfare Act Committee.
- (2) All issuances of consent must be in writing and presented to the court. The consent decrees become part of the record upon receipt by the court.
- (3) The consent decrees shall be considered incorporated in the petition for adoption;
- (4) The court shall, upon the acceptance of the consent decrees, explain to the parties the consequences of an adoption.
- (5) No adoption shall be official if any of the above-named parties are not notified and given an opportunity to submit a written consent decree/ waiver of notice, or otherwise voice their concerns regarding any adoption, and accepted by the court.

**(C) Initial In-Home Study of Indian Child Welfare Department.** The Indian Child Welfare Department, and Tribal Social Service Department shall do an initial in-home study of the prospective adoptive parent(s) and issue a determination as to whether it would be in the best interest of the child to be placed in the adoptive parent(s) household. The Indian Child Welfare Committee shall submit a copy of this report to the court. The report shall be submitted to the Court after the

petition is filed but prior to the initial hearing. No adoption shall be final unless this report is submitted.

**(D) Background Investigation of Prospective Parents.** The Tribal Court shall authorize an individual to conduct a background investigation of the prospective adoptive parent(s). The investigation shall include a review of the prospective parents life and lifestyle for the past Seven (7) years. The individual so named by the Court shall issue a final report as to the fitness of the prospective parents and the prospective parents ability to raise the child(ren) in the traditions and cultures of the tribe. This report shall be submitted to the court after the petition is filed but prior to the initial hearing. No adoption shall be final unless this report is submitted.

**(E) Initial Hearing.**

(1) The court shall set a date for an initial hearing within Sixty (60) days of the filing of the petition for adoption.

(2) The child, if Twelve (12) years of age or older, shall be present at the hearing unless the court considers otherwise. A child under the age of Twelve (12) years may be invited to attend the initial hearing if the court so decides.

(3) During the initial hearing the court shall ascertain from the petitioner(s) the complete names and addresses of those to be notified pursuant to the requirements of Rule 6.405(B). At the initial hearing the court shall also direct the Indian Child Welfare Committee to conduct its in-home study pursuant to Subrule (C) of this rule, and name the party that will conduct the Background Investigation pursuant to Subrule (D) of this rule.

(4) The court shall set a date for an Interim Hearing to a final determination of the adoption petition at a time greater than Thirty (30) days after the initial hearing.

**(F) Interim Hearing to a Final Determination of Adoption.** At a time period greater than Thirty (30) days after the initial hearing the court shall hold an interim hearing to a final determination of adoption. All interested parties as set forth under this rule shall be given notice of this hearing, and/or an opportunity to waive their consent. At this hearing the court shall determine the following:

(1) Whether the requirements of this Subchapter and those of the Indian Child Welfare Act have been met;

(2) Whether the adoption is in the best interests of the prospective adoptee, as evidenced from the reports generated from the in-home study and background investigation; and, if in the affirmative, order a Probationary Period of Adoption.

**(G) Probationary Period of Adoption.** During the time period between the initial hearing and the date set by the Court for the final determination, the following shall occur:

(1) If not already enrolled, and eligible for enrollment, the minor child shall be enrolled with the Tribe;

(2) The Indian Child Welfare Department shall conduct an in-home study of the prospective parent(s) and the child and issue a determination as to whether it will be in the best interest of the child(ren) to be placed in the particular family setting;

(3) A final explanation, in writing, by the court shall be sent to all interested parties explaining the legal consequences of the adoption.

**1999 Comment**

Subrule (F) of this rule is substantially the same as its counterpart except for the added provision contained under subsection (1), which adds, as now amended, "and eligible for enrollment".

**2001 Comment**

Subparagraph (a) of Paragraph (1), Subrule (B) changes the age of individual consent in adoptions from the former provision of children Thirteen years of age or older, to now Twelve years of age or older.

Subparagraph (c) of Paragraph (1), Subrule (B) now deliberately omits the former requirement that consent be sought of maternal Aunts and Uncles.

Subrule (B) now omits the former requirement that the consent of the Tribal Council is required in an adoption proceeding.

Paragraph (5) of Subrule (B), now adds, "and accepted by the court."

Subrule (E), Paragraph (2) in its present form now requires attendance of the child who is the subject of the adoption at 12 years of age or older as opposed to the former provision which called for attendance of children "over the age of 13 years".

### **RULE 6.405 FINAL ORDER OF ADOPTION**

**(A) Date for Final Hearing.** The court shall set a date not less than 60 days after the initial hearing, to consider the Final Order of Adoption.

**(B) Notice of Hearing.** Absent any Waiver and Consent of Adoption filed with the Court prior to the date set for the final hearing, the court shall serve notice of the final hearing on the Petition of Adoption to the following:

- (1) The Petitioners;
- (2) The child's current guardian, custodian, or foster care provider;
- (3) The natural parent(s) of the child (if their parental rights have not been terminated);
- (4) The child's Maternal and Paternal Grandparents and brothers and/or sisters if over the age of 18 years;
- (5) The Indian Child Welfare Committee;
- (6) The Social Services Department.

**(C) Final Hearing.** The court shall receive all reports, consent decrees, resolutions, or other such material on the record at the final hearing. The court shall permit any party served with notice of such hearing an opportunity to be heard. Upon a presentation of all the information the court shall issue a finding as to whether an adoption of the child(ren) is granted, or otherwise be denied.

**(D) Final Order of Adoption.** The final order of adoption shall contain, at a minimum, the following:

- (1) To whom the new parent(s) of the child(ren) are;
- (2) The new name of the child if one is so requested;

(3) An expressed notation of the explanation of the legal rights and consequences surrounding an adoption as well as the affirmation of all parties understanding these rights;

(4) Reference to the waiver/consent decrees of the family as well as any concerns that the family may have with the adoption;

(5) Expressed affirmation of the child's enrollment with the Tribe;

(6) An expressed finding that the adoption is in the best interest of all the parties and the evidence relied upon to reach this conclusion;

(7) If the adoptive parent(s) are not enrolled with the Tribe, or eligible for enrollment with the Tribe, the reason for selecting the party rather than another member of the Tribe;

(8) If applicable, any provisions for visitation with the extended family or the Tribe, if necessary;

(9) Any other related information specific to the adoption proceedings.

**(E) Final Order of Adoption/Probationary Placement.** The Final Order of the court shall become binding on all parties.

**(F) Effect of Final Order.** The Final Order of the Court does not terminate the Tribal Court's jurisdiction to review the conditions of the adoption. The Tribal Court shall maintain jurisdiction over the adoption until the minor child attains the age of Eighteen (18) years. Upon petition to the court, or on the court's own motion, the Tribal Court, at any time, may review and modify an adoption order upon a showing of a change of circumstances that has an effect on a material factor of the adoption.

**(G) Effect of Final Order over Extended Family.** A Final Order of Adoption does not serve to terminate the relationship nor the rights of the child(ren) and the extended family.

**(H) Disclosure of Tribal Heritage.** The Tribal Court shall provide for a mechanism in the adoption order whereby the child(ren) will be informed of the heritage and culture of the Tribe as well as the child(ren) membership in the Tribe. The mechanism the court uses shall be tailored to the facts and circumstances of the particular adoption. The Court shall document in the permanent file the particular mechanism selected in the adoption order as well as the results of the mechanism selected.

#### 1999 Comment

The applicable Subsections (5) and (6) of Subrule (D) of former LVD II/1994 have been omitted herein. Said omitted and supplanted Subsections under the former rule read as follows: "(5) A copy of the final recommendation of the Indian Child Welfare Committee if the court rules consistent with the recommendations; [and] (6) A expressed statement as to why the court is rejecting the recommendations of the Indian Child Welfare Committee or other such parties...."

Subrule (E) modifies its counterpart as contained under former LVD II/1994, in that in its present form, this Subrule deletes a substantial portion of that provision. The new provision deletes the requirement that the final order becomes binding upon all parties for a period of Eight months after the Final Hearing, as well as the provision that the Indian Child Welfare Committee conduct a secondary in-home study. The essence of this Subrule in its amended form is to make the Final Order of Adoption final and binding upon the date it is entered.

**2001 Comment**

Paragraph (3) of Subrule (B) now asserts notice of hearing to the child's parents only if the parents' rights have not been terminated. Subrule (B) now also eliminates the former provision that the Tribal Chairman be notified of the hearing upon a final order of adoption.

Paragraph (6) is new. It has been inserted here to be consistent with the addition of Social Services in the participation of initial in-home study(s) as now is provided for under Subrule (C) of Rule 6.404.

**2022 Comment**

Subrule (E) is new and as a result the rule in its present form has displaced Subrules (F), (G) and (H), which remain unchanged from their 2008 Counterpart.

**RULE 6.406 POST ADOPTION CONTACT WITH THE COURT.**

The court shall direct the adoptive parent(s) to submit annual reports to the court as to the domicile of the adoptive parent(s) and adoptee(s). The report shall contain the adoptive parent(s) and adoptee(s) current address, any movements in the past period of time, any substantial change in employment, provisions followed for the visitation with the extended family and the Tribe, and a brief summation concerning the welfare of the child(ren). A failure to submit the report, upon order of the court, may result in a revocation of the Tribal Court's Final Order of Adoption.

**1999 Comment**

This amended rule changes the former rule which mandates, without condition, that the adoptive parents submit a report to the Court two times a year. The amended rule now gives the court discretion as to whether semi-annual reports be submitted by the adoptive parents.

**2001 Comment**

Rule 6.406 is similar to the original 1994 Rule. It now mandates the Court to direct adoptive parent(s) to submit annual reports to the court. A further substantive change from the corresponding 1999 Rule, is that this rule, in its present form, now requires the submission of annual reports as opposed to the former requirement of semi-annual reports.

**RULE 6.407 COURT RECORDS AND PAPERS CONCERNING ACTIONS OF ADOPTION.**

[Effective February 1, 2001]

**(A) Generally.** All Orders, Records, Reports and other such papers relating to any particular action for Adoption shall be kept in the permanent files in the Office of the Lac Vieux Desert Tribal Court Clerk.

**(B) Non-Public Disclosure.** All Orders, Records, Reports and other such papers relating to any particular action for Adoption shall be sealed at the conclusion of all actions pertaining to the Granting or Denying of an Order of Adoption.

**(C) Actions to Unseal Adoption Records.** Adoption records, once sealed, may only be unsealed by virtue of Court Order. An Order unsealing Adoption Records shall only be entered upon the showing by the Petitioner, that said unsealing of said records would be in the best interest of the subject of the adoption.

**2001 Comment**

Rule 6.407 has been adopted to ensure confidentiality and also to provide a mechanism whereby adoption records can be obtained.

**SUBCHAPTER 6.500 GUARDIANSHIP****RULE 6.501 LIMITED GUARDIANSHIP**

**(A) Court Appointed Temporary Guardianship.** The court may appoint a temporary guardian under such terms and conditions as the court sets forth in the written order. A temporary guardian may be terminated if the court determines that it is in the best interest of the child to change custody from the temporary guardian to a new guardian or to return the child to the natural parents.

**(B) Family Liberal Visitation Rights Extended.** The parent and the child's extended family shall be granted liberal visitation rights unless deemed inappropriate by the court. A temporary guardianship shall be established by parental consent only, and may be revocable by the court upon parental consent.

**1999 Comment**

Subrule (B) of this Rule now provides that the court "may revoke" temporary guardianship upon parental consent, as opposed to the former rule which recited that the court "shall revoke" temporary guardianship upon parental consent.

**RULE 6.502 FULL GUARDIANSHIP**

**(A) Purpose.** The Children's Court, when it appears necessary or convenient, may appoint guardians of the persons and/or property of children under the Children's Court Jurisdiction. Unless otherwise specified by the Court, a guardian appointed shall have the custody and care of the education of the child and the care and management of his/her property until such child attains the age of Eighteen years, marries, dies, or is emancipated under the provisions of this Subchapter, or until the guardian is legally discharged.

**(B) Types of Guardianship.**

- (1) The types of guardianship shall include:
  - (a) Guardianship of the person; and,
  - (b) Guardianship of the property.

(2) Unless the court appoints a separate individual as guardian of the property, the guardian of the person shall also be deemed the guardian of the child's property. In those instances where a guardian of the child's property is necessary, the court may direct that the guardian or conservator file from time to time inventories and otherwise an accounting of that child's property.

**(C) Circumstances for Court Involvement.** The court may appoint a guardian for a child if either of the following circumstances exist:

- (1) The parental rights of both parents of the surviving parent have been terminated or suspended by prior court order; by judgment of divorce or separate maintenance; by death; by judicial determination of mental incompetency; by disappearance; or by confinement in a place of detention.
- (2) The appointment is necessary for the immediate physical well-being of the minor.

**(D) Who May File.**

(1) Any person, including the Tribal Human Resources and Social Services Agency may file a petition for guardianship. The petition shall be initiated either by the proposed guardian or by the child if at least Fourteen (14) years of age.

(2) Before appointing a Guardian, the court must give reasonable notice to any person having the current care of the child, to the child himself/herself, and to other relatives of the child as the court deems proper.

**(E) Guardianship Petition; Form.**

(1) The Petition for Guardianship shall include the following, to the best information and belief of the Petitioner:

- (a) The full name, sex, date and place of birth, residence and tribal affiliation of the proposed ward;
- (b) The Petitioner's full name, address, tribal affiliation, relationship (if any) to the proposed ward, and interest in the proceedings;
- (c) The names and addresses of the minor's parent's, if living, and of the persons known to have an interest in the petition for appointment of guardian; the name and date of death of the minor's deceased parent(s), if applicable;
- (d) The basis for the court's jurisdiction;
- (e) The name and address of the person or agency having legal or temporary custody of the proposed ward;
- (f) A statement of the reason(s) that the appointment of a guardian is sought; whether the petitioner seeks the appointment of a guardian of the person, a guardian of the estate, or both; and to whom the petitioner recommends or seeks to have appointed as such guardian or guardians;
- (g) A full description and statement of the value of the minor's assets and liabilities with an estimate of the value of any property owned, possessed, or in which the proposed ward has an interest, including any income receivable to which the proposed ward is entitled.

(2) All petitions must be signed and dated by the petitioner(s), and must be notarized or witnessed by the clerk of tribal court.

**2001 Comment**

Paragraph (2) of Subrule (B) now provides for the filing of inventories and accountings where a guardian of the child's property is appointed.

**RULE 6.503 GUARDIANSHIP REPORT; CONTENTS TO COURT**

**(A)** Upon the filing of a guardianship petition, the court may request that the social service department or other qualified agency conduct a guardianship report on the proposed guardian and report on the proposed ward. If so ordered the guardianship report shall contain all pertinent information necessary to assist the court in determining the best interest of the proposed ward.

**(B)** If so ordered, the guardianship report shall be submitted to the court no later than Ten (10) days before the hearing. The court may order additional reports as it deems necessary.

**2001 Comment**

Subrule (A) now eliminates the requirement that the court order a Guardianship Report upon the filing of a Guardianship Petition.

Subrule (B) now strikes the 1999 corresponding provision which formerly read: *"No determination can be made on a petition for guardianship until the report has been completed and submitted to and considered by the court."*

**RULE 6.504 POWERS AND DUTIES OF GUARDIAN****(A) Powers and Duties.**

(1) To the extent that it is not inconsistent with the terms of any order of the court, a guardian of the person has the following powers and duties:

(a) The appointed guardian is entitled to custody of the person of his or her ward and shall make provision for his or her ward's care, comfort, and maintenance, and shall, as appropriate to the ward's needs, arrange for his or her training, education, employment, rehabilitation or habilitation. The guardians shall take reasonable care of the ward's clothing, furniture, vehicles, and other personal effects that are the wards property.

(b) In arranging for a place of abode, the guardian of the person shall give preference to places within the tribal reservation, in both in-reservation and out-of reservation places which are substantially equivalent. The guardian shall give preference to places that are not treatment facilities, such as group homes, over treatment facilities that are not tribal based.

(c) The guardian of the person shall have authority to consent to any medical, legal, psychological, or other professional care, or service for the person. The guardian of the person may give any other consent or approval on the ward's behalf that may be in the ward's best interest. The guardian of the person may petition the court for concurrence in consent or approval.

#### **(B) Reimbursement to Guardian.**

(1) A guardian of the person is entitled to be reimbursed out of the ward's estate for reasonable and proper expenditures incurred in the performance of his/her duties as guardian of the ward's person.

(2) The court may order monthly reimbursement payments to the person or agency to whom custody is granted, provided sufficient funds have been appropriated by tribal council. The use of such payments for any purpose other than that for which they have been allocated shall subject the guardian to contempt of court and any criminal and civil penalties or remedies as provided by tribal law.

**(C) Limitations on Liability of Guardian.** A guardian of the person, if he or she has acted within the limits imposed on him or her by the court, shall not be liable for damages to the ward or the ward's estate, merely by reason of the guardian's:

(1) Authorizing or giving consent or approval necessary to enable the ward to receive legal, psychological, or other professional care, counseling, treatment, or service, in a situation where the damages result from the negligence of other acts of a third party; or,

(2) Authorizing medical treatment or surgery for his or her ward, if the guardian acted in good faith and was not negligent.

**(D) Guardianship of Estate.** The court may appoint a guardian of the property of a ward under such terms and conditions as the court sets forth in a written order. The guardianship may cover all property or it may be limited to only specific property or a specific legal action as set forth in a written order. A limited guardianship of the person may also include guardianship of the ward's property if set forth in the court's written order. The guardian of property has the power to perform in a reasonable and prudent manner, every act that a reasonable and prudent person would perform incident to the collection, preservation, management, and use of the child's estate to accomplish the desired result of administering the child's property legally and in the child's best interest, including, but not limited to the following specific powers:

(1) To take possession, for the child's use, of all the child's estate;



- (2) To receive assets due the child from any source;
- (3) To maintain any appropriate action or proceeding to obtain support to which the child is legally entitled, or to recover possession of any of the child's property, or to determine title thereto, or to recover damages for any injury done to any of the child's property, or to compromise, or otherwise deal with and settle any other claims in favor of, or against the child;
- (4) To abandon or relinquish all rights in any property when, in the guardians opinion, and in a acting reasonably and in good faith, it is valueless, or is so encumbered or is otherwise in such condition that it is or no benefit or value to the child or his/her estate.
- (5) To vote share of stock or other securities in person or by general or limited proxy, and to pay sums chargeable or accruing against or on account of securities owned by the child;
- (6) To insure the child's assets against damage or loss, at the expense of the child's estate;
- (7) To pay taxes, assessment, and other expenses incident to the collection, care, administration and protection of the child's estate;
- (8) To expend estate income on the child's behalf and to petition the court for prior approval of expenditures from the estate principal; provided neither the existence of the estate or guardian's authority to make expenditures therefrom shall be construed as affecting the legal duty that a parent or other person may have to support and provide for the child;
- (9) To employ persons, such as attorneys, auditors, investment advisors, appraisers, or agents to advise or assist the guardian in the performance of the guardian's duties as guardian of the estate;
- (10) To continue any business operation in which the child was engaged, where such continuation is reasonably necessary or desirable to preserve the value, including goodwill, of the child's interest in such business;
- (11) To acquire, retain and sell every kind of property and every kind of investment, including but not limited to bonds, debentures, and other corporate governmental obligations; stocks, preferred or common; real estate mortgages; shares in building and loan associations or savings and loan association; annual premium or single premium life, endowment, or annuity contracts; and securities of any management type investment company or investment trust register under the Federal Investment Company Act of 1940, as from time to time amended;
- (12) Without a court order, to lease any of the child's real estate for a term of not more than three years, or to sell, lease or exchange any of the child's personal property including securities, provided that the aggregate value of all items of the child's tangible personal property sold without court order over the duration of the estate shall not exceed Five Thousand (\$5,000.00) dollars. A guardian may sell the item only as provided under Subsection 13 of this Subrule;
- (13) A guardian who is permitted by Subsection 12 of this Subrule, shall, and any other guardian who so desires may, by motion in the cause, request the court to issue him or her an order to lease the child's real estate or to sell any item or items of the child's personal property. Notice of the motion and of the date, time and place of a hearing thereon shall be served upon all parties of

record and upon such other person as the clerks of courts may direct. The court may issue the order after hearing and upon such conditions as the court may require, provided that the power granted in this Subsection shall not affect the power of the guardian to petition the court for prior approval of expenditures from the estate principal.

(14) To foreclose as an incident to the collection of any bond, note or other obligation, any mortgage, deed of trust, or other lien securing such bond, note or other obligation, and to bid in the property as such foreclosure sale, or to acquire the property by deed from the mortgagor or obligor without foreclosure; and to retain the property so bid on or take over without foreclosure;

(15) To borrow money for such periods of time and upon such terms and conditions as to rates, maturities, renewals, and security as the guardian shall deem advisable, including the power of paying debts, taxes, and other claims against the child, and to mortgage, pledge, or otherwise encumber such portion of the child's estate as may be required to secure such loan or loans;

(16) To execute and deliver all instruments that will accomplish or facilitate the exercise of the powers vested in the guardian.

**(E) Resignation.**

(1) Any guardian who wishes to resign may apply in writing to the court, setting forth the circumstances of the case. If a guardian of the estate or of the person, at the time of making the application of resignation, also exhibits his or her final account or settlement, and if the court is satisfied that the guardian has fully accounted, the court may accept the resignation of the guardian and discharge him or her and appoint a successor guardian. The guardian so discharged and his or her sureties are still liable in relation to all matters connected with the guardianship before the discharge.

(2) A guardian of both the estate and of the person of the ward, who wishes to resign as guardian of the estate of the ward but continue as guardian of the person of the ward, may apply for the partial resignation by petition as provided herein.

**(F) Appointment of Successor Guardian.** Upon the removal, death, or resignation of a guardian, the court shall appoint a successor guardian following the same criteria that would apply to the initial appointment of a guardian.

## **SUBCHAPTER 6.600 POWER OF ATTORNEY/ EMANCIPATION**

### **RULE 6.601 POWER OF ATTORNEY**

**(A) Delegation.** A parent, legal custodian, or guardian (including Tribal Social Service Agencies) by a properly executed power of attorney, may delegate to another person for a period not exceeding Six (6) months any of the person's legal custodian's or guardian powers.

**(B) General Powers.** A duly appointed legal guardian of a child shall have such powers in regards to the child's care, custody or property, except the power to consent to marriage or adoption and the power to release a child for adoption.

#### **RULE 6.602 EMANCIPATION**

**(A) Who May File for Emancipation.** Any child over the age of 16 years may petition the court for emancipation.

**(B) Court Determination; Effects of Emancipation.** The Court shall grant such status when the child proves to the court that the child is capable of functioning as an independent member of the community.

### **SUBCHAPTER 6.700 AUTHORIZATION OF MEDICAL TREATMENT**

#### **RULE 6.701 COURT INTAKE**

**(A) Circumstances for Court Authorized Medical Treatment.** At any time regardless of whether a child is under the authority of the court, medical or surgical care for a child may be authorized, when:

(1) A parent, legal guardian or custodian is not immediately available and cannot be found after reasonable efforts have been made; or,

(2) A physician informs the court orally or in writing that in his/her professional opinion, the life of the child would be greatly endangered without certain treatment and the patient, guardian, or other custodian refuses or fails to consent. If time allows, every effort shall be made to grant the parent, custodian, and/or guardian an immediate informal hearing.

**(B) Consideration by the Court.** In making its order, the court shall give due consideration to any treatment being given the child by prayer through spiritual means alone or through other methods accepted by tribal customs or traditions or religions, if the child or his parents, guardian, or legal custodian are adherents of an established religious denomination that relies on this form of treatment in lieu of medical treatment, or practices the tribal customs, traditions, or religion which is relied upon for such treatment of the child.

**(C) Court Written Authorization.** After entering any authorization under this rule, the court shall reduce the circumstances, findings and authorizations to writing and enter it in the records of the court and shall cause to have copies of the authorization served upon the appropriate physician, hospital, or both.

**(D) Oral Authorization.**

(1) Oral authorization by the court is sufficient for care or treatment to be given in the event that circumstances are such where the delay of a written order could endanger the health or otherwise delay treatment of the child.

(2) No physician or hospital or any nurse, technician or other person under the direction of such physician or hospital shall be subject to criminal or civil liability in the court for performance of care or treatment in reliance upon the court's authorization, and any function performed thereunder shall be regarded as if it were performed with the child's and the parent's authorization.

## CHAPTER 7. FAMILY COURT PROCEEDINGS

Effective December 27, 1994  
Including Amendments Received Through  
September 1, 2022

### SUBCHAPTER 7.000 SCOPE; APPLICABILITY OF FAMILY COURT RULES

#### RULE 7.001 SCOPE OF RULES

The rules in this Chapter govern matters of procedure in the Family Division of the Lac Vieux Desert Tribal Court.

**2008 Comment**

This Rule was formerly located under Rule 1.201, Subrule (A) of LVD/2003 and prior Court Rules.

#### RULE 7.002 APPLICABILITY OF RULES

These rules apply to marriages, divorces, marital separations, cohabitational terminations, paternity and child support actions, and all other related family matters except:

(A) As otherwise provided by rule or statute;

(B) When it clearly appears that these rules apply to the Childrens Court Rules contained under Chapter 6 of these Rules; and/or,

(C) When a statute or court rule provides a like or different procedure.

**1999 Comment**

The term “cohabitational terminations” inserted in LVD II/ 1999 1.201(b) is the result of court practice initiated in 1996 to include within the realm of family court relations actions between two persons cohabitating together as though they are married, although infact are not married.

**2008 Comment**

Rule 7.002 was formerly located under Rule 1.201, Subrule (B) of LVD/2003 and all prior Court Rules.

This rule is substantially the same as its 2003 counterpart, Subrule (B) of former Rule 1.201 with the exception that notice of the application of these rules is now deliberately given to actions concerning paternity and child support.

### SUBCHAPTER 7.100 MARRIAGES

#### RULE 7.101 SCOPE OF RULE

This rule applies to all marriages on the lands of Lac Vieux Desert performed by a Tribal Judge of the Lac Vieux Desert Tribal Court or any other person legally authorized to solemnize marriages. This rule is superseded by any conflicting or similar Tribal Law or Tribal Ordinance

relating to the matter of marriages. This rule shall be read consistently with the Tribe's customs and traditions. Where a conflict arises the tribal custom or tradition shall trump any particular rule within this Subchapter.

**2008 Comment**

Rule 7.101 was formerly located under Subrule (A) of Rule 1.202 of LVD/ 2003 and all prior Court Rules.

**RULE 7.102 APPLICATION OF MARRIAGE.**

Any couple wishing to be married under the provisions of this Subchapter must:

**(A)** Obtain two copies of the Marriage License from the Tribal Clerk of Courts; and,

**(B)** Complete two copies of the Marriage License in the presence of the Tribal Clerk of Courts and deposit with Clerk a non-refundable filing fee in the amount of \$100.00.

**2001 Comment**

Consistent with the Court's filing fee schedule, effective January 1, 2001, paragraph Two of Subrule (B) [now Subrule (B) of this Rule] now includes the depositing of the applicable \$75.00 filing fee.

**2008 Comment**

Rule 7.102 was formerly located under Subrule (B) of Rule 1.202 of LVD/2003 and all prior Court Rules.

**2022 Comment**

Court Administrative Order, 2022 maintains the June 1, 2020 marriage filing fee from the former filing fee of \$75.00 to \$100.00 as indicated in the corresponding rule of LVD/2008.

**RULE 7.103 CERTIFICATE OF MARRIAGE**

The Application of Marriage as issued by the Clerk of Court shall be valid up to Six (6) months from the date of issuance. At any time during this period a couple may be married on the lands of the Tribe by a Tribal Judge or any other person legally authorized to solemnize marriages. The couple to be married shall be responsible for presenting two copies of the Application of Marriage to the person solemnizing the marriage. The person solemnizing the marriage shall:

**(A)** Complete two copies of the Certificate of Marriage after any particular Marriage Ceremony; and,

**(B)** Return one copy of the Certificate of Marriage to the Court within 10 days of the date of the Marriage Ceremony; and,

**(C)** Return one copy of the Certificate of Marriage to the married couple immediately following the ceremony.

**2008 Comment**

Rule 7.103 was formerly located under Subrule (C) of Rule 1.202 of LVD/2003 and all prior Court Rules.

**RULE 7.104 QUALIFICATIONS OF APPLICANTS**

**(A)** All requirements of the State of Michigan with respect to the requisite qualifications entitling persons to marry within that jurisdiction, whether now in existence or to become effective in the future, are hereby adopted, both presently and prospectively, insofar as the same shall pertain to the sex of the parties to the proposed marriage, and the age of the parties to the proposed marriage.

**(B)** No license for marriage shall be issued by the Tribal Court for a marriage to be performed by a member of the Clergy or a Judge of the Tribal Court unless at least one of the parties is domiciled on the Lac Vieux Desert Reservation and is an Indian person, regardless of whether the Indian male or Indian female is an enrolled member of the Lac Vieux Desert Community.

**(C)** An applicant may be deemed qualified to be married under these rules where at least one of the parties is a duly enrolled member of the Lac Vieux Desert Tribe, regardless of where the parties are domiciled.

**2008 Comment**

Rule 7.104 was formerly located under Subrule (D) of Rule 1.202 of LVD/2003 and all prior Court Rules.

**2022 Comment**

Subrule (B) expounds upon the provision of its 2008 counterpart with the specific language that at least one party to the proposed marriage must be an Indian person domiciled on the reservation.

Subrule (C) is new and promulgated to specify that there are no residential requirements where at least one party to the proposed marriage is a duly enrolled Tribal member.

### **RULE 7.105 PERSONS ENTITLED TO SOLEMNIZE MARRIAGES**

No marriage performed pursuant to a license issued by the Tribal Court shall be valid and recognized unless:

**(A)** (Performed by a clergyman duly designated by the governing body of his or her faith as having the authority to perform marriages;

**(B)** A Tribal Judge or Judicial Magistrate of the Trial Division of the Lac Vieux Desert Tribal Court or a Court of another Federally recognized Tribe who is authorized to perform marriages by virtue of either the consent of the Lac Vieux Desert Tribal Council or Chief Judge of the Tribal Court; or,

**(C)** An Indian medicine man or spiritual leader who is commonly recognized as such by Indian people who has been approved as such by the Tribal Court upon the Court's own motion or upon the motion of any other person, and such order of recognition shall not be unreasonably withheld. An Order denying such recognition shall be appealable in the same fashion and manner as any other order of the court.

**2008 Comment**

Rule 7.105 was formerly located under Subrule (E) of Rule 1.202 of LVD/2003 and all prior Court Rules.

### **RULE 7.106 RECORDING OF MARRIAGE LICENSE/CERTIFICATE**

**(A)** Within Ten (10) days of the solemnization of any marriage, one copy of the License/Certificate of marriage shall be returned to the Clerk of Courts by the official who solemnized any marriage for filing of the same.

**(B)** It shall not be the responsibility of the Court to record or file the License/Certificate of marriage with any County, State or Tribal Government other than that of Lac Vieux Desert. Should the parties to any marriage performed under the auspices of these provisions desire that a Marriage Certificate be filed or recorded in another jurisdiction, they may obtain such certified copies from the Clerk of Tribal Courts for a fee as time to time set by the Court.

**2008 Comment**

Rule 7.106 was formerly located under Subrule (F) of Rule 1.202 of LVD/2003 and all prior Court Rules.

## **SUBCHAPTER 7.200 DIVORCES, SEPARATIONS, AND COHABITATIONAL TERMINATIONS**

### **RULE 7.201 SCOPE OF SUBCHAPTER**

This Subchapter applies to all actions of Separation, Divorce, and Cohabitational Terminations sought through Tribal Court regardless of whether the marriage was solemnized under the jurisdiction of a State or under the jurisdiction of another Tribe, and/or whether the parties commenced cohabitating together in the jurisdiction of another state or jurisdiction of another Tribe.

#### **1999 Comment**

LVD II/1999, Rule 1.203 has changed from LVD II/1994, Rule 1.203 in that the 1999 version of this rule provides for Cohabitational Terminations, in addition to Divorce and Separation of marital actions.

#### **2001 Comment**

Subrule (A) expounds upon the provisions of the corresponding rule as contained under the Lac Vieux Desert Court Rules of 1999, in that it outlines under paragraph (2) the instances where deliberate consent of the parties is required to invoke the court's jurisdiction.

#### **2008 Comment**

Rule 7.201 was formerly located under Rule 1.203, Subrule (A) of LVD/2003 and all prior Court Rules. The rule in its present form omits the former provisions of Paragraph(s) (1) and (2), and adds the application of this rule regardless of where and what entity solemnized the marriage or cohabitating commenced.

### **RULE 7.202 CONSENT TO JURISDICTION**

**(A) Generally.** Consent to the jurisdiction of the Lac Vieux Desert Family Court to an action for Divorce, Separation or Cohabitational Termination must be given either by oral testimony before the court, or by affidavit, if: At least one party is not an enrolled member of Lac Vieux Desert, and has been domiciled off the lands of Lac Vieux Desert a minimum of 180 days prior to the commencement of the action for Divorce, Separation, or Cohabitational Termination.

**(B) Non-member Party.** Where at least one party is not an enrolled member of Lac Vieux Desert, and where that party, or both parties, have been domiciled on the lands of Lac Vieux Desert or its contiguous boundaries a minimum of 180 days prior to the commencement of the action for Divorce, Separation, or Cohabitational Termination, the consent to the jurisdiction of the Lac Vieux Desert Family Court by the respondent is not necessary for the action to proceed.

#### **2002 Comment**

Subrule (B) is new and has resulted in the re-enumeration of the 2001 Court Rules (B) and (1). Subrule (B) in its present form provides a mechanism for deliberate consent to the jurisdiction of the Tribal Court where the respondent to the action is either not a member of the Tribe, or is domiciled off the reservation, or both.

#### **2008 Comment**

Rule 7.202 was formerly located under Subrule (B) of Rule 1.203 of LVD/2003 and prior Court Rules.

Effective May 15, 2007, this rule now differentiates between when consent to the jurisdiction of the Family Division is required, and when the action may proceed without the consent of one of the parties.

#### **2022 Comment**

Subrule (A) specifically eliminates the former provision that consent is required where both parties are domiciled off the Lac Vieux Desert Reservation. The intent being that at least one party meet the 180 residency requirements on the lands of Lac Vieux Desert or its contiguous boundaries.

### **RULE 7.203 MINORS CAPACITY TO SUE**

A legally married minor may prosecute or defend an action for divorce or separation in his or her own name. Appointment of next of friend or guardian ad litem is not necessary in an action for divorce and separation, unless:



(A) The appointment is ordered by the court; or,

(B) It is alleged and proven that there is no lawful marriage between the parties.

**2008 Comment**

Rule 7.203 was formerly located under Subrule (C) of Rule 1.203 of LVD/2003 and prior Court Rules.

**RULE 7.204 PETITION FOR DIVORCE, SEPARATION, OR COHABITION TERMINATION.**

**(A) Generally.** The party seeking divorce or separation of marriage or termination of cohabitation, must initiate such action by filing a Petition for Divorce or a Petition for Separation or Petition for Cohabitation Termination and depositing a \$100.00 non-refundable filing fee with the Clerk of Courts.

**(B) Contents of Petition.** Regardless of the contentions of the parties with respect to the existence of the marriage, at a minimum the petition must state:

(1) The complete names of the parties and their names before the marriage, and the complete physical and mailing addresses with respect to both parties;

(2) The Tribe where each of the parties are enrolled;

(3) The complete names and dates of birth and tribal affiliation of any minor children of the parties, or other minor children born during the marriage;

(4) Whether the female is pregnant;

(5) Whether there is property to be divided.

**2008 Comment**

Rule 7.204 was formerly located under Subrule (D) of Rule 1.203 of LVD/2003 and prior Court Rules.

**2022 Comment**

Court Administrative Order, 2022 maintains the June 1, 2020 marriage filing fee from the former filing fee of \$75.00 to \$100.00 as indicated in the corresponding rule of LVD/2008.

**RULE 7.205 NOTICE TO PARTIES.**

Upon receipt of the proper filing fee and Petition, the Clerk of Tribal Courts shall:

**(A)** Send notification in the form of a Summons to the Respondent. The notification, at a minimum, shall include:

(1) A statement that the Petitioner has filed a Petition for Divorce, Separation or Cohabitation Termination, as the case may be;

(2) Attach a copy of the Petition and Summons; and,

(3) Inform the Respondent that within Twenty-one (21) days of receiving the Summons, the Respondent may elect to file a written answer containing any objections to the petition.

**(B)** Within Thirty (30) days of sending written notice to the Respondent, the Clerk of Tribal Courts shall calendar a date for pre-hearing conference in the matter of the Petition for Divorce or

Petition for Separation or the Petition of Cohabitation Termination, and send notification of the date to the Petitioner and Respondent.

**2008 Comment**

Rule 7.205 was formerly located under Subrule (E) of Rule 1.203 of LVD/2003.

**RULE 7.206 PREHEARING CONFERENCE.**

Prior to the actual proceedings in any action for Divorce, Separation, or Cohabitation Termination Hearing, both parties shall be given notice of a prehearing conference. The purpose of the prehearing conference is to:

**(A)** Establish on the record the court's jurisdiction over the particular proceeding; and if in the affirmative;

**(B)** To address any preliminary motions and/or to formally schedule mediation.

**2008 Comment**

Rule 7.206 was formerly located under Subrule (F) of Rule 1.203 of LVD/2003.

**RULE 7.207 MEDIATION.**

On written stipulation of the parties, or written motion of a party, or on the judge's own initiative, the judge to whom a case is assigned may refer the contested issues to mediation conducted between a court-appointed person(s) other than a Tribal Judge. The purpose of the mediation shall be to informally mediate and narrow the scope of the issues associated with the given action, and from the findings of the mediator(s), the same shall submit a recommendation to the Court concerning child support payments, custody, visitation rights, and property division.

**2008 Comment**

Rule 7.207 was formerly located under Subrule (G) of Rule 1.203 of LVD/2003.

**RULE 7.208 DIVORCE, SEPARATION, COHABITATION HEARING.**

**(A) Testimony.** Testimony and proofs must be taken in open court before any final judgment can be granted.

**(B) Default Judgment.** A judgment of divorce, separation, or cohabitation termination may be entered as a matter of course upon the default of the Respondent because of failure to appear at the hearing or by consent. At least one party, however, must be present in order for the judgment to be entered.

**2008 Comment**

Rule 7.208 was formerly located under Subrule (H) of Rule 1.203 of LVD/2003.

**RULE 7.209 JUDGMENT AND ORDERS.**

**(A) Form of Judgment.** If applicable, the judgment rendered by the court shall, at a minimum, include provisions for:

- (1) Division of property;
- (2) Alimony/Maintenance;
- (3) Custody, visitation and support of children;

(4) Income withholding; and,

(5) In matters of divorces, only, a statement that from the date of Judgment or Order, that it is unlawful for any person who is or has been a party to the divorce of this court, or elsewhere to marry again until Six (6) months after judgment of divorce is granted, and the marriage of any person solemnized before the expiration of Six (6) months from the date of the granting of the judgment of divorce shall be void.

**(B) Child Support Order or Judgment.** A child support order or judgment must:

(1) Specify the amount of support of each child, if there any children or more than one;

(2) Contain a provision for income withholding; and,

(3) Provide for payment for a child until the child reaches the age of majority or until further order by the court.

**(C) Judgment for Alimony/ Maintenance.** A judgment for Alimony or Maintenance, must:

(1) Specify the amount of alimony;

(2) Contain a provision providing for income withholding; and,

(3) Provide for a time period in which alimony is to be paid.

**(D) Judgment Awarding Custody.** An order or judgment awarding custody of a child must provide:

(1) That the domicile or residence of the child at the time of awarding custody may not be removed without the approval of the judge who awarded custody or the Judge's successor;

(2) That the parent awarded custody shall promptly notify the Court when the child or children are moved from their address.

**2008 Comment**

Rule 7.210 was formerly located under Subrule (H) of Rule 1.203 of LVD/2003.

**RULE 7.210 NOTICE OF RECONCILIATION**

If on or before the date of the hearing to determine the final disposition of Divorce, Separation, or Cohabitation Termination reconcile and stipulate to the dismissal of the action, the parties to the cause of action or their attorney, shall immediately notify the court of such in writing of reconciliation and an intent to dismiss the pending action. This notice is not, in and of itself, grounds for dismissal of the action.

**2008 Comment**

Rule 7.210 was formerly located under Subrule (H) of Rule 1.203 of LVD/2003.

**2022 Comment**

This rule is substantially the same as its 2003 counterpart with the exception that this now provides that both parties stipulate to the dismissal of the action.

## **SUBCHAPTER 7.300 PROCEDURES FOR ESTABLISHING PARENTAGE.**

### **RULE 7.301 EFFECTIVE DATE.**

The provisions in this Subchapter become effective, June 1, 2007 and governs all proceedings and actions brought on or after the date concerning procedures for establishing parentage in the courts of the Lac Vieux Desert Band of Lake Superior Chippewa Indians and has no relation, force or effect upon the Lac Vieux Desert Tribal Enrollment policies and procedures insofar as it pertains to Genetic Testing pursuant to Lac Vieux Desert Enrollment Ordinance 10.14.

### **RULE 7.302 DEFINITIONS.**

**(A) Acknowledged Father.** An “Acknowledged Father” means a man who has established a father-child relationship.

**(B) Adjudicated Father.** An “Adjudicated Father” means a man who has been adjudicated by a court of competent jurisdiction to be the father of a child.

**(C) Alleged Father.** An “Alleged Father” means a man who alleges himself to be, or alleged to be, the genetic father or a possible genetic father of a child, but whose paternity has not been determined. This does not include:

- (1) A presumed father;
- (2) A man whose parental rights have been terminated or whose parental rights have been declared not to exist;
- (3) A male donor.

**(D) Determination of Parentage.** Means the establishment of the parent-child relationship by signing a valid acknowledgment of paternity or adjudication of the same by the court.

**(E) Genetic Testing.** Means an analysis of genetic markers only to exclude or identify a man as the father, or, a woman as the mother of the child;

**(F) Parent-Child Relationship.** Means the legal relationship between a child and a parent of the child. The terms includes the mother-child relationship and the father-child relationship.

**(G) Paternity Index.** Means the likelihood of paternity calculated by computing the ratio between:

- (1) The likelihood that the tested man is the father, based on the genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is the father of the child; and,

(2) The likelihood that the tested man is not the father, based on genetic markers of the tested man, mother, and child, conditioned on the hypothesis that the tested man is not the father of the child and that the father is from the same ethnic or racial group as the tested man.

**(H) Presumed Father.** Means a man who, by operation of the law, is recognized to be the father of a child until that status is rebutted or confirmed in a judicial proceeding.

#### **RULE 7.303 SCOPE OF RULE; CHOICE OF LAW.**

**(A) Generally.** This Subchapter governs every determination of parentage coming before the courts of the Lac Vieux Desert Band of Lake Superior Chippewa Indians. Any proceeding determining parentage under these rules do not depend on:

- (1) The place of birth of the child; or,
- (2) The past or present residence of the child.

**(B) Relation to other Rules.** These rules do not create, enlarge, or diminish parental rights or duties under any laws of the Tribe now in effect or to become effective.

#### **RULE 7.304 PROTECTION OF PARTICIPANTS.**

Proceedings under this Subchapter are subject to other laws, rules, regulations and procedures of the Tribe governing the health, safety, privacy, and liberty of a child or other individual that could be jeopardized by disclosure of identifying information, including address, telephone number, place of employment, social security number, and the child's day-care facility or school.

#### **RULE 7.305 DETERMINATION OF MATERNITY.**

The provisions relating to the determination of paternity may be applied to a determination of maternity.

#### **RULE 7.306 ESTABLISHMENT OF PARENT-CHILD RELATIONSHIP**

**(A) Mother-Child Relationship.** The mother-child relationship is established between a child and a woman by:

- (1) The woman's having given birth to the child;
- (2) An adjudication of the woman's maternity;
- (3) Adoption of the child by the woman.

**(B) Father-Child Relationship.** The father-child relationship is established between a child and a man by:

- (1) An un rebutted presumption of the man's paternity of the child;
- (2) The man's having signed an acknowledgement of paternity of the child;
- (3) An adjudication of the man's paternity;

- (4) Adoption of the child by the man.

**RULE 7.307 NON-DISCRIMINATION BASED ON MARITAL STATUS.**

A child born to parents who are not married to each other has the same rights under the law as a child born to parents who are married to each other.

**RULE 7.308 PRESUMPTION OF PATERNITY IN CONTEXT OF MARRIAGE.**

**(A)** A man is presumed to be the father of the child if:

(1) He and the mother of the child are married to each other and the child is born during the marriage;

(2) He and the mother of the child were married to each other and the child is born within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, divorce or decree of separation;

(3) Before the birth of the child, he and the mother of the child married each other in apparent compliance with the law, even if the attempted marriage is, or could be, declared invalid and the child is born during the invalid marriage or within 300 days after its termination by death, annulment, declaration of invalidity, divorce or after a decree of separation.

(4) After the birth of the child, he and the mother of the child have married each other in apparent compliance with the law, whether or not the marriage is, or could be declared valid, and the alleged father voluntarily asserted his paternity of the child, and:

- (a) the assertion is in a record filed with an agency maintaining birth records;
- (b) agreed to be and is named as the child's father on the child's birth certificate; or,
- (c) promised in a record to support the child as his own.

**(B)** A presumption of paternity established under these rules may be rebutted only by an Adjudication of Paternity.

**RULE 7.309 VOLUNTARY ACKNOWLEDGMENT OF PATERNITY.**

**(A) Acknowledgment of Paternity.** The mother of a child and a man claiming to be the father of the child conceived as the result of his relations with the mother may sign an acknowledgment of paternity with the intent to establish the man's paternity.

**(B) Execution of Acknowledgment of Paternity.** An Acknowledgment of Paternity must:

- (1) Be in a record;
- (2) Be signed under the penalty of perjury by the other and by the man seeking to establish his paternity;
- (3) State that the child whose paternity is being acknowledged:

- (a) Does not have a presumed father, or has a presumed father whose full name is stated; and,
- (b) Does not have another acknowledged or adjudicated father; and,
- (c) State whether there has been genetic testing and, if so, that the acknowledging man's claim of paternity is consistent with the results of the testing; and,
- (d) State that the signatories understand that the acknowledgment is the equivalent of a judicial adjudication of paternity of the child and that a challenge to the acknowledgment is permitted only under limited circumstances and is barred after two years.

**(C) Acknowledgment of Paternity Void.** An acknowledgment of paternity is void if:

- (1) The acknowledgment states that another man is a presumed father, unless a denial of paternity is signed by the presumed father and is filed with an agency maintaining birth records;
  - (2) The acknowledgment states that another man is an acknowledged or adjudicated father;
- or,
- (3) Falsely denies the existence of a presumed, acknowledged, or adjudicated father of the child.

#### **RULE 7.310 DENIAL OF PATERNITY.**

A presumed father of a child may sign a denial of his paternity. The denial is valid only if:

- (A)** An acknowledgment of paternity is signed and filed by another man;
- (B)** The denial is in a record, and signed under penalty or perjury; and,
- (C)** The presumed father has not previously:
  - (1) Acknowledged his paternity, unless the previous acknowledgment has been rescinded or successfully challenged; or,
  - (2) Been adjudicated to be the father of the child.

#### **RULE 7.311 RULES FOR ACKNOWLEDGMENT AND DENIAL OF PATERNITY.**

**(A) Form of Acknowledgment or Denial.**

- (1) An acknowledgment of paternity is signed and filed by another man;
- (2) An acknowledgment of paternity or denial of paternity may be signed before the birth of the child.
- (3) An acknowledgment or denial of paternity signed by a minor is valid if otherwise is in compliance with these rules.

**(B) Effect of Acknowledgment of Denial of Paternity.**

(1) Except as otherwise provided herein, a valid acknowledgment of paternity filed with the court or an agency maintaining birth records is equivalent to an adjudication of paternity of a child and confers upon the acknowledged father all the rights and duties of a parent.

(2) Except as otherwise provided herein, a valid denial of paternity filed with the court or agency maintaining birth records in conjunction with a valid acknowledgment of paternity is equivalent to an adjudication of the nonpaternity of the presumed father and discharges the presumed father from all of the rights and duties of a parent.

**RULE 7.312 PROCEEDINGS TO ADJUDICATE PARENTAGE.**

**(A) Standing to Maintain Proceeding.** A proceeding to adjudicate parentage may be maintained by:

- (1) The child;
- (2) The mother of the child;
- (3) A man whose paternity of the child is to be adjudicated;
- (4) A representative authorized to act for an individual who would otherwise be entitled to maintain a proceeding but who is deceased, incapacitated or a minor; or
- (5) An intended parent.

**(B) Parties to the Proceeding.** The following individuals must be joined as parties in a proceeding to adjudicate parentage:

- (1) The mother of the child; and,
- (2) A man whose paternity of the child is to be adjudicated.

**RULE 7.313 JOINER OF PROCEEDINGS.**

A proceeding to adjudicate parentage may be joined with a proceeding for adoption, termination of parental rights, child custody or visitation, child support, divorce or annulment, legal separation or separate maintenance, or other appropriate proceedings.

**RULE 7.314 PROCEEDINGS BEFORE BIRTH**

Although a proceeding to determine parentage may be commenced before the birth of the child, the proceeding may not be concluded until after the birth of the child. The following actions may be taken before the birth of the child: service of process; discovery; collection of specimens for genetic testing.

**RULE 7.315 HEARINGS; INSPECTION OF RECORDS**

**(A) Jury Prohibited.** The Court, without a jury, shall adjudicate parentage of a child.



**(B) Hearings; Records.** On request of a party and for good cause shown, the court may close a proceeding for parentage. A final order in a proceeding under these rules is available for public inspection. Other papers or records are available only with the consent of the parties or on order of the court for good cause.

#### **RULE 7.316 ORDER ADJUDICATING PARENTAGE.**

**(A) Generally.** The court shall issue an order adjudicating whether a man alleged or claiming to be the father is the parent of the child. An order adjudicating parentage must identify the child by name and date of birth, and may assess filing fees, fees for genetic testing, and other reasonable expenses incurred as a result of the proceedings.

**(B) Binding Effect of Determination of Parentage.** A determination of parentage is binding on:

- (1) All signatories to an acknowledgment or denial of paternity;
- (2) All parties to an adjudication by a court acting under circumstances that satisfy the requirements of this Subchapter.

### **SUBCHAPTER 7.400 CHILD SUPPORT**

#### **RULE 7.401 EFFECTIVE DATE.**

The provisions of this Subchapter become effective, June 1, 2007 and governs all proceedings and actions brought on or after the date concerning procedures for establishment and enforcement of Child Support in the courts of the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

#### **RULE 7.402 GENERALLY.**

Once the court has made a determination that one party should be awarded primary physical placement of the child(ren), the court may enter an order as it relates to support of the referenced children. Child Support cannot be assigned where physical custody of the children has not been ordered. For the purposes of these rules, child support shall be construed so as to mean money paid directly to the parent with placement of the child, from the parent who does not have primary physical placement of the child.

##### **2022 Comment**

This rule remains substantially the same as its 2008 counterpart with the exception of the specification that child custody must be determined before child support is assigned.

#### **RULE 7.403 CHILD SUPPORT GUIDELINES**

**(A) Generally.** The percentage order of child support shall be based upon the gross income of the person ordered to pay support. For the purposes of clarification, this means total income, not take home income.

**(B) Percentage Guidelines.** Unless the court finds reason for not applying the percentage guidelines, or unless, the parent who does not have primary physical placement is considered a shared time payor, child support may be computed as follows:

- (1) One Child= 17%
- (2) Two Children= 25%
- (3) Three Children= 29%
- (4) Four Children= 31%
- (5) Five Children= 33%

**RULE 7.404 DEVIATION FROM PERCENTAGE GUIDELINES.**

The following are three exceptions whereby an order may not contain the flat percentage reflective under Rule 7.403 (B):

**(A) Serial Family.** A serial family payor is one who is paying child support to two or more different parties, not for two different children born of the same party. In these instances child support will be adjusted so as to include an equal amount under the applicable percentage guideline for subsequent children.

**(B) Shared Time Payer.** A shared time payer is someone who has more than 110 overnights per year. In these instances child support may be reduced from the percentage standards of Rule 7.403(B).

**(C) Court Modification.** Upon the request of a party, or upon the court's own motion, the court may modify the amount of child support payments, if after considering the following factors the court finds by the greater weight of the credible evidence that use of the percentage standard is unfair to the child or to the parties, considering:

- (1) The financial resources of the child;
- (2) The financial resources of both parties;
- (3) The standard of living the child would have enjoyed had the marriage not ended in annulment, divorce or legal separation;
- (4) The desirability that the custodian remain in the home as a full time parent;
- (5) The cost of day care if the custodian works outside the home, or the value of custodial services performed by the custodian if the custodian remains home;
- (6) The award of substantial periods of physical placement to the non-custodial parent;
- (7) The physical, mental and emotional needs of the child, including any costs for health insurance for the child;

- (8) The child's educational needs;
- (9) The earning capacity of each parent, based on each parent's education, training and work experience and the availability of work in or near the parent's community;
- (10) Any other factors which the court in each case determines are relevant.

**RULE 7.405 JUDGMENTS AND ORDERS OF CHILD SUPPORT**

A judgment or order awarding child support must:

- (A) Provide for income withholding and state the payer's source of income and the source's address;
- (B) Set forth the parties' residential addresses, and require the parties to inform the court of any subsequent change of address or employment;
- (C) Provide that the support be paid through the office of the Clerk of Tribal Courts, unless otherwise stated in the judgment or order. If an order is silent as to the method of payment, support must be paid through the officer of the Clerk of Tribal Courts.
- (D) Specify the amount of support both at the time of judgment and as to the number of children for whom there is a support obligation decrease;
- (E) Provide for payment until the child reaches the age of 18 years, and/or until the child graduates from high school or reaches the age of 19 ½ years.
- (F) Provide for Health Care Coverage.

**RULE 7.406 MODIFICATION OF SUPPORT.**

Any final order for periodic payments of child support may at any time thereafter be continued, set aside, altered or modified by the court upon a showing of a substantial change in the circumstances of either party.

**2022 Comment**

Rule 7.406 in its present form removes the language of its 2008 counterpart which provided that support be modified upon a showing that the final order of support substantially deviated from the child support guidelines. The child support percentage guidelines of Rule 7.403(B) are discretionary guidelines and not required percentages to calculate support.

## CHAPTER 8. RULES OF EVIDENCE

Effective December 27, 1994  
Including Amendments Received Through  
September 1, 2022

### SUBCHAPTER 8.000 GENERAL PROVISIONS

#### RULE 8.001 TITLE; CITATION

Except where otherwise held to be specific in its application these rules shall apply to all civil and criminal matters coming before the Lac Vieux Desert Tribal Court. In unique and special circumstances, these rules may be specifically modified to apply to a particular case. Where the rules of evidence are modified prior notice of the modifications shall be made known by the court to all parties in the case.

**2008 Comment**

This Rule was formerly located under Rule 7.001 of LVD/2003.

#### RULE 8.002 INTERPRETATION OF RULES

Although these rules are similar to those of the United States Federal Courts of Michigan, the rules are specific and designed for the Tribe. Interpretations as to the applicability by other courts are not binding upon the Tribal Court, although such interpretations may be used as persuasive evidence. Words reflecting gender contained in these rules are deemed to be interpreted to include the opposite gender. Other than this exception, all terms in these rules shall be strictly defined in accordance with its plain meaning.

**1999 Comment**

This rule combines former LVD II/1994 Rules 2.002 and Rule 2.107.

**2008 Comment**

Rule 8.002 was formerly located under Rule 7.002 of LVD/2003.

#### RULE 8.003 SCOPE

These rules govern all proceedings in the courts of Lac Vieux Desert Tribal Court. Traditional beliefs and customs that are not superseded by these rules are further incorporated into these rules.

**2008 Comment**

Rule 8.003 was formerly located under Rule 7.003 of LVD/2003.

#### RULE 8.004 PURPOSE

These rules are intended to secure fairness in administration, elimination of justifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained and proceedings justly determined.

**2008 Comment**

Rule 8.004 was formerly located under Rule 7.004 of LVD/2003.

**RULE 8.005 RULINGS ON EVIDENCE**

**(A) Appeal Based on Erroneous Ruling.** An appeal shall not be granted upon a ruling which admits or excludes evidence unless a substantial right of the party is affected, and that party raises such an objection to the admittance or exclusion of such evidence on the record and in a timely manner.

**(B) Plain Error.** Nothing in this rule precludes taking notice of plain errors affecting substantial rights although they were not brought to the attention of the court.

**2008 Comment**

Rule 8.005 was formerly located under Rule 7.005 of LVD/2003.

**RULE 8.006 PRELIMINARY QUESTIONS**

**(A) Questions of Admissibility Generally.** Preliminary questions concerning the qualification of a person to be a witness, the existence of privilege, or the admissibility of evidence, shall be determined by the court. In making its determination, the court is not bound by the Rules of Evidence except those with respect to privileges.

**(B) Relevancy Conditioned on a Fact.** When the relevancy of evidence depends upon the fulfillment of a condition of fact, the court shall admit it upon, or subject to, the introduction of evidence sufficient to support a finding of the fulfillment of the condition.

**(C) Testimony by Accused.** The accused does not, by testifying upon a preliminary matter, subject himself to cross-examination as to other issues in the case.

**(D) Weight of Credibility.** This rule does not limit the right of a party to introduce before the court evidence relevant to weight or credibility.

**2008 Comment**

This Rule was formerly located under Rule 7.006 of LVD/2003.

**RULE 8.007 LIMITED ADMISSIBILITY**

When evidence which is admissible as to one party or for one purpose but not admissible as to another party or for another purpose is limited, the court, upon request, shall restrict the evidence to its proper scope and instruct the jury accordingly.

**2008 Comment**

Rule 8.007 was formerly located under Rule 7.007 of LVD/2003.

**RULE 8.008 REMAINDER OF OR RELATED WRITING OR RECORDED STATEMENTS.**

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require time to introduce any other party or any other writing or recorded statement which ought in fairness be considered contemporaneously with it.

**2008 Comment**

This Rule was formerly located under Rule 7.008 of LVD/2003.

**SUBCHAPTER 8.100 JUDICIAL NOTICE****RULE 8.101 JUDICIAL NOTICE OF ADJUDICATIVE FACTS.**

**(A) Scope of Rule.** This rule governs only judicial notice of adjudicative facts, and does not preclude judicial notice of legislative facts.

**(B) Kinds of Facts.** A judicially noticed fact must be one not subject to reasonable dispute in that it is either: (1) generally known within the Tribe's reservation; or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.

**(C) When Discretionary.** A court may take judicial notice, whether requested or not, and may require a party to supply necessary information.

**(D) Opportunity to be Heard.** A party is entitled upon timely request to an opportunity to be heard as to the propriety of taking judicial notice and the tenor of the matter noticed. In the absence of prior notification, the request may be made after judicial notice has been taken.

**(E) Time of Taking Notice.** Judicial notice may be taken at any stage of the proceedings.

**2008 Comment**

Rule 8.101 was formerly located under Rule 7.102 of LVD/2003.

**RULE 8.102 JUDICIAL NOTICE; WHEN MANDATORY.**

**(A) Notice of Law.** The court shall take judicial notice, with or without request by a party of:

(1) The criminal, civil, and constitutional laws of the Tribe; and,

(2) Acts and resolutions properly passed by the Tribal Council. By taking judicial notice of one of the Tribal Laws the court does not surrender its right to interpret the law or determine its constitutionality.

**(B) Judicial Notice of Foreign Judgments Honored by the Court.** The court shall take judicial notice, with or without request of a party as to the Foreign Court Civil and Criminal Judgments/ Court Orders, applicable to the individual or subject matter, which has been duly entered and honored by the Tribal Court.

**2008 Comment**

Rule 8.102 was formerly located under Rule 7.102 of LVD/2003.

In its present form, Rule 8.102 has been reworded and restructured from the former 2003 Rule 7.102 "Judicial Notice of Law". The provisions of Subrule (B) are new and now make reference to the application of Foreign Judgments.

## **SUBCHAPTER 8.200 PRESUMPTIONS IN CRIMINAL AND CIVIL ACTIONS AND PROCEEDINGS**

### **RULE 8.201 PRESUMPTIONS IN CRIMINAL ACTIONS.**

**(A) Scope.** In criminal cases, presumptions against an accused, recognized by law or created by statute, including statutory provisions that certain facts are prima facie evidence of other facts or of guilty, are governed by this rule.

**(B) Instructing the Trier of Fact.** Whenever the existence of a presumed fact against an accused is submitted to the trier of fact, the court shall instruct the trier of fact that it may, but need not, infer the existence of the presumed fact from the basic facts and that the prosecution still bears the burden of proof beyond a reasonable doubt of all the elements of the offense.

**2008 Comment**

This Rule was formerly located under Rule 7.201 of LVD/2003.

### **RULE 8.202 PRESUMPTIONS IN CIVIL ACTIONS.**

In all civil actions and proceedings not otherwise provided for by statute or by these rules, a presumption imposes on the party against whom it is direct the burden of going forward with evidence to rebut or meet the presumption, but does not shift to such party the burden of proof in the sense of the risk of non-persuasion, which remains throughout the trial upon the party on whom it was originally cast.

**2008 Comment**

Rule 8.202 was formerly located under Rule 7.202 of LVD/2003.

## **SUBCHAPTER 8.300 RELEVANCY AND ITS LIMITS**

### **RULE 8.301 DEFINITION OF “RELEVANT EVIDENCE”**

“Relevant Evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

**2008 Comment**

Rule 8.301 was formerly located under Rule 7.301 of LVD/2003.

### **RULE 8.302 RELEVANT EVIDENCE GENERALLY ADMISSIBLE; IRRELEVANT EVIDENCE INADMISSIBLE.**

All relevant evidence is admissible, except as otherwise prohibited by the Tribal Constitution, these rules, other applicable rules, or other acts of the Tribal Council. Evidence which is not relevant is not admissible.

**2008 Comment**

Rule 8.302 was formerly located under Rule 7.302 of LVD/2003.

**RULE 8.303 EXCLUSION OF RELEVANT EVIDENCE ON GROUNDS OF PREJUDICE, CONFUSION, OR WASTE OF TIME.**

Although deemed relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

**2008 Comment**

Rule 8.303 was formerly located under Rule 7.303 of LVD/2003.

**RULE 8.304 CHARACTER EVIDENCE NOT ADMISSIBLE TO PROVE CONDUCT; EXCEPTIONS; OTHER CRIMES.**

Evidence of a persons character or a trait of the persons character is not admissible for the purpose of proving that the person acted in conformity therewith on a particular occasion, except:

**(A) Character of the Accused.** Evidence of a pertinent trait or character offered by an accused, or by the prosecution to rebut the same;

**(B) Character of the Victim.** Evidence of pertinent trait or character of the victim of the crime offered by an accused, or by the prosecution to rebut the same, or evidence of a character trait of peacefulness of the victim by the prosecution ~~in a homicide case~~ to rebut evidence.

**(C) Sex Offense Cases.** Notwithstanding any other provision of law, in a criminal case in which a person is accused of a sexual offense, evidence of a victim's past sexual behavior other than reputation or opinion evidence is also not admissible, unless such evidence other than reputation or opinion evidence is evidence of:

(1) Past sexual behavior with persons other than the accused, offered by the accused upon the issue of whether the accused was or was not, with respect to the alleged victim, the source of the particular injury; or,

(2) Past sexual behavior with the accused and is offered by the accused upon the issue of whether the alleged victim consented to the sexual behavior with respect to which such offense is alleged.

**1999 Comment**

This rule in its present form rewrites Rule 2.404 of LVDII/1994 and attempts to be the synthesis of Rule 404 and Rule 412 of the Federal Rules of Evidence.

**2008 Comment**

Rule 8.304 was formerly located under Rule 7.304 of LVD/2003.

**RULE 8.305 METHODS OF PROVING CHARACTER**

**(A) Reputation or Opinion.** In all cases in which evidence of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowed into reports of relevant specific instances of conduct.

**(B) Specific Instances of Conduct.** In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of conduct. An individual's Tribal, State or Federal Criminal Histories pertaining to the



same or similar criminal activities may be introduced in matters before the Tribal Court.

**2001 Comment**

Subrule (B) now adds language allowing the introduction of criminal histories of other jurisdictions as proof relating to specific instances of conduct.

**2008 Comment**

Rule 8.305 was formerly located under Rule 7.305 of LVD/2003.

**RULE 8.306 HABIT; ROUTINE PRACTICE**

Evidence of the habit of a person or of the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or practice routine.

**2008 Comment**

Rule 8.306 was formerly located under Rule 7.306 of LVD/2003.

**RULE 8.307 SUBSEQUENT REMEDIAL MEASURES.**

When after an event measures are taken which, if taken previously would have made the relevant event less likely to occur, evidence of the subsequent measures when offered for another, such as proving ownership, control, or feasibility of precautionary measures, if controverted or for impeachment purposes.

**2008 Comment**

Rule 8.307 was formerly located under Rule 7.307 of LVD/2003.

**RULE 8.308 COMPROMISE AND OFFERS TO COMPROMISE**

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

**2008 Comment**

Rule 8.307 was formerly located under Rule 7.307 of LVD/2003.

**RULE 8.309 INADMISSIBILITY OF PLEAS, OFFERS OF PLEAS, AND RELATED STATEMENTS**

Except as otherwise provided in this rule, evidence of a plea of guilty, later withdrawn, or a plea of nolo contendere, or of an offer to plead guilty or nolo contendere, to the crime charged or any other crime, or of statements made in connection with any of the foregoing pleas or offers is not admissible in any civil or criminal proceeding against the person who made the plea or offer. However, evidence of a statement made in connection with, and relevant to, a plea of guilty or nolo contendere to the crime charged or any other crime, is admissible in a criminal proceeding for perjury or false statement.

**2008 Comment**

Rule 8.309 was formerly found under Rule 7.309 of LVD/2003.

**RULE 8.310 LIABILITY INSURANCE.**

Evidence that person was or was not insured against liability is not admissible upon the issue whether he or she acted negligently or otherwise wrongfully. This rule does not require the exclusion

of evidence of insurance against liability when offered for another purpose, such as proof of agency, ownership, or control, if controverted, or bias or prejudice of a witness.

**2008 Comment**

Rule 8.310 was formerly found under Rule 7.310 of LVD/2003.

## **SUBCHAPTER 8.400 PRIVILEGES**

### **RULE 8.401 PRIVILEGE EVIDENCE**

Evidence obtained is not admissible in the Tribal Court if the evidence is considered privilege under these rules. The defense of privilege must be raised by the party invoking the privilege either before the evidence is sought or when the individual knows, or has reason to know, that the evidence sought is privileged.

**2008 Comment**

Rule 8.401 was formerly found under Rule 7.401 of LVD/2003.

### **RULE 8.402 PRIVILEGED COMMUNICATIONS; DEFINITION**

Privileged communications are those statements made by certain persons within a protected relationship such as husband-wife, attorney-client, priest-penitent and the like which the law protects from forced disclosure on the witness stand at the option of the witness, client, penitent, spouse. Privileged communications cover only those conversations made during the scope of the relationship and those statements that are intended to be kept confidential.

**2008 Comment**

Rule 8.402 was formerly found under Rule 7.402 of LVD/2003.

### **RULE 8.403 PROFESSIONALS LICENSE; DEFINITION OF PRIVILEGE**

Where a professional license defines the term privileged information and sets specific guidelines for that information, that information is considered incorporated within this definition of privilege. Such standards must be submitted to the Court prior to the testimony which is sought.

**2008 Comment**

Rule 8.403 was formerly found under Rule 7.403 of LVD/2003.

### **RULE 8.404 EXCEPTIONS TO THE PRIVILEGED RULE**

Evidence not considered privilege, even though it may meet a certain set of criteria, if the evidence obtained relates to the execution of a criminal offense, the information pertains to the threat of harm to an individual, or the information is otherwise not considered privileged under a professional license and the professional reasonably believes that the action is likely to occur.

**2008 Comment**

Rule 8.404 was formerly located under Rule 7.404 of LVD/2003.

**SUBCHAPTER 8.500 WITNESSES****RULE 8.501 WITNESSES; GENERAL RULE OF COMPETENCY.**

Any person is competent to be a witness except as otherwise provided in these rules.

**1999 Comment**

Rule 7.501 is substantially the same as the former Rule 2.601 of LVD II/1994.

**2008 Comment**

Rule 8.501 was formerly found under Rule 7.501 of LVD/2003.

**RULE 8.502 LACK OF PERSONAL KNOWLEDGE**

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that he has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of testimony of the witness himself.

**2008 Comment**

Rule 8.502 was formerly found under Rule 7.502 of LVD/2003.

**RULE 8.503 OATH OR AFFIRMATION.**

Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

**2008 Comment**

Rule 8.503 was formerly found under Rule 7.503 of LVD/2003.

**RULE 8.504 JUDGE AND JURY AS WITNESS**

The presiding Judge or member of the jury is prohibited from acting as a witness in the case. This rule is automatically applied and violations of such rule will raise sufficient grounds for appeal.

**2008 Comment**

Rule 8.504 was formerly found under Rule 7.504 of LVD/2003.

**RULE 8.505 EVIDENCE OF CHARACTER AND CONDUCT OF WITNESS**

**(A) Opinion and Reputation Evidence of Character.** The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to the following limitations:

- (1) The evidence may refer only to character for truthfulness or untruthfulness; and,
- (2) Evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

**(B) Specific Instances of Conduct.** Specific instances of conduct of a witness, for the purpose of attacking or supporting a witnesses credibility, other than conviction of a crime as provided herein, may not be proceeded by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness: (1) concerning his/her character for truthfulness or untruthfulness; or, (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.

(C) The giving of testimony, whether by an accused or by any other witness, does not operate as a waiver of his or her privilege against self-incrimination when examined with respect to matters which relate only to credibility.

**2008 Comment**

This Rule was formerly found under Rule 7.505 of LVD/2003.

**RULE 8.506 IMPEACHMENT BY EVIDENCE OF CONVICTION OF CRIME.**

(A) **Generally.** For the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a crime shall not be admitted unless the evidence has been elicited from the witness or established by public record during cross examination; and,

(1) The crime contained an element of dishonesty, theft or false statement; or,

(2) The crime is considered a felony punishable by One (1) year or greater in jail; and,

(3) The court determines that the probative value of the evidence outweighs its prejudicial effect, and that the evidence is solicited from a credible source.

(B) **Time Limit.** Evidence of a conviction under this rule is not admissible if a period of more than Five (5) years has elapsed since the date of the conviction or the release of the witness from the confinement imposed for that conviction, whichever is the later date.

(C) **Effect of Pardon, Annulment or Certificate of Rehabilitation.** Evidence of a conviction is not admissible under these rules if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, the setting aside of a conviction or other equivalent procedure based on a finding of rehabilitation.

(D) **Juvenile Adjudication.** Evidence of juvenile adjudication is generally not admissible under this rule, except in subsequent cases against the same child in the juvenile division of Tribal Court. The court may, however, in a criminal case against the child allow evidence of a juvenile adjudication of a witness other than the accused if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that the admission is necessary for a fair determination of the case or proceeding.

(E) **Pendency of Appeal.** The pendency of an appeal therefrom does not render evidence of a conviction inadmissible. Evidence of the pendency of an appeal is admissible.

**1999 Comment**

Subrule (A)(2) in its present form supplants the former applicable provision, which read in paragraph two of Subrule (A), "the crime is considered a felony punishable by greater than 1 year in jail..."

Subrule (F) "Scope of Admittance, Counting Rule" as contained in the former rule, has been omitted under this rule.

**2001 Comment**

Subrule (C) includes the admissibility of convictions which have been set aside. This inclusion is promulgated by adoption of Subchapter 1.400 which provides for Setting Aside Adjudications.

**2008 Comment**

Rule 8.506 was formerly found under Rule 7.506 of LVD/2003.

**RULE 8.507 RELIGIOUS OR OTHER BELIEFS OR OPINIONS.**

Evidence of the beliefs, or opinions of a witness on matters of religious, political or sexual preference is not admissible for the purpose of showing that by reasons of their nature the witnesses credibility is impaired or enhanced.

**2008 Comment**

Rule 8.507 was formerly located under Rule 7.507 of LVD/2003.

**RULE 8.508 MODE AND ORDER OF INTERROGATION AND PRESENTATION**

The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to:

- (A) Make the interrogation and presentation effective for ascertainment of the truth;
- (B) Avoid needless consumption of time; and,
- (C) Protect witnesses from harassment of undue embarrassment.

**2008 Comment**

This Rule was formerly found under Rule 7.508 of LVD/2003.

**RULE 8.509 WRITING OR OBJECT USED TO REFRESH MEMORY**

**(A) While Testifying.** If while testifying, a witness uses a writing or object to refresh his or her memory, an adverse party is entitled to have the writing or object produced at the trial, hearing, or deposition in which the witness is testifying.

**(B) Before Testifying.** If before testifying, a witness uses a writing or object to refresh his or her memory for the purpose of testifying and the court in its discretion determines that the interests of justice so requires, an adverse party is entitled to have the writing or object produced, if practicable, at the trial, hearing, or deposition in which the witness is testifying.

**(C) Terms and Conditions of Production and Use.** A party entitled to have a writing or object produced under this rule is entitled to inspect it, to cross-examine the witness thereon, and to introduce evidence, for their bearing on credibility only unless otherwise admissible under these rules for another purpose, those portions which relate to the testimony of the witness. If production of the writing or object at the trial, hearing or deposition is impracticable, the court may order it made available for inspection. If it is claimed that the writing or object contains matters not related to the subject matter of the testimony, the court shall examine the writing or object in camera, strike any portions not so related, and order delivery of the remainder to the party entitled thereto. Any portion withheld over objections shall be preserved and made available to the appellate court in the event of an appeal.

**2008 Comment**

Rule 8.509 was formerly found under Rule 7.509 of LVD/2003.

**RULE 8.510 PRIOR STATEMENTS OF WITNESSES**

**(A) Examining Witnesses Concerning Prior Statement.** In examining a witness concerning a prior statement made by the witness, whether written or not, the statement need not be shown nor its contents disclosed to the witness at that time, but on request it shall be shown or disclosed to opposing counsel and the witness.

**(B) Extrinsic Evidence of Prior Inconsistent Statement of Witness.** Extrinsic evidence of a prior inconsistent statement by a witness is not admissible unless the witness is afforded an opportunity to explain or deny the same and the opposing party is afforded an opportunity to interrogate the witness thereon, or the interests of justice otherwise require.

**2008 Comment**

Rule 8.510 was formerly located under Rule 7.510 of LVD/2003.

**RULE 8.511 CALLING AN INTERROGATION OF WITNESS BY THE COURT**

**(A) Calling by Court.** The court may, on its own motion or upon motion by either party, call witnesses, and all parties are entitled to cross-examine witnesses thus called. In calling a witness the court shall take all precautions as to remain unbiased.

**(B) Interrogation by Court.** Only in the case where the court determines that information necessary for the proper adjudication of the case is not being satisfied, the court may interrogate a witness.

**(C) Objections.** Objections to the calling of witnesses by the court or to interrogation by it may be made at the time or at the next available opportunity.

**2008 Comment**

Rule 8.511 was formerly located under Rule 7.511 of LVD/2003.

**RULE 8.512 EXCLUSION OF WITNESSES**

Consistent with the authority of the court to control the operations of a trial, the court may order the sequester of witnesses in a trial.

**2008 Comment**

Rule 8.512 was formerly located under Rule 7.512 of LVD/2003.

**SUBCHAPTER 8.600 OPINIONS AND EXPERT TESTIMONY**

**RULE 8.601 OPINION TESTIMONY BY LAY WITNESSES**

If the witness is not testifying as an expert, his or her testimony in the form of opinions or inferences is limited to those opinions or inferences which are rationally based on the perception of the witness, and, helpful to a clear understanding of his or her testimony or the determination of a fact in issue.

**2008 Comment**

Rule 8.601 was formerly located under Rule 7.601 of LVD/2003.

**RULE 8.602 TESTIMONY BY EXPERT**

If the court determines that recognized scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form

of an opinion or otherwise.

**2008 Comment**

This Rule was formerly located under Rule 7.603 of LVD/2003.

**RULE 8.603 BASIS OF OPINION TESTIMONY BY EXPERTS**

The facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by or made known to him at or before the hearing. The court may require that underlying facts or data essential to an opinion or inference be in evidence.

**2008 Comment**

Rule 8.603 was formerly located under Rule 7.603 of LVD/2003.

**RULE 8.604 OPINION ON ULTIMATE ISSUE.**

Testimony in the form of an opinion or inference otherwise admissible is not objectionable because it embraces an ultimate issue to be decided by the trier of fact.

**2008 Comment**

Rule 8.604 was formerly located under Rule 7.604 of LVD/2003.

**RULE 8.605 DISCLOSURE OF FACTS OR DATA UNDERLYING EXPERT OPINION.**

The expert may testify in terms of opinion or inference and give his reasons therefrom without prior disclosure of the underlying facts or data, unless the court requires otherwise. The expert may in any event be required to disclose the underlying facts or data on cross-examination.

**2008 Comment**

Rule 8.605 was formerly located under Rule 7.605 of LVD/2003.

**RULE 8.606 COURT APPOINTED EXPERT.**

The court may, on its own initiative or that of a party, appoint an expert to resolve or clarify issues in a case. Prior to appointing an expert, the court shall make public, to both parties, the credentials that qualify this individual to be an expert. Either party has the right to voir dire the expert prior to the witness testifying. The court-appointed expert witness must meet the same standards for acceptance as another expert.

**2008 Comment**

Rule 8.606 was formerly located under Rule 7.605 of LVD/2003.

**SUBCHAPTER 8.700 HEARSAY**

**RULE 8.701 HEARSAY; DEFINITIONS**

The following definitions apply under this Subchapter:

**(A) Statement.** A “statement” is: (1) an oral or written assertion, or (2) nonverbal conduct of a person, if it is intended by him or her as an assertion.

**(B) Declarant.** A “declarant” is a person who makes a statement.

**(C) Hearsay.** “Hearsay” is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.

**(D) Statements which are not Hearsay.** A statement is not hearsay if:

(1) Prior Statement of Witness. The declarant testifies at the trial or hearing and is subject to cross-examination concerning the statement, and the statement is:

(a) Inconsistent with his testimony, and was given under oath subject to penalty for perjury, or other such penalties, at a trial, hearing, or other proceedings, or in a deposition; or,

(b) Consistent with his testimony and is offered to rebut an express or implied charge against him or recent fabrication or improper influence or notice; or,

(c) One of identification of a person made after perceiving him.

(2) Admission by Party-Opponent. The statement offered against a party and is:

(a) His own statement, in either his individual or a representative capacity, except statements made in connection with a guilty plea to misdemeanor motor vehicle violation or an admission of responsibility for a civil infraction under laws pertaining to motor vehicles; or

(b) A statement of which he has manifested his adoption or belief in its truth; or,

(c) A statement by a person authorized by him to make a statement concerning the subject; or,

(d) A statement by his agent or servant concerning a matter within the scope of his agency or employment, made during the existence of the relationship; or,

(e) A statement by a co-conspirator of a party during the course and in furtherance of conspiracy on independent proof of conspiracy.

**2008 Comment**

Rule 8.701 formerly was located under Rule 7.701 of LVD/2003.

**RULE 8.702 HEARSAY RULE.**

Hearsay is not admissible except as provided by these rules.

**2008 Comment**

This Rule was formerly located under Rule 7.802 of LVD/2003.

**RULE 8.703 HEARSAY EXCEPTIONS; AVAILABILITY OF DECLARANT IMMATERIAL**

**(A) Notice.** A party seeking to admit a statement under these rules must give the adverse party prior notice of the intention to submit such statements and the particulars of the statements. The prior notice should allow the adverse party sufficient time and a fair opportunity to defend the claim.

**(B) Non-exclusions.** The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

(1) Present Sense Impression. A statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter.

(2) Excited Utterance. A statement relating to a startling event or condition made while the declarant was under the stress or excitement caused by the event or condition.



(3) The existing Mental, Emotional, or Physical Condition. A statement of the declarant's then existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health) but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the execution, revocation, identification, or terms of declarant's will.

(4) Statements made for Purposes of Medical Treatment or Medical Diagnosis in Connection with Treatment. Statements made for purposes of medical treatment or medical diagnosis in connection with treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or general character of the cause of external source thereof insofar as reasonably necessary to such diagnosis and treatment.

(5) Recorded Recollection. A memorandum or record concerning a matter about which a witness once had knowledge but now has insufficient recollection to enable him to testify fully and accurately, shown to have been made or adopted by the witness when the matter was fresh in his memory and to reflect the knowledge correctly. If admitted, the memorandum or record may be read into evidence but may not itself be received as an exhibit unless offered by an adverse party.

(6) Records of Regularly Conducted Activity. A memorandum, report, record, or data compilation, in any form, of acts, transactions, occurrences, events, conditions, opinions, or diagnosis, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data source of information or the method of circumstances of preparation indicate lack of trustworthiness. The term "business" under this section includes commissions formed under Article IV(J) of the Lac Vieux Desert Constitution.

(7) Absence of Entry in Records kept in Accordance with the Provisions of Subrule (F). Evidence that as a matter is not included in the memoranda, reports, records, or data compilations, in any form, kept in accordance with the provisions of Subrule (F), to prove the nonoccurrence of nonexistent matter, if the matter was of a kind which such document would have regularly included, unless the sources of information or other circumstances indicate lack of trustworthiness.

(8) Public Records, Reports and Data. Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth:

(a) The activities of the office or agency; or,

(b) Matters observed pursuant to duty imposed by law as to which matters there was a duty to report, excluding, however, in criminal case matters observed by police officers and other law enforcement personnel.

(9) Records of Vital Statistics, Family Records, Religious Organizations, Interests in Property, Property Boundaries, Marriage or Baptismal Certificates. Documents or reports, including those

listed in this title, and other similar documents, that by their very nature reflect a degree of accuracy are admitted to establish the relationship set forth by the records.

(10) Child's Statement about Sexual Act or Physical Abuse. A statement describing an incident that included a sexual act or physical abuse performed with or on the declarant by the defendant or an accomplice is admissible to the extent that it corroborates testimony given by the declarant during the same proceedings, provided:

- (a) The declarant was under the age of Ten (10) years when the statement was made;
- (b) The statement is shown to have been spontaneous and without indication of manufacture;
- (c) Either the declarant made the statement immediately after the incident or any delay excusable as having been caused by fear or other equally effective circumstances; and,
- (d) The statement is introduced through the testimony of someone other than the declarant.

**2008 Comment**

Rule 8.703 was formerly located under Rule 7.803 of LVD/2003.

**2022 Comment**

This Rule is substantially the same as its LVD/2008 counterpart provision. The rule in its present form has been renumbered from Rule 8,703 of LVD/2008, effective, May 5, 2014, pursuant to Administrative Order 2014-0003..

**RULE 8.704 HEARSAY EXCEPTIONS; DECLARANT UNAVAILABLE.**

**(A) Definition of Unavailability.** "Unavailability as a Witness" includes situations in which the declarant:

- (1) Is exempted by ruling of the court on the grounds of privilege from testifying concerning the subject matter of his statement; or
- (2) Persists in refusing to testify concerning the subject matter of his statement despite an order of the court to do so; or,
- (3) Has a lack of memory of the subject matter of his statement; or,
- (4) Is unable to be present or to testify at the hearing because of death or then existing physical or mental illness or infirmity; or,
- (5) Is absent from the hearing and the proponent of his statement has been unable to procure his attendance by process or other reasonable means, and in a criminal case, due diligence is shown; or.

(6) The declarant is a nonmember of the Tribe residing off Tribal Lands, thus falling outside Tribal Jurisdiction, and refuses to come into the tribal court despite requests by the parties, and the court accepts the authenticity of the statements; or,

(7) Other such circumstances in which, by the very nature of the particular facts and circumstances, the trustworthiness of the statement is not in doubt.

**(B) Hearsay Exceptions.** The following are not excluded by the hearsay rule if the declarant is unavailable as a witness:

(1) Former Testimony. Testimony given as a witness at another hearing of the same or different proceedings, if the party against whom the testimony is now offered, or in a civil action of proceedings, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.

(2) Statement Under Belief of Impending Death. In any criminal or civil action or proceedings, a statement made by a declarant while believing that his or her death was imminent, concerning the cause or circumstance of what he or she believed to be his or her impending death.

(3) Statement Against Interest. A statement which was made at the time of its making so far contrary to the declarant's pecuniary or proprietary interest, or so far intended to subject him or her to civil or criminal liability, or to render invalid a claim by him or her against another, that a reasonable person in his or her position would not have made the statement unless he or she believed it to be true. A statement tending to expose the declarant to criminal liability and offered to exculpate the accused is not admissible unless corroborating circumstances clearly indicates the trustworthiness of the statement.

(4) Statement of Personal or Family History. A statement concerning a declarant's own, or a relatives, personal or family history, stated in a manner reflecting the declarant's honest belief in its accuracy, regardless of whether the declarant had actual knowledge of the personal matter stated.

(5) Deposition Testimony. Statements given during a testimony in the same or related case in which the adverse party, or a successor in interest, had a fair opportunity for cross-examination, or the rights and interests of the adverse party were adequately represented in the prior deposition.

(6) Circumstances Reflecting Trustworthiness. Other such circumstances not covered herewithin that, by its very nature, reflect a strong belief in the accuracy of trustworthiness.

**1999 Comment**

The former provision as contained under Subrule (B)(2) of LVD/1994 requiring that in criminal matters this hearsay exception be applied solely in the prosecution of homicide cases, has under this amended subrule been deleted and now includes the provision of, "any criminal or civil action or proceeding...."

**2008 Comment**

Rule 8.704 was formerly located under Rule 7.804 of LVD/2003.

**RULE 8.705 HEARSAY WITHIN HEARSAY**

Hearsay included within hearsay is not excluded under the hearsay rule if each party of the combined statements conforms with an exception to the hearsay rule in these rules.

**2008 Comment**

Rule 8.705 was formerly located under Rule 7.805 of LVD/2003.

**RULE 8.706 WEIGHT AND CREDIBILITY OF DECLARANT**

It is at the court's discretion whether to hear testimony and issue the statements as to how much weight and credibility as it sees fit. The adverse party has the right to attack the credibility as to the trustworthiness of such statements upon the admittance of the statements.

**2008 Comment**

This Rule was formerly located under Rule 7.806 of LVD/2003.

**SUBCHAPTER 8.800 AUTHENTICATION AND IDENTIFICATION****RULE 8.801 REQUIREMENTS OF AUTHENTICATION OR IDENTIFICATION.**

**(A) General Provisions.** The requirements of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.

**(B) Methods of Authentication.** The proponent may use the following methods for establishing the authenticity of the matter:

- (1) Testimony of a witness who possesses knowledge that the matter is what it is;
- (2) Non-expert opinion of one who has familiarity of the authenticity;
- (3) Comparison by the trier of fact or an expert witness;
- (4) Voice identification based upon direct transmission or comparison of electronic transmission; or,
- (5) Other such testimony that, in the court's discretion, dictates an authenticity of the matter.

**2008 Comment**

Rule 8.801 was formerly located under Rule 7.901 of LVD/2003.

**RULE 8.802 SELF-AUTHENTICATION**

Extrinsic evidence of authenticity as condition precedent to admissibility is not required with respect to the following:

**(A) Domestic Public Documents Under Seal.** A document bearing a seal purporting to be that of the Tribe, United States, or the State of Michigan or a county therewithin, that includes a signature purporting to be an attestation or execution.

**(B) Domestic Public Documents Not Under Seal.** A document purporting to bear the signature of a person in his official capacity as an officer or employee of any entity included in Subrule (A) of this rule, having no seal, if a public officer having a seal and having official duties in the district or political subdivision of the officer or employee certifies under seal that the signer has the official capacity and that the signature is genuine.

**(C) Prior Court Documents Certified by an Officer of Tribal Court.** A court document that is signed by an officer of the court and certified as being received by the court.

**(D) Certified Copies of Public Records.** A copy of an official record or report or entry therein, or a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations in any form, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with this rule, or complying with any law of the Tribe, the United States, or the State of Michigan.

**(E) Official Publications.** Books, pamphlets, or other publications purporting to be issued by a public authority.

**(F) Newspapers and Periodicals.** Printed materials purporting to be newspapers or periodicals.

**(G) Trade Inscriptions and the like.** Trade inscriptions, signs, tags, or labels purporting to have been affixed in the course of business and indicating ownership, control, or origin.

**(H) Acknowledged Documents.** Documents accompanied by a certificate of acknowledgment executed in the manner provided by law by a Notary Public or other officer authorized by law to take acknowledgments.

**(I) Commercial Paper and Related Documents.** Commercial paper, signatures thereon, and documents relating thereto to the extent provided by general commercial law.

**(J) Presumption Created by Law.** Any signature, document, or other matter declared by any law of the Tribe, the United States, or the State of Michigan to be preemptively or prima facie genuine or authentic.

**2008 Comment**

Rule 8.802 was formerly located under Rule 7.902 of LVD/2003.

**RULE 8.803 ADMISSIBILITY OF EVIDENCE; ORIGINAL PREFERRED**

To provide the content of a writing, recording, or photograph, the original writing, recording or photograph is preferred. The court will accept copies of such evidence when sufficient evidence is submitted to establish the reason for the copy and the genuineness of the copy.

**2008 Comment**

Rule 8.803 was formerly located under Rule 7.903 of LVD/2003

## **CHAPTER 9. EVICTIONS AND FORECLOSURES**

Effective July 9, 1999  
Including Amendments Received Through  
September 1, 2022

### **SUBCHAPTER 9.000 GENERAL PROVISIONS**

#### **RULE 9.001 SHORT TITLE**

The following Chapter shall hereinafter be referred to as Chapter 9 “Evictions and Foreclosures of the Lac Vieux Desert Tribal Court Rules. It shall apply to any and all hearings, formal or informal, written or agreed to orally or by the practice of the parties, in selling, buying, renting, leasing, occupying, or using any and all housing, dwellings, or accommodations for occupation and residence. Pursuant to Lac Vieux Desert Tribal Resolution Number 99-029, this Chapter of the Lac Vieux Desert Tribal Court Rules becomes effective July 9, 1999.

**2008 Comment**

Rule 9.001 was formerly located under Rule 8.001 of LVD/2003.

#### **RULE 9.002 JURISDICTION**

**(A)** Jurisdiction is extended over all buildings and lands intended for human dwelling, occupation or residence which may lie within:

- (1) The exterior boundaries of the Tribal Reservation;
- (2) Lands owned by, held in trust for, leased or used by the Tribe, its Housing Authority, or any other entity of the Tribe; or,
- (3) The Indian Country of the Tribe, as may be defined from time to time by the laws of the Tribe or of the United States of America.

**(B)** Jurisdiction is extended over all persons or entities within the jurisdiction of the Tribe who sell, rent, lease, or allow persons to occupy housing, dwellings or accommodations for the purpose of human dwelling, occupation or residence, and all persons who buy, rent, lease or occupy such structures. Such personal jurisdiction is extended over all persons and entities, whether or not they are members of the Tribe, whether they are Indian or non-Indian, and whether or not they have a place of business within the tribal reservation. Any act within the reservation, or otherwise on tribal owned lands, dealing with the subject matter of this Chapter shall be subject to the jurisdiction of the Tribe.

(C) Jurisdiction over all matters arising within the jurisdiction of the Tribe with respect to the subjects of this Chapter, and jurisdiction with respect to any person or entity acting or causing actions which are within this Chapter shall be exercised by the Tribal Court.

**2008 Comment**

This Rule was formerly found under Rule 8.002 of LVD/2003.

**RULE 9.003 PURPOSES AND INTERPRETATION.**

This Chapter shall be liberally interpreted and construed to fulfill the following purposes:

(A) To simplify, clarify, modernize and revise the provisions governing the occupation of dwelling units and accommodations, as well as the rights, obligations and remedies of the owners, sellers, lessors, landlords, lessees, tenants and occupiers of such structures.

(B) To preserve the peace, harmony, safety, health and general welfare of the people of the Tribe and those permitted to enter or reside on the reservation and all other lands owned by the Tribe.

(C) To protect tribal housing by providing eviction procedures and provide for evictions when necessary.

(D) To encourage landlords and tenants to maintain and improve dwellings on the reservation in order to improve the quality of housing as a tribal resource.

(E) To avail the Tribe, tribal entities and tribal members of financing for the construction and/or purchase of family residences on trust land, and all other lands owned in fee by the Tribe by prescribing procedures for the recording, priority and foreclosure of leasehold mortgages given to secure loans made by any financial institution or governmental agency.

**2008 Comment**

Rule 9.003 was formerly located under Rule 8.003 of LVD/2003.

**RULE 9.004 RELATION TO OTHER LAWS**

(A) **Applicable Law.** Unless affected or displaced by this Chapter, principles of law and equity in the common law of the Tribal and tribal customs and traditions are applicable, and the general common law principles of law may be used as a guide to supplement and interpret this Chapter.

**(B) Conflict with other Laws.**

(1) Tribal Laws. To the extent that this Chapter may conflict with Tribal Laws or ordinances which have been enacted to comply with statutes or regulations of any agency of the United States of America, such tribal laws or ordinances may govern over the provisions of this Chapter if it has specific applicability and it is clearly in conflict with the provisions of this Chapter.

(2) Federal Laws. Where a conflict may appear between this Chapter and any statute, regulation or agreement of the United States, the federal law may govern if it has specific application and if it is clearly in conflict with the provisions of this Chapter.



(3) State Laws. To the extent that the laws of any state may be applicable to the subject matter of this Chapter, such laws shall be read to be advisory and not directly binding and shall not govern the relations of the parties.

**2008 Comment**

Rule 9.004 was formerly located under Rule 8.004 of LVD/2003.

**RULE 9.005 DEFINITIONS.**

**(A)** “Action, Suit or Lawsuit, Claim, Complaint or Defense” shall include any dispute between persons or entities which relate to the sale, rental, use or occupancy of any housing, dwelling or accommodation for human occupancy, including claims for the payment of monies for such housing, dwellings or accommodations, damage to such units, including the right to occupy them.

**(B)** “Borrower/Mortgagor” means the Tribe, Housing Authority, or any individual Indian(s) or any heir(s), successor(s), executor(s), administrator(s), or assign(s) of the Tribe or such Indian(s) who have executed a mortgage as defined in this Chapter or a leasehold mortgage as defined in this Chapter.

**(C)** “Building/Housing Codes” means any law, ordinance or governmental regulation of the Tribe or any agency of the United States which deals with fitness for habitation, health conditions or the safety, construction, maintenance, operation, occupancy, use or appearance of any dwelling unit. Where appropriate to the situation, standard or recognized building codes may be applied as building or housing codes.

**(D)** “Drug-related Criminal Activity” means the illegal manufacture, sale, distribution, use or possession with intent to manufacture, sell, distribute or use of a controlled substance as defined in Section 102 of the Controlled Substance Act (21 U.S.C. 802).

**(E)** “Dwelling or Dwelling Unit” means a structure or part of a structure that is used as a home, residence or sleeping place by any person who maintains a household; and is not for purposes of this Chapter any public transient accommodation, such as a hotel room.

**(F)** “Housing Authority” means the Lac Vieux Desert Band of Lake Superior Chippewa Indians Housing Authority, as established for the purpose of constructing and maintaining dwellings for public use within the territorial jurisdiction of the Tribe.

**(G)** “Indian” means any person recognized as being an Indian or Alaskan Native by the Tribe, or by the government of the United States.

**(H)** “Indian Country, Territorial Jurisdiction” includes all lands owned in fee by, held in trust for, leased, occupied or otherwise controlled by the Tribe, as well as any such ownership or use by an entity of the Tribe; and those terms shall include any and all areas which may constitute the Indian Country of the Tribe under applicable provisions of its laws or the laws of the United States.

**(I)** “Landlord” means any person, entity or agency of government that is the owner, lessor or sublessor of a dwelling unit, and it also means a manager of any such dwelling unit, as well as the Housing Authority.

**(J)** “Lease” means the lease of property, for which a qualified leasehold mortgage as defined under Subrule (K) of this Rule, has at the time been given.

**(K)** “Leasehold Mortgage” means the mortgage of a lease of property given to secure a loan made under the auspices of any federal agency homebuyer program.

**(L)** “Leasehold Mortgage Foreclosure Proceeding” means a proceeding in Tribal Court”

(1) To foreclose the interest of the borrower(s)/mortgagor(s), and each person or entity claiming through the borrower(s)/mortgagor(s), in a lease for which a mortgage has been given under the home purchase program or any federal agency; and,

(2) To assign such lease to the applicable federal agency or the agency’s assignee.

**(M)** “Lender Designated Assignee” means any Lender who has assigned or transferred its interest in a lease and/or leasehold mortgage to a designated assignee.

**(N)** “Lender/Mortgagee” means any private lending institution established to primary loan funds and not the investment in, or purchase of properties, the Tribe, the Housing Authority or a U.S. Governmental Agency which loans money, guarantees or insures loans to a Borrower for construction, acquisition, or rehabilitation of a home. It is also any lender designated assignee(s) or successor(s) of such lender/mortgagee as preapproved or approved by the Tribe.

**(O)** “Lessor/Lessee”

(1) “Lessor” means the beneficial or equitable owner of property under a lease for which a mortgage has been given, or the heir, successor, executor, administrator, or assigns of the Tribe or such other person.

(2) “Lessee” means the homebuyer. The lessee may, for purposes of federal agency home mortgage programs, be the Housing Authority.

**(P)** “Mortgage” means a first lien as is commonly given to secure advances on of the unpaid purchase price of a dwelling, real estate, and may refer both to a security instrument creating a lien, whether called a mortgage, deed of trust, security deed or other term, as well as the credit instrument, or note, secured thereby.

**(Q)** “Premises” means a dwelling unit and the structure of which it is a part, and all facilities and areas connected with it, including grounds, areas and facilities intended for the use of tenants or the use of which is either promised or purchased for tenants.

**(R)** “Rental Agreement” means any agreement, written, oral or by practice of the parties, as well as valid rules and regulations regarding the terms and conditions for any use or occupancy of a dwelling or premises.

**(S)** “Subordinate Lienholder” means the holder of any lien, including a subsequent mortgage, perfected subsequent to the recording of a leasehold mortgage under this Chapter.

**(T)** “Tenant” means any person who rents, purchases or occupies a dwelling under an agreement to rent, occupy, or lease/purchase a dwelling; and it includes any person actually occupying a dwelling that he does not own. It will also include any person of the same household of a tenant, including guests, actual occupiers, heirs or successors to any interest in a dwelling.

**(U)** “Waste” means spoilage or destruction by a tenant/lessee of land, buildings, gardens, trees or other improvements which result in substantial injury to the lessor’s interest in the property.

**2008 Comment**

Rule 9.005 was formerly located under Rule 8.005 of LVD/2003.

**2022 Comment**

Subrule (M) of this Rule, in its present form removes the former included provision of this rule which was deemed substantive and outside the scope of this Subrule, which read, *“Any time prior to such assignment, transfer or assumption, the lender must seek written approval from the Tribe of a proposed designated assignee. United States government and Federal Agencies guaranteeing or insuring leasehold mortgages during foreclosure actions do not need approval from the Tribe to act as a lender designated assignee.”*

## SUBCHAPTER 9.100 MORTGAGES AND FORECLOSURES

### RULE 9.101 PRIORITY.

All mortgages, including leasehold mortgages recorded in accordance with the recording procedures set forth in this Chapter and including loans guaranteed by the United States Government shall have priority over any lien not perfected at the time of such recording and any subsequent lien or claim excepting a lien or claim arising from a tribal leasehold tax assessed after the recording of a mortgage. Nothing in this provision shall prevent any person or entity from recording a leasehold mortgage in accordance with State Law or from filing a leasehold mortgage with the Bureau of Indian Affairs.

### RULE 9.102 RECORDING

Insofar as court proceedings, all mortgages, including leasehold mortgages, on lands not otherwise held in Trust by the United States of America for the benefit of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, which have been recorded in the Office of the appropriate County Register of Deeds shall take prima facie priority over its non-recorded counterparts.

**2001 Comment**

*“...on lands not otherwise held in Trust by the United States of America for the benefit of the Lac Vieux Desert Band of Lake Superior Chippewa Indians...”* has been added to this rule.

**2008 Comment**

Rule 9.102 was formerly located under Rule 8.102 of LVD/2003.

**2022 Comment**

This former Rule, which formerly read as a requirement that Mortgages/Leasehold Mortgages be recorded, has now been reworded to provide that such Mortgages/Leasehold Mortgages that are recorded take prima facie priority over non-recorded instruments.

### RULE 9.103 LEASEHOLD MORTGAGE FORECLOSURE PROCEDURE.

Where it has been demonstrated that the Tribe has a Leasehold interest, and upon notification to the Tribe by the lender/mortgagor of borrower/mortgagor’s default, the Tribe may initiate proceedings for summary possession and eviction.

**2003 Comment**

Former Rule 8.103 was broken down into two subrules. Subrule (A) of former 9.103, has now been entirely rescinded so as to now omit the language of its counterpart which formerly subjected a borrower/mortgagor to immediate foreclosure after 30 days past due mortgage payments. The provision allowing the tribe to initiate proceedings for summary possession and eviction, “on the first day of default” as formerly contained under former Subrule (B), now has been rescinded.

**2008 Comment**

Rule 9.103 was formerly located under Rule 8.103 of LVD/2003.

**RULE 9.104 LEASEHOLD MORTGAGE FORECLOSURE; COMPLAINT AND SUMMONS**

**(A) Verified Complaint.** At a minimum, the verified complaint in a leasehold mortgage foreclosure proceeding shall contain the following:

(1) The name and address of the Borrower/Mortgagor and each person or entity claiming through the Borrower/Mortgagor subsequent to the recording of the mortgage, including each subordinate lienholder;

(2) A description of the property subject to the leasehold mortgage;

(3) A concise statement of the facts concerning the execution of the lease and the leasehold mortgage; the facts concerning the recording of the leasehold mortgage; the facts concerning the alleged default(s) of the borrower/mortgagor; and such other facts as may be necessary to constitute a cause of action.

(4) True and correct copies of each promissory note, a copy of the lease, the mortgage, or assignment thereof and all other pertinent documents related to the property.

(5) Any applicable allegations concerning relevant requirements and conditions prescribed in:

- (a) Federal Statutes and Regulations;
- (b) Tribal Codes, Ordinances and Regulations;
- (c) Provisions of the Lease and/or Leasehold Mortgage.

**(B)** The complaint shall be verified by the Tribal Clerk of Courts along with a summons specifying a date and time of appearance for the Defendant(s). The form of summons shall be the same as those requirements provided for under Rule 2.102 of these rules. For the purposes of this chapter, it is not necessary for the Defendant to answer the Complaint or cross-claim of another lien claimant, unless an issue exists as to the validity and/or amount of the claim. If no issue between the Plaintiff and Defendant has been raised after the time allowed to answer the Summons, the action shall be deemed ready for hearing.

**2003 Comment**

This rule remains essentially unchanged from its counterpart with the exception of the added provisions of Subrule (B) in which it is no longer an absolute requisite for the Defendant to answer the Complaint. This provision was added to lend consistency to the amendments to Rule 2.102.

**2008 Comment**

Rule 9.104 was formerly located under 8.104 of LVD/2003.

**RULE 9.105 SERVICE OF PROCESS AND PROCEDURES**

Service of process shall be carried out according to the specific procedures for landlords and tenants as set forth under Rule 9.303 of this Chapter, and the general rules of Service of Process pursuant to the applicable provisions of Rule 2.102(E) of these Rules.

**2001 Comment**

This rule remains substantially unchanged with the exception that Rule 8.303 is specifically referenced, and also with the reference to the general civil inclusion of Process as contained under 2.102(E) of these Rules.

**2008 Comment**

Rule 9.105 was formerly located under Rule 8.105 of LVD/2003.

**RULE 9.106 CURE OF DEFAULT BY SUBORDINATE LIENHOLDER**

**(A) Mortgagor-Defendant's Right to Cure.** After the filing of a complaint to foreclose, the mortgagor-defendant may bring in the principle and interest due, with costs and the complaint may then be dismissed pursuant to the provisions of Subrule (B) of this Rule. "Bringing into Court" includes both paying the amount into court, and a tender of the amount in open court.

**(B) Dismissal of Action after Cure of Default.** A Defendant in a foreclosure proceeding whose default has been cured prior to the entry of a Judgment, is entitled to a dismissal of the cause of action. Unless otherwise stated, a dismissal of an action under this rule is without prejudice. An action may be dismissed with an ex-parte order of the court by:

(1) The Plaintiff filing a notice of dismissal before service by the adverse party of an answer or motion; or,

(2) By filing a Stipulation of Dismissal signed by all parties to the particular cause of action.

**2003 Comment**

This rule has been entirely reworked from the former LVD/1999 Rule 8.106 entitled, "*Cure of Default by Subordinate Lienholder*". Whereas the former Rule 8.106 specifically provided for "no right of redemption", the intent of Rule 8.106 in its present form is to provide a mechanism for the Mortgagor-Defendant to cure a default prior to the entry of an actual adjudicated Judgment.

**2008 Comment**

Rule 9.106 was formerly located under Rule 8.106 of LVD/2003.

**2022 Comment**

In terms of the Mortgagor-Defendant's right to cure and the dismissal of the complaint, Subrule (A) supplants the former language of "shall" with "may".

**RULE 9.107 JUDGMENT AND REMEDY**

Except for good cause, any matter of foreclosure set before the court shall be heard and decided by the Tribal Court in a prompt and reasonable time period not to exceed Ninety (90) days from the date of service of the complaint on the borrower/mortgagor or as soon thereafter as the matter can be heard by the court. If the alleged default has not been cured at the time of trial and the Tribal Court finds for the Plaintiff, the Tribal Court shall enter Judgment, subject to the entry of a final order of foreclosure and the Mortgagor-Defendant's right of redemption in accordance with Rule 9.108 of this Chapter.

**2003 Comment**

The amended provisions of this Rule now refer to the new provisions associated with the Defendant's right of redemption in foreclosure proceedings. The present rule also rescinds the language of former Rule 8.107(A) and (B) which contained the requisite language of a Tribal Court Judgment of Foreclosure. The intent of the omission of the language of Subrule (A) and (B) was that this former provision was too restrictive and inconsistent with the new provisions of a Mortgagor-Defendant's right of redemption.

**2008 Comment**

Rule 9.107 was formerly located under Rule 8.107 of LVD/2003.

**2022 Comment**

This rule in its present form remains substantially unchanged with the exception of the "good cause" provision for matters which may extend beyond the proscribed Ninety day period of time.

**RULE 9.108 POST JUDGMENT REDEMPTION; FINAL ORDERS OF FORECLOSURE**

**(A) Post Judgment Redemption.** If, within Sixty (60) days after a Judgment has been entered, the Mortgagor-Defendant brings into court the principal and interest due with costs, the proceedings in action shall be stayed; but the judgment of foreclosure shall remain enforceable by further order of the court in the event of a subsequent default in the payment of any portion or installment of the principal, or of any interest thereafter to become due.

**(B) Final Orders of Foreclosure.** If after 60 days from the date the initial judgment has been entered, all sums due under the cause of action have not been satisfied in full by the Mortgagor-Defendant, and there remains before the court no further pending post-judgment motions, the court shall enter a Final Order of Foreclosure. At a minimum, the final order of foreclosure shall:

- (1) Identify the parties, case number, and with clarity, the mortgage to be foreclosed upon;
- (2) State the date of the initial order of foreclosure, and a statement to the effect that a period of the Mortgagor-Defendant's right of redemption has lapsed;
- (3) Include a statement that under the particular mortgage at issue, the Mortgagor-Defendant's interests are foreclosed; and,
- (4) If applicable, include provisions to compel the immediate delivery of the possession of the premises to the Mortgagee-Plaintiff.

**(C) Foreclosure Evictions Subsequent to Final Order of Foreclosure.** Where the Mortgagor-Defendant or any other occupant of the premises refuses to physically vacate voluntarily after a Final Order of Foreclosure has been entered, upon ex-parte order, the Mortgagor-Defendant any other occupant of the premises, may be removed from the premises by a Tribal Law Enforcement Officer.

**2003 Comment**

This rule replaces the former Rule 8.108 *Foreclosure Evictions*, which in whole has been rescinded. All of the provisions of Rule 8.108 *Post Judgment Redemption; Final Orders of Foreclosure* are new and have been adopted to provide a final mechanism to cure a default.

**2008 Comment**

This Rule was formerly located under Rule 8.108 of LVD/2003.

**RULE 9.109 PROHIBITION OF MERGER OF ESTATES**

There shall be no merger of estates by reason of the execution of a lease or leasehold mortgage or the assignment or assumption of the same, including an assignment adjudged by the Tribal Court, or by operation of law, except as such merger may arise upon satisfaction of the leasehold mortgage.

**2008 Comment**

Rule 9.109 was formerly located under Rule 8.108 of LVD/2003.

**RULE 9.110 CERTIFIED MAILING TO TRIBE AND LESSOR**

In any foreclosure proceedings on a lease or leasehold mortgage where the Tribe or the Lessor(s) is not named as a Defendant, a copy of the summons and complaint shall be mailed to the Tribe and the Lessor(s) by certified mail, return receipt requested, within Ten (10) days after the issuance of the summons. If the location of the Lessor(s) cannot be ascertained after reasonable inquiry, a copy of the summons and complaint shall be mailed to the Chairman of the Tribe.

**2008 Comment**

Rule 9.110 was formerly located under Rule 8.110 of LVD/2003.

**RULE 9.111 INTERVENTION**

The Tribe or any lessor may petition the Tribal Court to intervene in any lease or leasehold mortgage foreclosure proceeding under this Chapter. Neither the filing of a petition for intervention by the Tribe, nor the granting of such a petition by the Tribal Court shall operate as a waiver of Sovereign Immunity of the Tribe, except as may be expressly authorized by the Tribe.

**2008 Comment**

This Rule was formerly located under Rule 8.111 of LVD/2003.

**SUBCHAPTER 9.200 LANDLORD/TENANT RELATIONS****RULE 9.201 EFFECT OF ANY AGREEMENT REGARDING DWELLINGS**

Unless an agreement or an applicable provision of the agreement is clearly contrary to this Chapter or the laws and ordinances of the Tribe, the agreement or provision will govern the rights and obligations of any party before the Tribal Court, and the Tribal Court must grant the relief provided for in the agreement according to its terms. Where there is no written agreement, the intent of the parties expressed in their oral agreement or relationship will govern, as well as applicable provisions of this Chapter.

**2008 Comment**

Rule 9.201 was formerly located under Rule 8.201 of LVD/2003.

**RULE 9.202 LANDLORD REMEDIES**

Where a tenant has not complied with the terms of a lease, the housing codes and/or agreement of the parties, the landlord has a right to:

**(A)** Give reasonable notice to the tenant to comply with his/her obligations, pay any monies due and owing under the agreement of the parties; or the Landlord may terminate the agreement under which the tenant occupies the premises, and demand that he and those living with the tenant, leave the premises.

**(B)** Require repairs or maintenance which are the responsibility of the tenant and compliance with reasonable rules and regulations for occupancy.

**(C)** Seek a court order or judgment for the payment of monies or costs for compliance with the agreements and obligations of the tenants, for termination of an agreement, payment of damages, eviction of tenants, or any other relief to which he may be entitled by law or the agreement of the parties.

**2008 Comment**

Rule 9.202 was formerly located under Rule 8.202 of LVD/2003.

**RUE 9.203 TENANT REMEDIES**

Where a landlord has not complied with this Chapter or the agreement of the parties, the tenant has the following rights:

**(A)** To give reasonable notice to the landlord to comply with his/her obligations, demand repairs which are the responsibility of the landlord, to terminate the agreement under which the tenant occupies the premises.

**(B)** To require repairs or maintenance which are the responsibility of the landlord.

**(C)** Should landlord fail to make repairs, as duly noticed by tenant, within a reasonable time, tenant may make necessary repairs and deduct the cost from the usual rental payment.

(D) To seek a Tribal Court order or judgment for the payment of monies or costs, compliance with the agreements and obligations of landlords, terminate an agreement, pay damages, or any other relief to which he may be entitled by law or the agreement of the parties.

**2008 Comment**

Rule 9.203 was formerly located under Rule 8.203 of LVD/2003.

## **SUBCHAPTER 9.300 SUMMARY PROCEEDINGS TO TERMINATE RENTAL AGREEMENT; TERMINATION NOTICE**

*[This Subchapter was formerly entitled "Termination of Rental Agreement; Termination Notice Requirement" under Subchapter 8.300 of LVD/1999]*

### **RULE 9.301 TIME WHEN SUMMARY PROCEEDINGS MAY BE BROUGHT**

(A) **Generally.** As a condition to the landlord's evoking the court's jurisdiction as associated with the termination of any agreement of the parties for the rental of a premises, and for the lease/purchase of a premises, the moving party is required to give due notice to quit, terminate, or demand possession upon the respondent.

#### **(B) Time for Service of Termination Notice.**

(1) General Circumstances. A properly executed Termination Notice shall be deemed effective after Ten (10) days from the date the Notice of Termination was duly served upon the Respondent, then allowing the Plaintiff to file with the Court a Complaint for Termination of Tenancy.

(2) Emergency Circumstances. Only in situations in which there is an emergency, such as a fire or condition making the dwelling unsafe or uninhabitable, or in situations involving an imminent or serious threat to public health and safety, upon the filing of a proper application to the court, the court may grant, ex-parte, an alternative Termination Notice effective date, for a period of time which is reasonable, given the situation.

**2001 Comment**

Rule 8.301 is entirely different from the former Rule 8.301 of LVD/1999 which was entitled "*Termination Procedure*". The intent of this rule in its present form is to: (1) clearly establish a point in time where the court's jurisdiction can be clearly invoked in Landlord/Tenant matters; and (2) specify a consistent time under the application of two separate circumstances (general and emergency) in which the notice become effective.

**2003 Comment**

Paragraph (1) of Subrule (B) now shortens the period of effect of a Notice of Termination from 30 days to 10 days. This paragraph also now adds the language, "*then allowing the Plaintiff to file with the Court a Complaint for Termination of Tenancy*".

**2008 Comment**

This Rule was formerly located under Rule 8.301 of LVD/2003.

**2022 Comment**

Subrule (B) of Rule 9.301 now deletes the language pertaining to dismissal under the time for service and termination notice. The deleted language in the body of Subrule (B) read as follows: "*Any action brought on or before the following effective dates of the required Termination Notice shall be dismissed: .....*"

### **RULE 9.302 REQUIRED CONTENTS OF TERMINATION NOTICE**

At a minimum, the Termination Notice as required under Rule 9.301 of these rules shall contain the following:



**(A)** The notice must be addressed to the known tenants of the premises, although unknown occupants need not be named;

**(B)** The notice shall state the reason(s) for the termination notice and state that within Ten (10) days of receipt of the Notice the tenant must:

- (1) Pay all past due sums in full (if the termination is by virtue of non-payment of rent); or
- (2) State a requirement that the Tenant cure any particular default or pay damages; or
- (3) State any other reason for the Termination of Notice.

**(C)** The notice shall state if the tenant has not cured the identified default or otherwise payment of past due rent within Ten (10) days of receipt of the Notice, the Landlord requires the tenant to leave the premises and surrender it to the Landlord.

**2001 Comment**

Rule 8.302 was formerly entitled, "*Termination Notice Requirement*". The new change in the title of this Rule is the result of reorganizing the provision of the 1999 Court Rule 8.402, Subrule (A) and (B) into the now amended Rule 8.302.

**2003 Comment**

This Rule has been re-written from its 2001 counterpart for clarity. The applicable 10 days period of notice requirement has been inserted to reflect the amended period of time notice must be given as provided for under Paragraph (1), Subrule (B) of Rule 8.301.

**2008 Comment**

Rule 9.302 was formerly located under Rule 8.302 of LVD/2003.

**2022 Comment**

Paragraph (3) of Subrule (B) has been added for consistency of this Rule with other provisions under this Subchapter.

### **RULE 9.303 SERVICE/NOTICE REQUIREMENTS OF TERMINATION NOTICE**

**(A) Delivery.** Delivery of the Termination Notice must be made by:

- (1) A Law Enforcement of the Tribe or any other duly authorized Federal, State or Tribal Government; or
- (2) Any legally competent adult or otherwise any other person authorized by the Tribal Court.

**(B) Effective Personal Delivery.** Delivery is deemed effective when it is:

- (1) Personally delivered to a tenant with a copy delivered by mail; or
- (2) Personally delivered to an adult agent or employee of the landlord or the tenant with a copy delivered by mail; or
- (3) Any other mode, manner and method as provided for under under Rule 2.202(E) of these Rules.

**(C) Substitute Delivery.** If notice cannot be given by means of personal delivery, or the landlord or tenant cannot be found, the notice may be delivered by means of:

- (1) Certified Mail, return receipt requested, at the last known address of the landlord or tenant; or,

(2) Securely taping a copy of the notice to the main entry door of the premises in such a manner that is not likely to blow away, and by posting a copy of the notice in some public place near the premises, which may be a tribal office, public store or other commonly frequented place and by sending a copy first class mail, postage prepaid, addressed to the tenant at the premises; or

(3) Any other mode, manner and method as provided for under Rule 2.202(E) of these Rules.

**(D) Copy of Notice/Proof of Service.** Regardless of the mode of service, the person giving notice must keep a copy of the notice and proof of service and return the same to the court with an affidavit of service or other manner as recognized by the court.

**2001 Comment**

This rule is new and has been inserted here to ensure that due process is following in the procedures as set forth herein, and also as provided for under the general civil procedure for services as found within Rule 2.102(E) of these Rules.

**2008 Comment**

Rule 9.303 was formerly located under Rule 8.303 of LVD/2003.

**2022 Comment**

Paragraph (1) of Subrule (A) of this Rule now supplants the former language, "...agency so authorized of the United States Government" with, "...other duly authorized Federal, State or Tribal Government."

## **SUBCHAPTER 9.400 RECOVER POSSESSION OF PREMISES**

*[This Subchapter was formerly entitled, "Eviction Procedure" under Subchapter 8.400 of LVD/1999]*

### **RULE 9.401 GROUNDS FOR EVICTION**

**(A) Generally.** Any time after Ten (10) days of a tenants receipt of a proper notice terminating a tenant's tenancy, a landlord may initiate formal proceedings seeking eviction of a tenant from any premises, and/or seeking an order to pay damages and costs, or otherwise seek an order or judgment of the Tribal Court for breach of any obligation under this Chapter, of any agreement, including an agreement to purchase or rent any dwelling, or for any other obligation provided by law. The receipt of a landlord of partial payments or an otherwise attempt by a tenant to cure all other breaches shall not excuse the tenants payment of the total balance due or otherwise total performance, upon demand by the landlord.

**(B) Nonpayment of Rent.**

(1) Written Agreement. Under an agreement for the lease, purchase or occupation of a dwelling when such payments are not made after the business day when due under the agreement/contract.

(2) Oral Agreements; Month-to-month Tenancies. Under any oral agreement renting a dwelling on a month-to-month basis, the first day of the next succeeding month when such payments are due.

**(C) Costs and/or Damages.** Unless a greater time is provided for in the written or oral agreement, costs and/or damages to the dwelling which have been due and owing for Thirty (30) calendar days or more prior to the landlord's delivery of the Termination Notice.

**(D) Criminal and Other Activity.** Controlled substances, alcohol or other activity associated with the Tenant's use of dwelling, nuisance, property damage or destructions, injuries to the property, person, or peace of other tenants, or injuries or damage to common areas and property.

**(E) Trespass.** Occupation of any premises without permission or otherwise agreement of the landlord, following reasonable demand by a person in authority over the premises to leave.

**(F) Breach of Landlord's Duties.** Noncompliance with this Chapter, Building or Housing Codes, or the reasonable rules and regulations of the landlord.

**2003 Comment**

Subrule (A) now specifies the time of ten days following a properly served Notice to Terminate Tenancy for Court intake.

Subrule (B) is now broken down into two parts to specifically provide for written agreements and oral agreements. Paragraph (1) of this Subrule now shortens the time from which an individual may give a Notice to Terminate Tenancy from the former 10 days of a default in rental payments to the first day after a default in rental payments, while the provisions of Paragraph (2) are entirely new.

The provisions regarding criminal activity under Subrule (C) are new and Subrules (D) and (E) have been renumbered from their 2001 counterparts.

**2008 Comment**

Rule 9.401 was formerly located under Rule 8.401 of LVD/2003.

**2022 Comment**

Subrule (C) of this Rule now adds the language, "Unless a greater time is provided for in the written or oral agreement..."

## **RULE 9.402 COMPLAINT UNDER LANDLORD-TENANT PROCEEDINGS**

**(A) Generally.** The Complaint must:

- (1) Comply with the general pleading requirements contained in these rules;
- (2) Have attached to it a copy of any written instrument upon which occupancy was or is based;
- (3) Have attached to it copies of any notice to terminate, notice to quit and any demand for possession, along with a showing of when and how these were served;
- (4) Describe the premises or the defendant's holding if it is less than the entire premises;
- (5) Show the Plaintiff's right to possession and indicate why the defendant's possession is improper or unauthorized.

**(B) Specific Requirements.**

- (1) If rent or other money is due and unpaid, the complaint must show:
  - (a) The rental period and rate;
  - (b) The amount due and unpaid when the complaint was filed; and,
  - (c) The date or dates the payments became due.
- (2) If possession is claimed for a serious and continuing health hazard or for extensive and continuing physical injury to the premises, the complaint must:
  - (a) Describe the nature and seriousness or extent of the condition upon which the complaint is based; and,
  - (b) State the period of time for which the property owner has been aware of the condition.

**2001 Comment**

This rule in its present form supplants the 1999 rule with the same number, which was entitled, *Notice to Quit Requirements*". The provisions of the former rule now, in its present form, is contained within Subrule (B) of Rule 8.302 of these Rules.

**2008 Comment**

Rule 9.402 was formerly located under Rule 8.402 of LVD/2003.

**RULE 9.403 SUMMONS AND SERVICE OF PROCESS**

**(A) Notice to Appear.** Upon the filing of a proper complaint under this Subrule, the court shall issue a Notice to Appear directing all parties to the cause of action as to the time and place of a hearing for taking of proofs on the matter.

**(B) Service of Process.** A copy of the notice to appear and complaint and all attachments must be served on the defendant. Unless the court perfects the service, the Plaintiff is required to perfect service in the same manner as provided for under Rule 9.303 of these rules.

**2001 Comment**

The assertion of this rule is new and been added herein to blend consistency with the general rules concerning civil process of issuance(s) of Summons under Rule 2.102 herein and the process of service as provided for under Rule 8.304 of these Rules.

**2003 Comment**

This Rule replaces the former Rule 8.403 replaces and revises the former Rule 8.403, *Summons and Service of Process*. This rule in its present form purposely omits the issuance of a summons and instead requires the issuance of a Notice to Appear. The intent behind this revision of former Rule 8.403 is to: (1) expedite the pre-trial process in Landlord-Tenant matters; and, (2) to eliminate the former requisite that a Defendant provide a formal answer to the Complaint.

**2008 Comment**

Rule 9.403 was formerly located under Rule 8.403 of LVD/2003.

**RULE 9.404 APPEARANCE AND ANSWER; DEFAULT.**

**(A) Appearance and Answer.** The defendant or the defendant's attorney must appear at the scheduled date and time set for hearing to orally answer each allegation in the complaint.

**(B) Right to an Attorney.** If either party appears in person without an attorney, the court must inform that party of the right to retain an attorney at his or her own expense.

**(C) Default.**

(1) If the Defendant fails to appear, the court, on the plaintiff's motion, or on the court's own motion, may enter default and may hear the Plaintiff's proofs in support of judgment. If satisfied that the complaint is accurate, the court must enter a default judgment. The default judgment must be mailed to the defendant and if applicable must inform he defendant:

- (a) That an Order of Eviction from the premises has been entered in favor of the Plaintiff and against the Defendant; and,
- (b) That the Defendant is or may be liable for a money judgment.

(2) If the Plaintiff fails to appear, and barring any counterclaims by the Defendant, the court may dismiss with prejudice the Plaintiff's cause of action.

**2001 Comment**

This rule is adopted and effective February 1, 2001.

**2003 Comment**

Subrule (A) rescinds the former provision which required the Defendant to answer the Plaintiff's Complaint for Eviction.

**2008 Comment**

Rule 9.404 was formerly located under Rule 8.404 of LVD/2003.

**RULE 9.405 TRIAL**

When both parties appear, the court may try the action, or upon determination that there must be pretrial motions to decide, adjourn the matter to a later date.

**2001 Comment**

This rule is adopted and effective as of February 1, 2001.

**2008 Comment**

Rule 9.405 was formerly located under Rule 8.405 of LVD/2003.

**RULE 9.406 JUDGMENTS.****(A) Evictions.**

(1) Where the Tribal Court orders an eviction, and the defendant or any other occupant of the premises refuses to vacate voluntarily by the effective date as given in that order, the defendant or other occupants may be forcibly removed from the premises by Tribal Law Enforcement. At the hearing where the eviction is ordered, the Tribal Court shall inform the Defendant that if he or she does not vacate the premises voluntarily by the effective date, he or she, and all other occupants, will be subject to the forcible eviction, and their property will be subject to storage, sale and disposal as forth under Rule 9.408.

(2) Following eviction, the court may provide in the initial order, or following application by subsequent order, allowing the landlord, the Housing Authority or the United States Government access to any property leased by either for the purposes of preserving and securing the premises.

**(B) Money Judgments.** All judgments concerning damages and/or past due rent as associated with the tenancy may be issued, in conjunction with a Judgment of Eviction, or may be reserved for a separate determination at a later time upon the physical vacation of the Defendant from the subject premises.

**(C) Post Judgment Enforcement.** It shall be the responsibility of the Judgment holder to transmit copies of all orders and judgment associated with the enforcement of a Judgment/Order entered under this rule.

**2001 Comment**

The provisions of Subrule (A) herein are essentially the same as the provisions of the former Rule 8.404 (A) and (B). This rule in its present form expands upon its parent rule in that it contains, under Subrule (B) herein, references to Money Judgments.

**2003 Comment**

Subrule (C) is new and has been promulgated as a result of the enactment of Tribal Resolution 2003-012, ratified, March 4, 2003, prohibiting the enforcement of Eviction Orders during the relevant periods of time. While restricting the dates of enforcement of an Order of Eviction, this subrule does not prohibit an entry of a Judgment of Eviction during the referenced time periods.

**2008 Comment**

Rule 9.406 was formerly located under Rule 8.406 of LVD/2003.

Former Subrule (C) of LVD/2003 has been rescinded. Former for Subrule (C) provided for a stay in enforcement of a Judgment of Eviction from the dates of October 15 through April 15<sup>th</sup>, where minor children were domiciled in a residence subject to eviction, has now been rescinded by virtue of Tribal Resolution.

**2022 Comment**

Subrule (C) is new and has been added and affirms court general civil practice that the responsibility of post judgment orders lies with Judgment Holder and not the Court issuing the judgment.

**RULE 9.407 NO SELF-HELP EVICTION**

Except by mutual consent of the parties to an eviction, no landlord may compel a tenant to vacate any premises in a forceful fashion or way which causes a breach of the peace without giving

notice to quit, and obtaining a Tribal Court Order as provided for in this Chapter.

**2001 Comment**

This Rule was formally located under Rule 8.403 of the Lac Vieux Desert Court Rules of 1999.

**2008 Comment**

Rule 9.407 was formerly located under Rule 8.407 of LVD/2003.

**RULE 9.408 STORAGE OF PERSONAL PROPERTY FOLLOWING ORDER OF EVICTION**

Following an Order of Eviction of the Defendant and/or other occupants, the former occupants' personal property shall be stored by the owner of the premises for at least Thirty (30) days, either on the premises or at another suitable location. In order to reclaim the property, the former occupants must pay the reasonable costs of its removal and storage. If they do not pay such costs within thirty days, the owner is authorized to sell the property in order to recover these costs. Upon request by the former occupants, the landlord must provide them with pertinent information concerning the sale, including the time, date and location. Any proceeds from the sale in excess of the storage and removal costs must be remitted to the former occupants. Nothing in this rule shall be construed to prevent the former occupants from reclaiming the property remaining after the sale if they can arrange to do so in a manner satisfactory to the owner.

**2001 Comment**

This rule was formerly located under Rule 8.404 of LVD/1999.

**2008 Comment**

Rule 9.408 was formerly located under Rule 8.408 of LVD/2003.

## CHAPTER 10. ENFORCEMENT OF FOREIGN COURT JUDGMENTS

Effective May 16, 1997  
Including Amendments Received Through  
September 1, 2022

*[This Chapter was formerly located under Subchapter 1.300 of LVD/1999]*

### SUBCHAPTER 10.000 GENERAL PROVISIONS

#### **RULE 10.001 PURPOSE AND EFFECTIVE DATE.**

The purpose of this chapter is to facilitate, improve and extend by reciprocal court rule the enforcement and/or recognition of judgments between the State of Michigan, other States of the United States of America, and the various federally recognized Indian Tribes of the United States of America, as well as to make uniform the law relating thereto. Pursuant to Tribal Council Resolution Number 97-019, this Chapter of the Lac Vieux Desert Tribal Court Rules becomes effective May 16, 1997.

##### **2008 Comment**

This Rule was formerly located under Rule 9.101 of LVD/2003.

#### **RULE 10.002 MONEY JUDGMENTS; ORDER OF PRIORITY**

**(A) Generally.** This rule provides for an order of priority with respect to enforcement of all money judgments rendered by this court or any Foreign Courts so honored, with respect to garnishment of Tribal Income and/or garnishment of Annual Tribal Per Capita and/or Lump Sum payments.

**(B) Order of Priority.** The following shall be the order of priority with respect to garnishments of income and seizures of Annual Tribal Per Capita and Lump Sum Payments:

- (1) Tribal Court Ordered Child Support; then,
- (2) Foreign Court Child Support Orders; then,
- (3) All other Tribal Court Money Judgments; then,
- (4) All other Foreign Court Money Judgments.

##### **2008 Comment**

Rule 10.002 is new and has been adopted effective June 1, 2007. This rule now provides for a reference point as to the order of priority money judgments will be treated.

**RULE 10.003 DEFINITIONS.**

When used throughout this entire Chapter, unless a particular provision indicates otherwise, the following definitions shall apply herein:

**(A)** “Code” means the Tribal Code of the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

**(B)** “Court” means the Lac Vieux Desert Band of Lake Superior Chippewa Indians Tribal Court.

**(C)** “Foreign Court” means all other courts including Federal, State, or Tribal Courts of another federally recognized Indian Tribe, and Courts of foreign countries.

**(D)** “Foreign Judgment” means any judgment, decree, or order by any United States Federal Court, State Court, or other Tribal Court or Court of a Foreign Country which is final in the rendering jurisdiction, regardless of whether such judgment is for money, injunctive, declaratory, or other relief.

**(E)** “Judgment Creditor” means one who has had a judgment rendered in his or her favor. Judgment Creditor is synonymous with the term Judgment Holder.

**(F)** “Judgment Debtor” means the party against whom a judgment has been rendered.

**(G)** “Judgment Holder” means one who has had a judgment rendered in his or her favor and is synonymous with the term judgment creditor.

**(H)** “Attorney” means an individual who is a current member of the State Bar of Michigan or any other state. The term “attorney” is synonymous with the term “lawyer”.

**(I)** “Lay Advocate” means a person who is not a licensed attorney but one who has been qualified by the Lac Vieux Desert Tribal Court to serve as an advocate on behalf of a party before the courts of Lac Vieux Desert.

**(J)** “Rendering Jurisdiction” means the jurisdiction in which the foreign judgment was entered.

**(K)** “Tribe” means the Lac Vieux Desert Band of Lake Superior Chippewa Indians.

**(L)** “Tribal Per Capita/ Lum Sum Payment” includes any regular annual Tribal sponsored payment to enrolled individuals, and/or any other Tribal sponsored annuity payments to enrolled members.

**2008 Comment**

This Rule was formerly located under Rule 9.102 of LVD/2003 and prior Court Rules. Subrule (L) herein, “Tribal Per Capita/Lump Sum Payment” is new.

**RULE 10.004 STATE OF MICHIGAN COURT JUDGMENTS.**

The judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of a Michigan State Court, shall have the same effect and are subject to the same procedures, defenses, and proceedings as judgments, decrees, orders, warrants, subpoenas, records and other judicial acts of the courts of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, provided that:



(A) The applicable State of Michigan Court and/or Legislature of Michigan has not declined reciprocal full faith and credit to judgments of the Tribe; and,

(B) The individual person or entity seeking full faith and credit complies with the procedural requirements as set forth in this chapter.

**1997 Comment**

This rule is consistent with Michigan Court Rule 2.615 "Enforcement of Tribal Judgments", as adopted in 1996, which requires, as an operative, that Tribal Courts enact an "ordinance, court rule, or other binding measure that obligates the tribal court to enforce the judgments, decrees, orders, warrants, subpoenas, records and judicial acts of the courts of Michigan."

**2008 Comment**

This Rule was formerly located under Rule 9.103 of LVD/2003 and prior Court Rules.

**RULE 10.005 JUDGMENTS OF TRIBAL COURTS.**

Judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of any other tribal court of a federally recognized Indian Tribe shall have the same effect and are subject to the same procedures, defenses, and proceedings as judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of the courts of the Lac Vieux Desert Band of Lake Superior Chippewa Indians, provided that:

(A) The applicable Tribal Court of a federally recognized Indian Tribe provides reciprocal full faith and credit to the judgments of the Tribe; and,

(B) The individual person or entity seeking full faith and credit complies with the procedural requirements as set forth in this chapter.

**2008 Comment**

Rule 10.005 was formerly located under Rule 9.104 of LVD/2003 and prior Court Rules.

**RULE 10.006 JUDGMENTS FROM ALL OTHER COURTS.**

The judgments of a U.S. Federal Court, Courts in foreign countries, or in a State other than Michigan may have, at the discretion of this court, full faith and credit in the Court of this Tribe, provided that:

(A) The foreign court in which the judgment originated has not declined or refused to accord full faith and credit to the judgments of this court; and,

(B) The individual person or entity seeking full faith and credit complies with the procedures set forth under this chapter.

(C) The discretion of the court is such that in granting full faith and credit it will serve the best interest of the parties and of the Tribe.

**2008 Comment**

This Rule was formerly located under Rule 9.105 of LVD/2003 and prior Court Rules.

**RULE 10.007 APPLICATION OF FULL FAITH AND CREDIT AND CONCLUSIVE JUDGMENTS.**

In accordance with the full faith and credit provisions set forth in this chapter, a foreign judgment that is final and conclusive is presumed valid and enforceable in the courts of Lac Vieux Desert.

**2008 Comment**

Rule 10.007 was formerly located under Rule 9.106 of LVD/2003 and prior Court Rules.

**RULE 10.008 NON-ENFORCEABLE OR NON-RECOGNIZABLE FOREIGN JUDGMENTS.**

A foreign judgment which meets the applications of full faith and credit as set forth under this chapter is presumed valid. To overcome that presumption, an objecting party must demonstrate that:

(A) The judgment was rendered by a process that does not assure the requisites of an impartial administration of justice, including but not limited to due notice and a hearing;

(B) The foreign court lacked personal or subject-matter jurisdiction;

(C) The foreign judgment was obtained by fraud, duress, or coercion;

(D) The cause of action which the judgment is based is repugnant to the public policy or the tribal customs of the Tribe;

(E) The judgment involves enforcement of child custody provisions where:

(1) The foreign court did not have jurisdiction over the child(ren); or

(2) The provisions of the Indian Child Welfare Act [25 USC 1901-1963] were not properly followed; or,

(3) Due Process was not provided to all interested persons participating in the foreign court proceeding; or,

(4) The foreign court proceeding violated the public policies, customs and common law of the Tribe.

**2008 Comment**

Rule 10.008 was formerly located under Rule 9.107 of LVD/2003 and prior Court Rules.

**RULE 10.009 NOTICE OF REGISTRATION OF FOREIGN JUDGMENT; GENERALLY.**

Upon the filing of the foreign judgment, attestation, affidavit and filing fee, if applicable, the clerk of court shall promptly mail notice of the filing of the foreign judgment along with a copy of the foreign judgment to all named parties at the address provided by the party seeking enforcement of said judgment.

**2001 Comment**

This Rule in its present form blends the corresponding provisions as formerly contained under Rule 1.308 of the Lac Vieux Desert Court Rules of 1999.

**2008 Comment**

This Rule was formerly located under Rule 9.108 of LVD/2003 and former Court Rules.

**RULE 10.010 APPEAL; STAY OF EXECUTION; STAY OF PROCEEDINGS.**

If the objecting party satisfies the Court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the Court may stay enforcement of the foreign judgment until the appeal is concluded, or the time for appeal expires, or the stay of execution expires or is vacated.

**2008 Comment**

Rule 10.010 was formerly located under Rule 9.109 of LVD/2003 and former Court Rules.

**RULE 10.011 POSTJUDGMENT PROCEEDINGS OF ENFORCED FOREIGN JUDGMENTS.**

The entry of the order enforcing a foreign judgment by this court shall entitle the judgment holder to enforce its judgment in any manner currently available. The judgment holder of an enforced foreign judgment, may have available the following remedies:

(A) An involuntary payroll withholding of the judgment debtor's Tribal Income until said judgment is satisfied;

(B) An involuntary withholding up to 25% of the judgment debtor's tribal per-capita or any other tribal annuity to be applied to satisfy unpaid balances of civil judgments;

(C) An involuntary withholding up to 65% of the judgment debtor's tribal per-capita or any other tribal annuity to be applied to satisfy unpaid balances of child support obligations.

(D) Banishment from the lands of Lac Vieux Desert until said judgment is satisfied by the judgment debtor.

**2008 Comment**

Rule 10.011 was formerly located under Rule 9.110 of LVD/2003 and former Court Rules.

Subrule (B) now makes reference to the standard in civil judgment withholdings of seizing up to 25% of an individual's annual tribal per capita and/or up to 25% of any lump sum tribal annuity to satisfy money judgment.

**2022 Comment**

Subrule (D) in its present form was formerly numerated as Subrule (C) of Rule 10.011 of LVD/2008, as a result of the displacement of the new provisions of Subrule (C) which include reference to the seizing of up to 65% of an individual's annual tribal per capita and/or up to 65% of any lump sum tribal annuity to satisfy outstanding child support obligations.

**RULE 10.012 SOVEREIGN IMMUNITY**

The Tribe expressly does not waive its immunity from suit with regard to enforcement of a foreign judgment in any post judgment proceedings when the Tribe is served as a garnishee defendant for wages or property of an employee or Tribal member who is a judgment debtor.

**2008 Comment**

This Rule was formerly located under Rule 9.111 of LVD/2003 and former Court Rules.

**SUBCHAPTER 10.100 ENFORCEMENT OF FOREIGN COURT CIVIL JUDGMENTS.****RULE 10.101 EFFECTIVE DATE; APPLICABILITY.**

The rules in this Subchapter are effective February 5, 2001 and govern procedure for the enforcement of all civil judgments from all courts which have accorded reciprocal full faith and credit with the Lac Vieux Desert Band of Lake Superior Chippewa Indians, for the enforcement of recovery of debts, personal property, or damages arising from any cause.

**2008 Comment**

Rule 10.101 was formerly located under Rule 9.201 of LVD/2003.

**RULE 10.102 REGISTRATION OF CIVIL FOREIGN JUDGMENT.**

Any individual or otherwise entity seeking enforcement of a foreign judgment shall file with the Tribal Court:

(A) A copy of the foreign judgment, which has been authenticated by the clerk or register of the foreign court in a certified manner to prove that the copy is a true and correct copy whole of the original foreign judgment; and,

(B) File a sworn affidavit by the Judgment Creditor, or his/her attorney or lay advocate, including, at a minimum the following information:

(1) The names and mailing addresses of the Judgment Debtor and the Judgment Creditor;

(2) That the judgment is final and that no appeal is pending;

(3) That no subsequent orders vacating, modifying or reversing the judgment have been entered in the rendering jurisdiction;

(4) A statement that the person against whom the foreign judgment has been rendered is subject to the jurisdiction of this court with regard to enforcement of said judgment. For the purposes of this provision, “jurisdiction over the person” against whom the foreign judgment has been rendered, includes:

(a) A Tribal member, other Indian person, or non-Indian who is domiciled and/or has property on the Lac Vieux Desert Reservation;

(b) A Tribal member, other Indian person, or non-Indian or entity who is either employed, contracts with the Tribe, or receives annuity benefits from Lac Vieux Desert, regardless of whether that person or entity is domiciled on the Lac Vieux Desert Reservation.

(5) The registrant seeking enforcement of a Foreign Judgment must submit to the Clerk of Tribal Courts a filing fee in the amount of \$50.00

**2001 Comment**

This rule corresponds with Rule 1.307 of the Lac Vieux Desert Court Rule of 1999. Sub (5) of this Rule, in its present form, amends the former filing fee of \$25.00 to \$50.00.

**2008 Comment**

Rule 10.102 was formerly located under Rule 9.202 of LVD/2003.

**RULE 10.103 NOTICE OF REGISTRATION OF CIVIL FOREIGN JUDGMENT.**

Upon receipt of the applicable filing fee, foreign judgment, attestation and affidavit, the clerk of court shall promptly mail notice of the filing of foreign judgment to the judgment debtor at the address provided by the judgment creditor and shall make a note of the mailing in the docket calendar. The notice to the judgment debtor shall include the following:

(A) The name and post office address of the judgment creditor and the judgment creditor’s attorney or lay advocate; and,

(B) A directive that an order entering the enforcement of the foreign judgment shall be entered by the Court within twenty-one (21) days of the same unless the judgment debtor files written objections with the court along with a request for a hearing on the same within said twenty-one (21) day period.

**2008 Comment**

Rule 10.103 was formerly located under Rule 9.203 of LVD/2003.

**RULE 10.104 HEARING; ENTRY OF ORDER.**

If the judgment debtor files written objections and/or requests for hearing within the twenty-one day period as provided for under 10.103, the Clerk of Courts shall send by first-class mail a copy of said written objections and/or request for hearing to the judgment holder or his/her attorney or lay advocate of record. At the same time, or as soon thereafter as practicably possible, the Clerk of Court shall also send by first-class mail a notice of hearing setting forth the date and time of hearing to the judgment holder applicant and the judgment debtor. The judgment debtor at the hearing will be required to show cause why the foreign judgment should not be enforced by this court. At the scheduled hearing, after reviewing all the relevant evidence concerning the foreign judgment, the court shall issue an order either granting or denying enforcement of the foreign judgment.

**2008 Comment**

Rule 10.104 was formerly located under Rule 9.204 of LVD/2003.

**RULE 10.105 NO OBJECTIONS; ENTRY OF ORDER**

Should the judgment debtor elect to not file any written objections and/or does not request a hearing within the twenty-one day period set forth herein, an order granting the enforcement of the foreign judgment shall be issued by the Tribal Court.

**2008 Comment**

This Rule was formerly located under Rule 9.205 of LVD/2003.

**RULE 10.106 POST CIVIL FOREIGN JUDGMENT EXECUTION**

A judgment which has been honored in this court from a foreign court jurisdiction shall entitle the judgment holder to enforce its judgment against the judgment debtor in the manner available under the jurisdiction of the court which rendered the judgment. This includes, but is not limited to, the application of any Postjudgment Garnishments and/or orders of periodic payments issued by a foreign court. Foreign Court postjudgment orders associated with a Foreign Judgment which have been honored by this court, shall be filed with this court before execution thereon.

**2001 Comment**

Rule 9.106 is new. This rule was promulgated as a means of allowing the judgment holder of an honored foreign judgment an acceptable mechanism by which to obtain relief. It is the responsibility of the judgment holder to provide the tribal court with any applicable post judgment foreign court orders for garnishment, period payments and the like.

**2008 Comment**

Rule 10.106 was formerly located under Rule 9.206 of LVD/2003

**SUBCHAPTER 10.200 ENFORCEMENT OF FOREIGN COURT CHILD SUPPORT ORDERS.****RULE 10.201 EFFECTIVE DATE; APPLICABILITY**

**(A) Effective Date.** These rules contained under this Subchapter become effective February 5, 2001.

**(B) Applicability.** These rules govern all proceedings in actions brough hereunder on or after the effective date, and all of the following further proceedings in actions then pending:

(1) All Foreign Court Orders for Child Support Payments regarding the obligation of payment by a duly enrolled tribal member, any other Native American domiciled on the reservation or working

with the Tribe, or any Non-Native American who is domiciled, employed, or contracts with the Tribe, shall be enforced in the manner provided for under this Subchapter.

(2) As used in this Subchapter, the terms “minor” or “child” may include children who have reached the age of majority, where outstanding child support obligations are still then pending, and where the payee is still under Foreign Court Order to pay said child support.

#### **RULE 10.202 REGISTRATION OF CHILD SUPPORT ORDER**

**(A) Registration of Order by Officer of a Foreign Court.** A Clerk of Court, Friend of the Court, Prosecuting Official, or other duly authorized and recognized officer of a foreign court, or a similar officer of the Lac Vieux Desert Tribal Court, seeking enforcement of a foreign judgment of Child Support, shall file with the Lac Vieux Desert Tribal Court a true and correct copy of said judgment.

**(B) Registration of Order other than by Officer of Foreign Court.** Any individual, or otherwise entity, other than a Clerk of Court, Friend of the Court, Prosecuting Official, or other duly authorized and recognized officer of a foreign court, seeking enforcement of a foreign judgment of Child Support with the Lac Vieux Desert Tribal Court shall file:

(1) A copy of the original foreign judgment of child support, which has been authenticated by the clerk or registrar of the foreign court in a certified manner to prove that the copy is a true and correct copy of the whole of the original and/or modified judgment of support; and,

(2) File a statement from an officer of the court stating that there are no subsequent orders vacating, modifying or reversing the judgment of child support being sought for registration and enforcement.

##### **2008 Comment**

This Rule was formerly located under Rule 9.302 of LVD/2003.

#### **RULE 10.203 WAIVER OF REGISTRATION/FILING FEE**

Any Foreign Court Child Support Order which meets the applicable registration guidelines as set forth under these rules, shall be exempt from the otherwise applicable filing fee for Registrations of Foreign Judgment.

##### **2008 Comment**

Rule 10.203 was formerly located under Rule 9.303 of LVD/2003.

#### **RULE 10.204 ENTRY OF FOREIGN COURT CHILD SUPPORT ORDER**

Upon receipt of said Foreign Judgment of Child Support that meets the registration criteria as provided for under the applicable rules of this Subchapter, the Tribal Court shall prepare an Order entering the Foreign Judgment of Child Support and transmit a copy of the same to the individual requesting enforcement of said order, or the court which entered the original order, and to the payee.. It is the responsibility of the individual requesting enforcement of said Order Enforcing the Foreign Court Order to transmit a copy of the same to the proper entity for enforcement.

##### **2008 Comment**

Rule 10.204 was formerly located under Rule 9.303 of LVD/2003.

##### **2022 Comment**

The rule in its present form eliminates the former provision that the court, “(transmit a copy of the Order) to the proper tribal department responsible for garnishing the payee’s wages under the enforced Foreign Judgment for Child Support.” This provision is now supplanted with the provision that it is the Petitioner/Registrants responsibility to perfect post judgment enforcement.

**RULE 10.205 MOTIONS/ORDERS AFFECTING ANNUAL TRIBAL PER CAPITA AND/OR ANY OTHER LUMP SUM PAYMENTS**

**(A) Generally.** All Motions and Orders Seizing an individual's Annual Tribal Per Capita and/or any other Lump Sum Payments due that individual from the Tribe by virtue of his or her membership in the Tribe, shall be effective until the sum total of the money judgment is paid in full.

**(B) Money Disbursement; Rank of Priority.** Rule 10.002 of this Subchapter shall govern the order of priority with respect to Orders Freezing and Seizing Annual Tribal Per Capita and/or any other Lump Sum Payments for a given year:

(1) Child Support. A maximum of Sixty-five (65%) percent of the total of the referenced Annual Tribal Per Capita and/or any other Lump Sum Payment to satisfy Child Support Orders so honored.

(2) Civil Judgments and other Money Judgments. A maximum of Twenty-five (25%) percent of the total of the referenced Annual Tribal Per Capita and/or any other Lump Sum Payment to satisfy Child Support Orders so honored.

**2008 Comment**

This Rule has been adopted effective June 1, 2007. This Rule encompasses the rank of order of priority as provided for under Rule 10.002 of this Subchapter, and also sets to form the differentiation of the maximum allowable percentages subject to seizure to satisfy Child Support and Civil Judgments as well as all other money judgments.

**SUBCHAPTER 10.300 JUVENILE AND ADULT CRIMINAL FOREIGN COURT ORDERS.****RULE 10.301 SCOPE AND EFFECT**

The judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of U.S. Federal Courts, State Courts, and Tribal Courts of federally recognized Indian Tribes, shall be given full faith and credit in the courts and jurisdiction of Lac Vieux Desert, provided that:

(A) The foreign court in which the judgment originated has not declined or refused to accord full faith and credit to the judgments of the courts of Lac Vieux Desert; and,

(B) The individual person or otherwise officer of a foreign court seeking full faith and credit, complies with the procedures set for the under these rules; and,

(C) The discretion of the court is such that in granting full faith and credit, it will serve the best interest of the parties and of the tribe.

**2008 Comment**

Rule 10.301 was formerly located under Rule 9.401 of LVD/2003.

**RULE 10.302 REGISTRATION OF FOREIGN COURT ORDERS.**

**(A) Registration of Order by Officer of a Foreign Court.** A Clerk of Court, Probation Officer, Prosecuting Official, or any other duly authorized and recognized officer of a foreign court, seeking enforcement of a foreign court order under this Subchapter shall file with the Lac Vieux Desert Tribal Court a true and authenticated copy of said order sought for registration.

**(B) Registration of Order other than by Officer of Foreign Court.** Any individual, or otherwise entity, other than a Clerk of Court, Probation Officer, Prosecuting Official, or any other duly authorized and recognized officer of a foreign court, seeking enforcement of foreign court judgment under this Subchapter shall file:

(1) A copy of the relevant order, which has been authenticated by the clerk or register of the foreign court in a certified manner to prove that the copy is a true and correct copy of the whole of the original and/or a copy of a modified order, if applicable; and,

(2) File a statement from an officer of the court rendering the Foreign Judgment under this Subchapter that no subsequent orders vacating, modifying or reversing the judgment has been entered in the rendering jurisdiction.

**2008 Comment**

Rule 10.301 was formerly located under Rule 9.402 of LVD/2003.

**RULE 10.303 WAIVER OF REGISTRATION/FILING FEE**

Any Foreign Court Order associated with this Subchapter which meets the applicable registration guidelines as set forth under Subrule (A) or (B) of Rule 10.302 of this Subchapter, shall be exempt from the otherwise applicable filing fee for Registrations of Foreign Judgments.

**2008 Comment**

Rule 10.303 was formerly located under Rule 9.403 of LVD/2003.

**RULE 10.304 NON ENFORCEABLE OR NON RECOGNIZABLE FOREIGN JUDGMENTS**

A foreign judgment which meets the applications of full faith and credit as set forth under this Subchapter is presumed valid. To overcome that presumption, an objecting party must demonstrate that:

**(A)** The judgment was rendered by a process that does not assure the requisites of an impartial administration of justice;

**(B)** The foreign court lacked personal or subject matter jurisdiction;

**(C)** The foreign court was obtained by fraud, duress, or coercion;

**(D)** The cause of action which the judgment is based is repugnant to the public policy or the tribal customs of the Tribe.

**RULE 10.305 NOTICE OF ENTRY**

Upon entry of an order enforcing a foreign court order the clerk of courts shall promptly cause to have delivered personally or by first-class mail a copy of the Order Enforcing the Foreign Court



Order to the applicant and the defendant. The judgment holder shall be responsible for transmittal of a copy of the same.

**2008 Comment**

Rule 10.305 was formerly located under Rule 9.405 of LVD/2003.

This rule now specifies by former practice, the requirement that in all matters except child support, that the judgment holder be responsible for transmittal of their order to the applicable payer of that order.

**2022 Comment**

The provision requiring the court to be responsible for forwarding the Order Enforcing Foreign Judgment to the Tribal Payroll/Accounting Department are now rescinded and consistent with the provisions of the 2021 amended Rule 10.204 of this Subchapter.

**RULE 10.306 POST JUDGMENT EXECUTION**

A judgment which has been honored in the courts of Lac Vieux Desert under this Subchapter is subject to any subsequent orders vacating, modifying or reversing the judgment so honored.

**2008 Comment**

This Rule was formerly located under Rule 9.406 of LVD/2003.

**SUBCHAPTER 10.400 RECOGNITION AND ENFORCEMENT OF  
FOREIGN COURT SUBPOENAS**

**RULE 10.401 EFFECTIVE DATE; APPLICABILITY.**

The rules in this Subchapter are effective December 27, 2013, pursuant to Court Administrative Order 2013-0002, and governs procedure for the recognition and enforcement of Foreign Court Subpoenas.

**RULE 10.402 RECOGNITION OF COURT ISSUED SUBPOENAS.**

The Lac Vieux Desert Tribal Court will only recognize subpoenas issued by and through Foreign Courts. Subpoenas issued by an individual party or an attorney for party will not be recognized.

**2022 Comment**

Rule 10.402, effective December 27, 2013 and contains the same renumbered provisions as the corresponding Subrule (A), of Rule 10.004 of Administrative Order 2013-0002.

**RULE 10.403 TRIBAL COURT ORDER REQUIRED BEFORE SERVICE.**

Before any foreign court subpoena can be served on any Tribal member, Tribal entity, Tribal employee or person under the jurisdiction of the Tribal Court, or custodian of Tribal papers and records, the Tribal Court shall issue an order allowing for the recognition and enforcement of the subpoena.

**2022 Comment**

Rule 10.403, effective December 27, 2013 contains the same renumbered provisions as the corresponding Subrule (B), of Rule 10.004 of Administrative Order 2013-0002.

**RULE 10.404 REGISTRATION OF FOREIGN COURT SUBPOENA.**

Any foreign court subpoena presented to the Tribal Court for recognition and enforcement must be registered with the Tribal Court. To register a foreign court subpoena, the person seeking recognition and enforcement of a foreign court subpoena shall:

**(A)** File a copy of the foreign court subpoena with the Tribal Court. The foreign court subpoena must be authenticated by the clerk, registrar or administrator of the foreign court in the following manner:

- (1) The clerk, registrar or administrator of the foreign court must attest in writing that:
  - (a) They are the clerk, registrar or administrator of the foreign court;
  - (b) They are the custodian of the records of the foreign court; and,
  - (c) They have compared the attached copy of the foreign court subpoena with the original case on file and of record in the foreign court and have found that the foreign court subpoena is made pursuant to a case pending or finalized on file and of record in the foreign court.
  - (d) The person who signed and issued the subpoena is a sitting judge of the foreign court.

(2) Upon completion of the written attestation, as referenced above, the clerk, registrar or administrator must:

- (a) Sign and date the attestation;
- (b) Affix the seal of the foreign court to the attestation; and,
- (c) Attach a certified copy of the caption page showing the parties names and file or case number from the original foreign court action to the attestation.

**(B)** Pay the filing fee for registering the foreign court subpoena.

**2022 Comment**

Rule 10.404, effective December 27, 2013 contains the same renumbered provisions as the corresponding Subrule (C), of Rule 10.004 of Administrative Order 2013-0002.

**RULE 10.405 NOTIFICATION TO TRIBAL ATTORNEY**

The Tribal Court shall notify the attorney for the Tribe, within Three (3) days, when any foreign court subpoena is received requesting papers or records of the Tribe or requesting that any Tribal member, Tribal officer or employee testify.

**2022 Comment**

Rule 10.405, effective December 27, 2013 contains the same renumbered provisions as the corresponding Subrule (D), of Rule 10.004 of Administrative Order 2013-0002.

**RULE 10.406 NOTICE OF REGISTRATION OF FOREIGN COURT SUBPOENA**

**(A) Notice.** Upon the filing of the foreign court subpoena and filing fee, the Tribal Court must, within Three (3) days, mail, by first class mail, a notice of the filing of the foreign court subpoena along with a copy of the foreign court subpoena to the subpoenaed witness, at the address provided by the party seeking the subpoena, the subpoenaed witness's attorney and Tribal Attorney, and complete proof of service of the same.

**(B) Contents of Notice.** The notice of the filing of the foreign court subpoena shall include the following:

- (1) The name and mailing address of the party seeking the subpoena and that party's attorney, if any; and,
- (2) A statement giving notice that an *Order Granting Recognition of Foreign Court Subpoena* shall be entered by the Tribal Court unless the subpoenaed witness, the subpoenaed witness' attorney

or the Tribal Attorney files a written objection, based upon the grounds set for under Rule 10.408 of this Subchapter, with the Tribal Court within Seven (7) days from the date of service of the notice for a subpoena of a person or Fourteen (14) days from the date of service of the notice for a subpoena of papers or records.

**2022 Comment**

Rule 10.406, effective December 27, 2013 contains the same renumbered provisions as the corresponding Subrule (E), of Rule 10.004 of Administrative Order 2013-0002.

**RULE 10.407 NOTICE OF DEADLINE TO FILE WRITTEN OBJECTION**

**(A)** The Tribal Court must mail a notice to the party seeking the subpoena, the subpoenaed witness, the subpoenaed witness's attorney and the Tribal Attorney that states the subpoenaed witness, the subpoenaed witness's attorney or the Tribal Attorney has Seven (7) days from the date of service of the notice for a subpoena of a person or fourteen (14) days from the date of service of the notice for a subpoena for papers and records to file any written objection to the recognition of the foreign court subpoena.

**(B)** Any objection filed must include a statement of the basis for the objection.

**(C) Entry of Order Absent Objection.** In the event that the subpoenaed witness, the subpoenaed witness's attorney or the Tribal Attorney does not file any written objection within the Seven (7) or Fourteen (14) day period set forth herein, an *Order Granting Recognition of Foreign Court Subpoena* shall be entered by the Tribal Court.

**2022 Comment**

Rule 10.407, effective December 27, 2013 contains the same renumbered provisions as the corresponding Subrule (F), of Rule 10.004 of Administrative Order 2013-0002.

**RULE 10.408 OBJECTION**

Only the person subject to the subpoena, their attorney, or the Tribal Attorney has standing to object to the subpoena under the following conditions:

**(A)** Any objection must be filed in writing with the Court within the objection period set forth under Rule 10.407.

**(B)** The objection must set forth the reasons for the objection to the enforcement of the subpoena and may include one or more of the following grounds:

(1) The foreign court lacks jurisdiction over the person subject to the subpoena;

(2) The subpoena was obtained by fraud, duress, coercion;

(3) The subpoena is repugnant to the public policy of the Band; or,

(4) To honor the subpoena would place the person subject to it in reasonable fear of physical harm or injury.

**(C)** The person filing the objection shall by first-class mail notify the foreign court that issued the subpoena of the objection within Seven (7) days of the receipt of the subpoena.

(D) If the subpoena is for papers or records then the Tribal Court shall, upon the receipt of an objection from the custodian of the papers or records:

(1) Notify the Attorney for the Tribe that an objection has been filed; and,

(2) All the Tribal Attorney to appear on behalf of the custodian.

**2022 Comment**

Rule 10.408, effective December 27, 2013 contains the same renumbered provisions as the corresponding Subrule (G), of Rule 10.004 of Administrative Order 2013-0002.

**RULE 10.409 OBJECTION HEARING**

The Tribal Court shall schedule a hearing as soon as possible but no later than fourteen (14) days after a written objection is received. The Tribal Court shall:

(A) Schedule a hearing on the objection;

(B) Provide notice of the time, date and place of the hearing to the issuing foreign court, the party requesting the subpoena and the person objecting, by first-class mail;

(C) At the hearing the person objecting has the burden of persuasion that the subpoena should not be enforced.

(D) **Order.** The Tribal Court shall issue an Order either granting or denying recognition of the subpoena. The Tribal Court shall enter an order as soon as practicable after the hearing, but no later than Seven (7) days following the Hearing.

**2022 Comment**

Rule 10.409, effective December 27, 2013 contains the same renumbered provisions as the corresponding Subrule (H), of Rule 10.004 of Administrative Order 2013-0002.

**RULE 10.410 APPEAL TO COURT OF APPEALS**

(A) **Appeal of Order Granting Recognition of Foreign Court Subpoena.** The subpoenaed witness, the subpoenaed witness's attorney or the Tribal Attorney may appeal an order granting recognition of a foreign court subpoena to the Court of Appeals within Seven (7) days of the date of service of the order upon the subpoenaed witness, the subpoenaed witness's attorney or the Tribal Attorney.

(B) **Appeal of Denial of Recognition of Foreign Court Subpoena.** The party seeking the subpoena or the attorney of the party seeking the subpoena may appeal the denial of recognition of a foreign court subpoena to the Court of Appeals within seven (7) days of the date of service of the order denying recognition upon the subpoenaed witness and the subpoenaed witness's attorney.

(C) **Stay of Execution of Tribal Court Order.** If an appeal is filed in an action any party may request a stay of execution from the Tribal Court within Seven (7) days after the date of service of an order or ruling of the Tribal Court.

**2022 Comment**

Rule 10.410, effective December 27, 2013 contains the same renumbered provisions as the corresponding provisions (A), (B) and (C) entitled *Appeal to the Court of Appeals* of Administrative Order 2013-0002.

## **SUBCHAPTER 10.500 EXTRADITION PROCEDURE**

### **RULE 10.501 EFFECTIVE DATE; APPLICABILITY.**

The rules in this Subchapter are effective March 21, 2017, pursuant to Court Administrative Order 2017-0001, and governs procedure concerning any person subject to the jurisdiction of the Lac Vieux Desert Band of Lake Superior Chippewa Indians located within the exterior boundaries of the Tribe's reservation who is subject to a foreign jurisdiction's arrest warrant and the transfer of custody of to said jurisdiction upon extradition.

#### **2022 Comment**

Rule 10.501, effective March 21, 2017 contains the same renumbered provision as the corresponding Subrule (1) of Rule 10.307 of Administrative Order 2017-0001.

### **RULE 10.502 EXTRADITION PETITION; REQUEST TO REGISTER**

A written request seeking the extradition of any person found within the exterior boundaries of the Lac Vieux Desert Reservation, to any foreign jurisdiction, state, tribal, or federal, due to the issuance of an arrest warrant by the foreign jurisdiction, shall be submitted to the Lac Vieux Desert Tribal Court by the Lac Vieux Desert Tribal Police Department and/or the Tribal prosecuting attorney in the form of an extradition petition and request for registration of a foreign court order, which shall be accompanied by:

- (A) A certified exemplified copy of the foreign court warrant; or,
- (B) Other reliable information that the foreign court warrant exists.

#### **2022 Comment**

Rule 10.502 effective March 21, 2017 is new and contains the same renumbered provisions as the corresponding Subrule (2), paragraphs (a) and (b) of Rule 10.307 of Administrative Order 2017-001.

### **RULE 10.503 REGISTRATION OF FOREIGN COURT WARRANT**

A Lac Vieux Desert Tribal Court judge or magistrate, upon receiving an extradition petition as required in Rule 10.502 of these rules, shall review the foreign court warrant as to whether it was issued by the foreign court, the date of issuance, offense charged, and the person named therein for the purpose of determining the warrant's apparent validity. If the tribal court judge or magistrate is satisfied with the validity of the foreign court warrant, the judge or magistrate shall register the foreign court warrant and issue a tribal bench warrant for the arrest of the person named therein. Such warrant shall empower tribal police to take the individual into custody and bring him/her before a Lac Vieux Desert Tribal Judge or Magistrate in accordance with Rule 10.504 below.

#### **2022 Comment**

Rule 10.503 effective March 17, 2017 is new and contains the same renumbered provisions as the corresponding Subrule (3) of Rule 10.307 of Administrative Order 2017-001.

### **RULE 10.504 TAKING INTO CUSTODY**

Once the person suspected of being the individual named in the extradition request is in the custody of the tribal police, the police shall immediately do the following:

(A) Notify the jurisdiction which issued the request, the tribal court, and the tribal prosecuting attorney's office, that the person has been arrested and is in custody; and,

(B) Take the arrestee before a tribal judge or magistrate for arraignment on the bench

warrant, unless the arrestee waives as provided in Subrule (F) of this rule.

**2022 Comment**

Rule 10.504, effective March 17, 2017 is new and contains the same renumbered provisions as the corresponding Subrule (4), paragraphs (a) and (b) of Rule 10.307 of Administrative Order 2017-0001

**RULE 10.505 WARRANTLESS ARREST**

In the event of a warrantless arrest, the procedure outlined in Rules 10.502, 10.503 and 10.504 of this Subchapter may be followed subsequent to such warrantless arrest.

**2022 Comment**

Rule 10.505, effective March 17, 2017, is new and contains the same renumbered provisions as the corresponding Subrule (5) of Rule 10.307 of Administrative Order 2017-0001

**RULE 10.506 WAIVER OF EXTRADITION HEARING**

The tribal police or prosecuting attorney may inform the arrestee of the extradition request and the right to waive arraignment and the extradition hearing. The arrestee may in writing waive the right to an extradition hearing in which case an order allowing his/her removal and delivery to the agent of the jurisdiction seeking extradition shall be forthwith entered without a hearing. Such written waiver must be signed by the arrestee, and signed and certified by a tribal court judge or magistrate.

**2022 Comment**

Rule 10.506, effective March 17, 2017, is new and contains the same renumbered provisions as the corresponding Subrule (6) of Rule 10.307 of Administrative Order 2017-0001

**RULE 10.507 EXTRADITION ARRAIGNMENT**

At the arraignment, the tribal court shall inform the person of the demand made for his or her surrender in the petition for extradition and request for registration of a foreign court order, and of the crime with which he or she is charged in the foreign court warrant, and that he or she has a right to representation of legal counsel at his or her own expense or that an attorney may be appointed if the arrestee qualifies for appointed counsel, and the right to apply for a writ of habeas corpus with the federal court and/or to request an evidentiary hearing to challenge the extradition request. If a hearing is requested, the judge shall fix a reasonable time for the hearing and make a determination regarding bond. The tribal court shall also inform the arrestee of the right to waive the extradition hearing. Any such waiver shall be in writing as provided in Subrule (E). If the hearing is waived, the person shall promptly be turned over to the custody of the agent of the jurisdiction seeking extradition.

**2022 Comment**

Rule 10.507, effective March 17, 2017, is new and contains the same renumbered provisions as the corresponding Subrule (7) of Rule 10.307 of Administrative Order 2017-0001

**RULE 10.508 EXTRADITION HEARING**

(A) The Tribal Prosecuting Attorney shall appear in the Tribal Court at the extradition hearing to represent the petitioner. The burden is on the petitioner to show probable cause that the person in custody and before the court (the arrestee) is the same person named in the extradition petition and charged in the warrant of the jurisdiction seeking extradition.

**(B)** At the hearing, if the tribal judge finds that there is probable cause to believe that the arrestee is the same person named in the extradition petition and charged in the warrant of the jurisdiction seeking extradition, an order shall be issued authorizing extradition to such jurisdiction. Guilt or innocence of the accused shall not be an issue. Accordingly, evidence of guilt or innocence is irrelevant except insofar as it would assist in identifying the arrestee.

**(C)** The rules of evidence do not apply except with regard to privileges.

**2022 Comment**

Rule 10.508, effective March 17, 2017, is new and contains the same renumerated provisions as the corresponding Subrule (8) of Rule 10.307 of Administrative Order 2017-0001

## CHAPTER 11. APPELLATE RULES

Effective December 27, 1994  
Including Amendments Received Through  
September 1, 2022

*[This Chapter was formally located under Chapter 9 of LVD/1999]*

### SUBCHAPTER 11.000 GENERAL PROVISIONS

#### RULE 11.001 APPLICABILITY; SCOPE.

**(A)** These rules apply to appeals to the Lac Vieux Desert Appellate Court from the Lac Vieux Desert “Trial Court”. For the purpose of this Chapter, “Trial Court” shall be construed to mean any adjudicated matter of first instance in any matter adjudicated by the Lac Vieux Desert Tribal Trial Court.

**(B)** An order or judgment of a trial court reviewable by the Appellate Court may be reviewed only by an appeal.

**(C)** This rule does not restrict or enlarge the right of review provided by law or make an order or judgment reviewable if it is not otherwise reviewable.

**2001 Comment**

This Rule has been renumbered from former Rule 9.001 of LVDCR/1999

**2008 Comment**

Rule 11.001 was formerly located under Rule 10.001 of LVDCR/2003

#### RULE 11.002 DEFINITIONS

**(A)** “Agency” means a Tribal Department, Bureau, Section, Board, Commission, or any other authority or office created by the Lac Vieux Desert Tribal Constitution, Statute or Tribal Council act from whose decision in a contested case an appeal to the Appellate Court is authorized by Law. It does not include the Legislative, Executive, or Judicial branches of Tribal Government.



**(B)** “Contested Cases” means a proceeding by any agency in which a determination of legal rights, duties, or privileges of a named party is required by law or by that agencies policies and procedures to be made by an agency after an opportunity of an evidentiary hearing.

**(C)** “Court” means the Lac Vieux Desert Tribal Court.

**(D)** “Decision” means either a determination, opinion, or order of an agency in a contested case, or a preliminary, procedural, or intermediate agency action or ruling.

**2001 Comment**

This Rule has been renumeralated from the former Rule 9.002 of LVDCR/1999.

**2008 Comment**

This Rule was formerly located under Rule 10.002 of LVDCR/2003.

### **RULE 11.003 APPEALS OF CRIMINAL MATTERS**

**(A) Generally.** All decisions, orders, or judgments of the Criminal Trial Division of Tribal Court may be appealed as a matter of right to the Appellate Division.

**(B) Time for Taking Appeal.** In criminal matters, an appeal from the Trial Division of Tribal Court must be taken within:

(1) Twenty-one (21) days after the entry of the order or judgment appealed from; or

(2) Twenty-one (21) days after the entry of an order denying a motion for a new trial or judgment notwithstanding the verdict, if the motion was filed within the original twenty-one day period.

**2001 Comment**

This Rule has been renumeralated from former Rule 9.003 of LVDCR/1999.

**2008 Comment**

Rule 11.003 was formerly located under Rule 10.003 of LVDCR/2003.

### **RULE 11.004 APPEALS OF CIVIL MATTERS**

**(A) Generally.** In civil matters, a party seeking to appeal shall, in addition to filing a notice of appeal, concurrently file with the Appellate Division a statement setting forth concisely the reason or reasons for the party’s belief that there is a compelling reason for acceptance of such an appeal prior to the judgment or order of the Court. The Appellate Court shall then consider the merit of the grounds for the appeal and enter an order either granting or denying leave to appeal.

**(B) Time for Taking Appeal.** An appeal to the Appellate Division of all decisions, orders or judgments of the Civil Division of the Trial Court must be taken within:

(1) Twenty-one (21) days after the filed order or judgment appealed from; or,

(2) Twenty-one (21) days after the filed order denying a motion for a new trial or judgment notwithstanding the verdict, if the motion was filed within the original twenty-one (21) day period.

**2001 Comment**

This Rule has been renumeralated from former Rule 9.004 of LVDCR/1999.

**2008 Comment**

Rule 11.004 was formerly located under Rule 10.004 of LVDCR/2003.

### **RULE 11.005 APPEALS FROM ADMINISTRATIVE AGENCIES**

Any party who is aggrieved by any order, commitment or judgment by an Administrative Agency shall be granted an appeal by right. An appeal from an Administrative Agency shall be considered as a new hearing in the matter, and any Trial Court decision may be then appealed from consistent with the provisions of this chapter. Before any appeal from an administrative agency can be heard, the moving party must submit proof to the court that all administrative remedies have been exhausted.

**1999 Comment**

This Rule in its present form relating to appeals from Administrative Agencies was previously found under LVDCR/1994, Rule 8.203 "Right to Appeal to Tribal Court".

**2001 Comment**

This Rule was formerly located under Rule 9.005 of LVDCR/1999.

**2008 Comment**

This Rule was formerly located under Rule 10.005 of LVDCR/2003.

### **RULE 11.006 APPEALS FROM CHILDREN'S COURT MATTERS**

**(A) Generally.** All decisions, orders, or judgments of the Children's Division of the Tribal Court which are final and not scheduled for review, may be appealed as a matter of right to the Appellate Division.

**(B) Time for Taking Appeal.** In all Children's Court matters which are final concerning Termination of Parental Rights, Custody and Adoptions must be taken within:

- (1) Twenty-one (21) days after the entry of the final order or judgment;
- (2) Twenty-one (21) days after the entry of an order denying a motion for a new hearing or judgment, if the motion was filed within the original twenty-one day period.

**2001 Comment**

This rule is new and has been added herein to be consistent with the provisions of Rule 6.303(C)(1) of these Court Rules. The intent of this rule is to provide a deliberate provision whereby orders which are final in the Children's Division may be reviewed.

**2008 Comment**

Rule 11.006 was formerly located under Rule 10.006 of LVDCR/2003.

### **RULE 11.007 MANNER OF TAKING APPEAL**

**(A)** Within the time for taking an appeal, an appellant must file a claim of appeal with the Tribal Clerk of Courts and pay the fee, if applicable, as required in this Chapter. The parties shall be named and shall be designated "appellant" and "appellee". At a minimum the claim must contain and state:

- (1) The name of the aggrieved party claiming an appeal;
- (2) The date the trial judgment was entered, as well as the trial level case number;
- (3) State the question(s) presented on appeal.

**(B) Other Requirements.** With the exception of Administrative Appeals, in addition to doing the acts previously required in this Chapter, the appellant must do the following:

- (1) Order in writing a copy of the full transcript of the trial level hearing. On appellant's motion, with notice to the appellee, the court may waive this provision, or order that a lesser portion of the proceedings be filed by the appellant.

(2) If a transcript of the relevant proceedings cannot be obtained, the parties may agree on a statement of facts without procuring the transcript and the statement signed by the relevant parties may be filed with the Tribal Court Clerk and sent as the record of testimony in the action.

(3) If a transcript of the relevant proceedings cannot be obtained, and the parties cannot agree as to a statement of facts, the Appellate Court may order oral arguments from the parties. The length and subject matter of such oral arguments shall be determined at the sole discretion of the Appellate Judge.

**2001 Comment**

This Rule has been renumbered from former rule 9.006 of LVDCR/1999.

**2008 Comment**

Rule 11.007 was formerly located under Rule 10.007 of LVDCR/2003.

**RULE 11.008 NOTIFICATION OF PARTIES**

**(A) Generally.** After filing a claim of appeal, the Clerk of Tribal Courts shall notify all parties to any appellate proceeding that an action has been filed.

**(B) Civil Appellate Determination.** The Appellate Court in determining whether to grant the appeal in civil matters, may do the following:

(1) Direct the Tribal Court Clerk to schedule a time and place for an Appellate Determination Hearing; whereby the clerk shall send out such notices to all involved parties; or,

(2) The Appellate Court may summarily decide whether the Appeal has merits to be heard without a Appellate Determination Hearing.

**(C) Appellate Determination Hearing.** If the Appellate Court decides to hold a Appellate Determination Hearing, such notices shall be sent by the Clerk of Courts informing all relevant parties of the time and place for such hearing.

**2001 Comment**

This Rule was formerly located under Rule 9.007 of LVCCR/1999.

**2008 Comment**

Rule 11.008 was formerly located under Rule 10.008 of LVDCR/2003.

**2022 Comment**

Subrule (A) of Rule 11.008 now removes the language of the former LVD/2008 Rule 11.008 which read that the Chief Tribal Court Judge assign the Appellate Judge.

Subrule (B) of Rule 11.008 in its present form strikes the language “.... Upon being assigned, the Appellate Judge..” and now makes reference generically to “the Appellate Court”. The changes in reference are intended to conform with Lac Vieux Desert Band of Lake Superior Chippewa Judicial Ordinance of 2010, Section V. “Composition of the Court of Appeals” which provides that a Three Judge Panel, appointed by the Tribal Council, to sit as the Appellate Court. The referenced Ordinance was enacted, August 27, 2010, Tribal Council Resolution Number 2010-042, and changes herein made pursuant to Administrative Order 2013-001, January 10, 2013..

**RULE 11.009 APPELLEE’S APPEARANCE; CROSS APPEAL**

**(A) Notice of Appearance.** Within 14 days after being served with the claim of appeal, the appellee must file an appearance in the Appellate Court and file exhibits in his/her possession with the Clerk of Court.

**(B) Cross Appeal.** The Appellee may take a cross appeal by filing a claim of cross appeal with his or her appearance. The provisions of this rule regarding an appeal govern a cross appeal with the exception of the filing fee. If a cross appeal is filed, the appellant shall be refunded one-half

of the filing fee paid, and the party filing the Cross Appeal shall pay that one-half of said filing fee paid.

**2001 Comment**

This Rule was formerly located under Rule 9.009 of LVDCR/1999.

**2008 Comment**

Rule 11.009 was formerly located under Rule 10.009 of LVDCR/2003.

**RULE 11.010 APPELLATE BRIEFS; REQUESTS FOR ORAL ARGUMENT**

**(A) Filing of Briefs.** Within Twenty-one (21) days after the Court Clerk notifies the parties that the record of appeal has been filed, the appellant must file a brief with the Tribal Clerk of Courts, and must also service a copy of the brief on the appellee. The Appellee may file a brief with the Court within Twenty-one (21) days of receiving the Appellant's brief. The Appellee's brief must also be served upon the Appellant.

**(B) Request for Oral Argument.** A party who has filed a timely brief is entitled to request oral argument. Oral argument shall be granted at the sole discretion of the Appellate Court and such a request should be typed in boldface type on the bottom of the title page of the party's brief.

**2001 Comment**

This Rule has been renumbered from former Rule 9.010 of LVDCR/1999.

**2008 Comment**

Rule 11.010 was formerly located under Rule 10.010 of LVDCR/2003.

**RULE 11.011 DISMISSAL FOR FAILURE TO FILE BRIEF**

**(A)** An Appellee is not required to file an Appellate Brief, but if the Appellant fails to file a brief within the time period provided for under Rule 11.010 of this Chapter, and the Appellate Division has not allowed for further time, the appeal may be considered abandoned, and the Court may dismiss the Appeal on Seven (7) days notice to the parties.

**(B)** If the appellant failing to file a Appellant Brief within the Twenty-one (21) days shows cause why said brief has not been filed within the required time, the Appellate Court, at its sole discretion, may accept a late brief or grant an extension of time to file the brief.

**2001 Comment**

This Rule was formerly located under Rule 9.012 of LVDCR/1999.

**2008 Comment**

This Rule was formerly located under Rule 10.011 of LVDCR/2003.

**2022 Comment**

Language of Rule 11.011 (B) which refers to "Appellate Judge" is now supplanted with "Appellate Court".

**RULE 11.012 SETTING FOR HEARING/ NOTIFICATION OF DISPOSITION**

**(A)** No more than Twenty-eight (28) days after the Appellee's brief is filed, the Clerk of Court shall:

(1) Schedule a date and place for oral argument, and notify the parties either through personal service or mail of said date and place for a hearing; or

(2) If neither party has requested oral argument, submit the file to the Judge to whom the appeal is assigned for decision.

**(B)** After the appeal is decided or dismissed, the Court Clerk shall promptly send the involved parties copies of the judgment, order, or opinion as entered.

**2001 Comment**

This Rule has been renumbered from former Rule 9.012 of LVDCR/1999.

**2008 Comment**

Rule 11.012 was formerly located under Rule 10.012 of LVDCR/2003.

## **SUBCHAPTER 11.100 OPINIONS, ORDERS, AND JUDGMENTS OF THE APPELLATE COURT**

### **RULE 11.101 APPELLATE DIVISION**

**(A)** The Appellate Division may, with or without a written opinion, do any of the following at the conclusion of its deliberations:

- (1) Sustain the Trial Division decision;
- (2) Sustain such decision in part and reverse in part;
- (3) Reverse the Trial Division decision.

**(B)** In any case where the Trial Court decision is not sustained in full, the Appellate Court may:

- (1) Remand the matter to the Trial Division for further proceedings consistent with its decision; or,
- (2) Enter an order or judgment with respect to the question presented on appeal, consistent with its decision, and which shall be depositive of the issue and the case.

**2001 Comment**

This Rule was formerly located under Rule 9.101 of LVD/1999.

**2008 Comment**

Rule 11.101 was formerly located under Rule 10.101 of LVD/2003.

### **RULE 11.102 OPINIONS OF THE COURT**

**(A)** Decisions of the Appellate Court shall be placed in writing and signed by the participating Appellate Judge, and shall forthwith be transmitted to the Clerk of the Tribal Court to be distributed to all parties in the matter.

**(B)** Under the rule of stare decisis only published opinions shall be precedentially binding. An opinion to be published must be written and bear the presiding Judge's name, the writer's name, or the label "per curiam" or "memorandum" opinion.

**2001 Comment**

This Rule was formerly located under Rule 9.102 of LVD/1999.

**2008 Comment**

Rule 11.102 was formerly located under Rule 10.102 of LVD/2003.

### **RULE 11.103 PROCEDURE AND STANDARDS FOR PUBLICATION**

#### **(A) Procedure.**

(1) An opinion may be written by the presiding Appellate Judge, or by any other officer of the Court with approval of the presiding Appellate Judge.

(2) The decision to be published shall be deposited with the Tribal Clerk of Court who is responsible for publication of such decisions. Published opinions shall be kept in the Court Clerk's office or the Courtroom, and shall be available for public inspection by any member of the Lac Vieux Desert Community.

#### **(B) Standards for Publication.** A court opinion must be published if it:

- (1) Established a new rule of law;
- (2) Construes a provision of the constitution, statute, ordinance, or court rule;
- (3) Alters or modifies an existing rule of law or extends the matter to a new factual context;
- (4) Reaffirms a principle of law not applied in a recently reported decision;
- (5) Involves a legally issue of continuing public interest;
- (6) Criticizes existing law; or,
- (7) Creates or resolves an apparent conflict of authority, whether or not the earlier opinion was reported.

#### **2001 Comment**

This Rule was formerly located under Rule 9.103 of LVD/1999.

#### **2008 Comment**

Rule 11.103 was formerly located under Rule 10.103 of LVD/2003.

## **SUBCHAPTER 11.200 COMPOSITION, OPERATION AND OFFICERS OF THE TRIBAL COURT OF APPEALS**

### **RULE 11.201 GENERALLY**

The Lac Vieux Desert Tribal Appellate Court shall be the final trier of justiciable controversy in the Lac Vieux Desert Tribal Court system. The filing of a petition with the Appellate Court does not stay enforcement of the decision or order of which review is sought unless ordered by the presiding Trial Judge who heard the case or subsequently ordered by the Appellate Court before whom the matter is pending.

#### **2001 Comment**

This Rule has been renumbered from former LVD/1999 of Rule 9.201

#### **2008 Comment**

Rule 11.201 was formerly located under Rule 10.201 of LVD/2003.

### **RULE 11.202 APPELLATE JUDGES**

**(A) Generally.** It is the Appellate Court's sole discretion as to whether to hear a case on Appeal which is not appealable by right.

**(B) Number.** The Appellate Court shall consist of a Three Judge Panel, as appointed from time to time and for a term designated by the Lac Vieux Desert Tribal Council.

**2001 Comment**

This Rule was formerly located under Rule 9.203 of LVD/1999.

**2008 Comment**

Rule 11.202 was formerly located under Rule 10.202 of LVD/2003.

**2022 Comment**

Pursuant to Administrative Order 2013-001, effective January 10, 2013, the LVD/2008 Court Rule reference made under Subrule (A) to the Chief Judge of Tribal Court designating the Appellate Judge to hear any particular appeal has been stricken.

Administrative Order 2013-001 also strikes the language contained in Subrule (B) of this Rule which formerly read that, "...only one Judge shall preside over any Appellate matter."

Former Subrule (C) "Removal of Appellate Judge" has been completely stricken and removed pursuant to the Court's Administrative Order 2013-001.

Rule 11.202's counterpart, Rule 11.204 "Assignment of Presiding Appellate Judge" of LVD/2008 has now been completely stricken from the Lac Vieux Desert Court Rules, effective January 10, 2013.

The rationale for the 2013 changes to LVD/2008 Rule 11.202 as well as the striking completely of LVD/2008 Rule 11.204 are provided for in Court Administrative Order 2013-001, effective January 10, 2013, which reads: *The first sentence of LVD/2008- 11.202(A), that provides that the "Chief Judge of the Lac Vieux Desert Tribal Court shall designate the Appellate Judge, " conflicts with the Constitutional mandate that the Tribal Council shall determine the composition of the Court of Appeals. The Chief Judge of the LVD Tribal Court playing any part in designating an Appellate Judge, whether in a particular case or for all cases on appeal, would be an encroachment or subversion of the Constitutionally designated power of the Tribal Council to compose the Court of Appeals as explicitly prescribed in Article V, Section 3(b). The first sentence of LVD/2008- 11.202(A) also arguably encroaches on the power vested in the Tribal Council in Article V, Section 4(a). The directive in LVD/2008- 11.202(B), that "only one judge shall preside over any Appellate matter," conflicts with the Constitutional mandate that the composition of the Court of Appeals is the authority of the Tribal Council. The same applies to that portion of LVD/2008- 11.204, which provides that "[t]he Chief Judge of the Lac Vieux Desert Tribal Court shall assign the Appellate Judge to hear a matter up for appeal, is contrary to Article V, Section 3(b).*

### **RULE 11.203 COURT OF APPEALS CLERK**

The Tribal Clerk of Courts shall act in the capacity of the Appellate Clerk of Court. The duties of the Tribal Appellate Court Clerk are:

**(A)** To act as a liaison between the Appellate Judge and the parties involved in the appeal;

**(B)** To accept filing fees;

**(C)** To accept documents and file such documents with the court;

**(D)** To keep a record of all decisions and opinions;

**(E)** To publish such opinions as directed by the court.

**2001 Comment**

This Rule was formerly located under Rule 9.203 of LVD/1999.

**2008 Comment**

This Rule was formerly located under Rule 10.203 of LVD/2003.

### **RULE 11.204 ASSIGNMENT OF PRESIDING APPELLATE JUDGE**

Assignments to any vacancies which may occur in the composition of the Three Judge Appellate Panel shall be made and appointed by the Lac Vieux Desert Tribal Council.

**1999 Comment**

This rule in its present form adds the provision for the Chief Tribal Court Judge's determination as to the appropriate level of compensation to the former provision contained in LVD/1994.

**2001 Comment**

This Rule was formerly located under Rule 9.204 of LVD/1999.

**2008 Comment**

Rule 11.204 was formerly located under Rule 10.204 of LVD/2003.

**2022 Comment**

The provisions of Rule 11.204 of former LVD/2008 has been rescinded in its entirety by virtue of Tribal Resolution No. 2010-042, enacted August 27, 2010. The former rule vested the authority of assigning an Appellate Judge, as well as determining the appropriate level of compensation for the functions performed.