

POTAWATOMI LAW AND ORDER CODE

**TITLE 4
CIVIL PROCEDURE**

**CHAPTER 4-1
GENERAL PROVISIONS**

These provisions and rules shall be known as the Prairie Band of Potawatomi's Code of Civil Procedure. The Court shall exercise these procedures in all cases which are civil in nature. These rules shall be construed to secure the just, speedy, and inexpensive determination of every action.

Section 4-1-1. No effect upon Sovereign Immunity.

Nothing in this Title shall be construed to be a waiver of the sovereign immunity of the Tribe, its officers, employees, agents, or political subdivisions or to be a consent to any suit beyond the limits now or hereafter specifically stated by Tribal law.

Section 4-1-2. Declaratory Judgment.

The Court, in any actual controversy before it, shall have the authority to declare the rights of the parties in that suit in order to resolve disputes even though a money judgment or equitable relief is not requested or not due.

Section 4-1-3. Effect of Previous Court Decisions.

All previous decisions of the Courts, insofar as they are not inconsistent with these provisions or rules, shall continue to have precedent value in the Court.

Section 4-1-4. Definitions.

- (A) **Claim.** "Claim" means any right of action which may be asserted in a civil action or proceeding and includes, but is not limited to, a right of action created by statute.
- (B) **Counterclaim.** "Counterclaim" means a claim presented by the defendant which opposes or reduces the original claim by alleging another's liability and if established will defeat or reduce the original claim.
- (C) **Joinder.** "Joinder" means the joining of persons or elements in a legal action or proceeding that will not deprive the Court of jurisdiction over the subject matter.
- (D) **Judgment.** "Judgment" means a final determination of the rights of the parties in an action, including those determined by a decree and any order from which an appeal lies.

CHAPTER 4-2
COMMENCEMENT OF ACTION:
PLEADINGS, MOTIONS AND ORDERS

Section 4-2-1. Commencement of Action.

A civil action is commenced by filing a complaint with the Court. Upon the filing of a complaint with the Court, the action is pending. While an action is pending, no third person shall acquire an interest in the subject matter of the suit as against the plaintiff's title, unless service of process is made upon the defendant within one hundred twenty (120) days after the filing of the petition. No action pending shall constitute notice with respect to any real property or personal property located within the Tribal jurisdiction until a notice is filed in the office of the Clerk of the Court.

Section 4-2-2. Pleadings and Motions.

(A) **Pleadings.** There shall be a complaint and an answer. No other pleading shall be allowed, except that the Court may order a reply to an answer or a third party answer. All pleadings shall be liberally construed so as to do substantial justice.

(B) **Motions and Other Papers.** An application to the Court for an order shall be by motion which, unless made during a hearing or trial, and:

- (1) be in writing;
- (2) state the grounds, and
- (3) set forth the relief or order sought.

(C) All pleadings and motions shall be signed by the party, or an attorney or advocate of record, with his individual name, address and telephone number. The signature constitutes a certificate that the pleading or motion has been read; that the information and belief with grounds to support is to their best knowledge; and that it is not interposed for delay.

Section 4-2-3. General Rules.

(A) **Consistency.** Each allegation or assertion of a pleading shall be simple, concise, and direct. No technical forms of pleadings or motions are required, but shall follow the general form as prescribed.

(B) **Complaint.** A pleading which sets forth a claim for relief shall contain

- (1) a statement of the claim showing the relief entitled, and
- (2) a demand for judgment for the relief to which he deems himself entitled.

(C) **Answer.** A party shall state his defenses to each claim asserted and shall admit or deny the allegations upon which the adverse party relies. If he is without knowledge or

information sufficient to form a belief as to the truth of an allegation, he shall so state and this has the effect of a denial.

(1) A party shall serve his answer within twenty (20) days after the service of process upon him, except when service is made under Section 4-2-8 and a different time is prescribed by Court order or statute.

(2) Within the time in which an answer may be served, a party may file an entry of appearance and reserve twenty (20) additional days to answer or otherwise defend. An entry of appearance shall extend the time to respond twenty (20) days from the last date for answering.

Section 4-2-4. General Form.

(A) **Caption.** All forms shall contain a caption setting forth the name of the Court, the name of parties, the type of the action, and the file number.

(B) **Separate Statements.** All allegations or assertions of a claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances.

(C) **Exhibits.** A copy of any written instrument which is an exhibit to a pleading, motion, or a brief may be adopted or referenced thereafter.

Section 4-2-5. Judgment on the Pleadings.

After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. The motion shall be treated as one for summary judgment. Every motion to dismiss shall be accompanied by a concise brief in support of that motion unless waived by order of the Court.

Prior to granting a motion to dismiss an action, the Court shall grant leave to amend, if the defect can be remedied, and shall specify the time within which an amended pleading shall be filed. Absent good cause for a shorter or longer time, an amended pleading shall be ten (10) days. If the amended pleading is not filed within the time allowed, final judgment of dismissal with prejudice shall be entered.

Section 4-2-6. Counterclaims.

(A) **Maturing or Acquired After Pleading.** A claim which either matured or was acquired, after the pleading may, with the permission of the Court, be presented as a counterclaim by a supplemental pleading or amended pleading.

(B) **Joinder.** Persons or claims other than those made in the original action may be joined as a counterclaim in accordance with the provisions of Section 4-4-2.

Section 4-2-7. Counterclaim Effect on Statutes of Limitation.

- (A) Where a counterclaim and the claim arise out of the same transaction or occurrence, the counterclaim shall not be barred by a statute of limitation.
- (B) Where a counterclaim and the claim do not arise out of the same transaction or occurrence, the counterclaim may be barred by a statute of limitation.
- (C) Where a counterclaim was barred by a statute of limitation before the claim of the opposing party arose, the barred counterclaim cannot be used for any purpose.

Section 4-2-8. Amended and Supplemental Pleadings.

- (A) **Amendments.** A party may amend his pleading once if the action has not been placed upon the trial calendar; he may amend it at any time within twenty (20) days after it is served; otherwise, a party may amend his pleading only by leave of the Court or by written consent of the adverse party. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading, whichever period may be the longer, unless the Court otherwise orders.
- (B) **Relation Back of Amendments.** An amendment changing the party against whom a claim is asserted relates back if the party to be brought in by amendment
 - (1) has received such notice of the action that he will not be prejudiced in maintaining his defense on the merits, and
 - (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against him.
- (C) **Supplemental Pleadings.** A supplemental pleading will relate back to the original pleading if it arises out of the conduct, transaction, or occurrence set forth in the original pleading.

Section 4-2-9. Pre-trial Conference.

- (A) In any action, the Court may in its discretion direct the parties to appear before it for a conference to consider such matters which may aid in the disposition of the action.
- (B) The Court shall make an order which recites the action taken at the conference and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice.

Section 4-2-10. Dismissal of Actions.

- (A) **Voluntary Dismissal By Plaintiff.** Subject to provisions of Section 902 an action may be dismissed by the plaintiff without order of Court by filing a notice of

dismissal at any time before service by the adverse party of an answer or of a motion of summary judgment, whichever first occurs, or by filing a stipulation of dismissal signed by all parties who have appeared in the action.

(B) Involuntary Dismissal By Defendant. The defendant, without waiving his right to offer evidence, may move for dismissal on the ground that:

(1) The plaintiff has failed to prosecute, or to comply with procedures, Court rule, or any order of the Court.

(2) The facts and the law the plaintiff has shown no right to relief. The Court may then determine the facts and render judgment. A dismissal on the merits operates as adjudication upon the merits, unless otherwise specified.

CHAPTER 4-3 PROCESS, SUMMONS, SUBPOENAS

Section 4-3-1. Issuance of Summons.

Upon filing the complaint the Court Clerk shall issue a summons and deliver the summons and complaint for service of process to a person appointed by the Court to serve it.

Section 4-3-2. Form of Summons.

The summons must follow the substantial form in Subsection 4-2-4(A) and shall:

- (A)** be directed to an individual,
- (B)** include addresses of all parties,
- (C)** specify an exact time to appear or defend,
- (D)** give notification for failure to appear or defend,
- (E)** be signed by the Court Clerk, and
- (F)** be under the seal of the Court.

Section 4-3-3. Manner of Process Service.

Every order required by its terms to be served, shall be served upon each of the parties, except as otherwise provided in this Code. No service need be made on parties in default for failure to appear. Service of process must be made by delivering a copy of the process personally or by leaving copies at his dwelling or to an agent authorized by appointment or by law to receive service of process.

Section 4-3-4. Who May Serve Process.

(A) If served in person service shall be made by a person licensed to make service of process or a person appointed by the Court for that purpose who is not a party to the action. The Court shall freely make special appointments to serve all process under this subsection.

(B) If served by mail service shall be made by certified mail, return receipt requested and delivery restricted to the addressee. Service by mail shall not be the basis for the entry of default unless a return receipt showing defendant's acceptance is in the record.

(C) Service by publication may be made if, and only if, it can be shown that with due diligence service cannot be made upon the individual by any other method. When service is made according this subsection, it shall be made in a publication authorized by law to publish legal notices. The Court reserves the right to vacate an entry of default when service is made by publication.

(D) When process has been served, proof of service shall be filed with the Court Clerk promptly and in any event within the time during which the person served must respond to the process. Failure to make proof of service does not affect the validity of the service.

Section 4-3-5. Proof of Service.

The person serving the process shall make proof of service to the Court. These provisions are not jurisdictional, but if the failure to comply with them prejudices the party served, the Court may extend the time to answer. Proof of service may be shown by:

- (A) An acknowledgment on the back of the summons.
- (B) The voluntary appearance of a defendant.
- (C) The return receipt for certified or registered mail.
- (D) A copy of each publication of notice.
- (E) An affidavit.

Section 4-3-6. Territorial Limits of Effective Service.

All process, other than subpoenas, may be served anywhere within the reservation boundaries, or any Indian Country, as defined by 18 U.S.C. § 1151, which is subject to the jurisdiction of the Tribe and, when authorized beyond these territorial limits.

Section 4-3-7. Time Limit for Service.

If service of process is not made upon a defendant within one hundred twenty (120) days after the filing of the complaint and the plaintiff cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the Courts own initiative with notice to the plaintiff or upon motion.

Section 4-3-8. Vacating Default Judgments Where Service is By Publication.

(A) A party against whom a default judgment has been rendered, when service was by publication, may apply to have the judgment opened and be let in to defend, if such application is within three (3) years after the date of the judgment.

(B) Before the judgment is opened, the applicant shall notify the adverse party of his intention to make such a challenge, and shall

- (1) File a full answer to the petition, and
- (2) Satisfy the Court by affidavit or other evidence that during the pendency of the action he had no actual notice in time to appear in Court and make his defense.

(C) The adverse party, on the hearing of any application to open a judgment as provided by this Section, shall be allowed to present evidence to show that during the pendency of the action the applicant had notice in time to appear in Court and make his defense.

Section 4-3-9. Subpoena.

(A) Every subpoena must follow the substantial form in Section 4-3-2 and shall:

- (1) command each person to whom it is directed to attend and give testimony at a time and place specified, or
- (2) command the person to whom it is directed to produce the books, papers, documents, or tangible things designated.

(B) The person to whom the subpoena is directed may object within ten (10) days after the service or on or before the time specified in the subpoena for compliance, if such time is less than ten (10) days after service. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials except pursuant to an order of the Court from which the subpoena was issued. The party serving the subpoena may, if objection has been made, move upon notice to the deponent for an order at any time before or during the taking of the deposition.

(C) **Contempt.** Failure by any person without adequate excuse to obey a subpoena served upon him within the Tribal jurisdiction may be deemed contempt of the District Court.

Section 4-3-10. Computation and Enlargement of Time.

(A) **Computation.** In computing any time period, the day of the act shall not be included, but the last day of the time period shall be included, provided, that any period which would otherwise end on a Saturday, a Sunday, or a legal holiday, will be deemed to end on the next day that is not a Saturday, a Sunday or a legal holiday.

(B) **Enlargement.** The Court for good cause shown may at any time, in its discretion, order the period enlarged if request is made before the expiration of the period originally prescribed or as extended by a previous order.

Whenever a party has been served by mail, three (3) days shall be added to the prescribed period.

Section 4-3-11. Extraterritorial Service Authorized.

Service of process by which an action is instigated may be made outside the territorial limits described in Section 4-3-8 in the following cases in addition to any circumstances specifically or otherwise provided for:

(A) In all actions arising under the tribal juvenile statutes or the Indian Child Welfare Act;

(B) In all divorce actions when one of the parties is a resident of the tribal jurisdiction or a member of the Tribe;

(C) In all actions arising in contract where the contract was entered into, or some material portion thereof was to be performed, within the tribal jurisdiction; or

(D) In all actions arising out of the negligent operation of an automobile within the tribal jurisdiction by a non-resident when an injury to person or property resulted within the tribal jurisdiction from the negligent operation of the motor vehicle.

**CHAPTER 4-4
PARTIES**

Section 4-4-1. Parties and Capacity.

(A) Every action shall be in the name of the real party in interest and when a statute of the Tribe so provides, an action for the use or benefit of another shall be brought in the name of the Tribe. No action shall be dismissed on the ground that it is not in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action and such ratification shall have the same effect as if the action had been commenced in the name of the real party in interest.

(B) Every person, except as otherwise provided by law, shall have the capacity to sue or be sued in its own name in the Courts and service may be had as provided in Section 4-3-3 of these procedures.

(C) A representative, either duly appointed, next friend or a *guardian ad litem*, may sue or defend on behalf of the infant or incompetent person. The Court shall proceed, as it deems proper for the protection of the infant or incompetent person.

Section 4-4-2. Joinder.

(A) Whenever it appears to the Court that separate actions are pending between the same parties, or involving the same facts of law, the Court may order actions joined if the parties will not be prejudiced.

(B) The Court shall determine whether in equity and good conscience the person, or claim, to be joined as a party to the action. The factors to be considered by the Court in making such determination include:

- (1) To what extent a judgment rendered in the person's absence complete relief cannot be accorded or it may be prejudicial to him or those already parties;
- (2) The extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided;
- (3) Third, whether a judgment rendered in the person's absence will be adequate; and
- (4) Whether the plaintiff will have an adequate remedy if the action is dismissed.

Section 4-4-3. Misjoinder of Parties.

Misjoinder of parties is not ground for dismissal of an action. Parties may be dropped or added by order of the Court on motion of any party or of its own initiative at any stage of the action and on such terms as are just. Leave of the Court shall not be required when the pleader amends his pleadings within the time period for amendment of pleadings specified in Section 4-2-8. Any claim against a party may be severed and proceeded with separately upon order of the Court.

Section 4-4-4. Intervention.

Any person desiring to intervene shall motion the Court stating the grounds for the claims, or defenses for which intervention is sought. In exercising its discretion the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

Section 4-4-5. Substitution of Parties.

(A) The Court may order substitution of the proper parties if a party dies or if a party becomes incompetent. The motion for substitution may be made by any party and shall be served on the parties. Unless the motion for substitution is made not later than ninety (90) days after the death is suggested upon the record, the action shall be dismissed as to the deceased party.

(B) **Transfer of Interest.** In case of any transfer of interest, the action may be continued unless the Court upon motion directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

**CHAPTER 4-5
DISCOVERY**

Section 4-5-1. General Provisions.

In order to expedite justice discovery may be had to expand pleadings, clarify and narrow issues, investigate the facts, explore evidence and to facilitate settlement. Discovery may be had by:

- (A) depositions,
- (B) interrogatories,
- (C) production of documents and such,
- (D) physical and medical examination, and
- (E) requests for admission.

Section 4-5-2. Privilege.

Any party may discover any matter which is not privileged that is relevant to the subject matter of a pending action, provided, that the opposing party's discovery commences thirty (30) days after service of process except by leave of Court. Privileged communications are:

- (A) between attorney and client
- (B) between spouses
- (C) testimony against spouse
- (D) testimony against self

- (E) government or trade secrets

Section 4-5-3. Notice and Service.

All person subjected to discovery shall be under oath and must have personal knowledge of the subject matter, may be represented by counsel, and shall receive reasonable advance notice stating the time and place of such proceedings. Discovery should be conducted within the 100 miles of the deponents residence or place of business. Non-party deponents may be served by subpoena in accordance with Section 4-3-9, provided that the deponent is served personally.

Section 4-5-4. Protection.

Any person may request Court protection by a motion and good cause shown. The Court may impose any order where justice requires the protection of any person from annoyance, embarrassment, oppression, or undue burden or expense.

Section 4-5-5. Costs.

Reasonable expenses of discovery shall be taxed as costs.

Section 4-5-6. Depositions.

Depositions may be had upon any person. All depositions shall be in the presence of a Court reporter and response must be oral. The individual being deposed shall have the right to review and correct their transcribed deposition. Statements in depositions are generally inadmissible at trial except when:

- (A) made by a party in the pending action that are adverse to their own interests.
- (B) made by a party not in the pending action that contradicts testimony given at the trial if used for impeaching.
- (C) the deponent is beyond the reach of the subpoena process or unavailable, provided, that the party is not responsible for his own absence.

Section 4-5-7. Interrogatories.

Interrogatories may be had only upon parties to the pending action. Responses must be written. The basis of information includes that which the party has reasonable access. A duty to respond is created and response must be made within forty-five (45) days. Response must be adequate.

Section 4-5-8. Production of Documents and Such.

Any party may serve a written request for the production of any designated tangible items within the served party's possession, custody, or control. The responding party must serve a

written response that may agree to comply or state objections for not complying. The request may, without leave of Court, be served after commencement of action and shall describe each item for production with reasonable particularity. The responding party's response shall be within thirty (30) days.

Section 4-5-9. Physical and Medical Examination.

When the mental or physical condition of a party is in controversy, a party may upon motion and for good cause shown, order physical or mental examination. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the item, place, manner, conditions, and scope of the examination and the person by whom it is to be made.

Section 4-5-10. Request for Admission.

A party may serve a written request for admission for purpose of the pending action only. Each matter, which an admission is requested, shall be separate. The matter is admitted unless within thirty (30) days after service the responding party submits a written answer or objection to each matter. An admission under the Section is not an admission by him for any other purpose other than the pending action and may not be used against him in any other proceeding.

Section 4-5-11. Sanctions.

Failure to comply with request may result in Court intervention. The Court, upon motion, may compel a response. Failure to comply with a compelled response then may result in a contempt action.

**CHAPTER 4-6
WITNESSES**

Section 4-6-1. Issue and Service of Subpoena for Witnesses.

The Clerk of the Court shall, on application of any party having a cause or any matter pending in the Court, issue a subpoena for a witness, in accordance with Section 4-3-9. The Clerk may issue separate subpoenas for each person, or issue one subpoena carrying the names of all persons subpoenaed. A subpoena may be served by any other person in the manner provided in Section 4-3-3 and Section 4-3-5.

Section 4-6-2. Witness Privileged.

A witness shall not be liable to be sued in the Tribal Court if he does not reside within the tribal jurisdiction by being served with a summons while going, returning, or attending in obedience to a subpoena.

Section 4-6-3. Demand for fees.

A witness may demand his fees for that day's attendance in obedience to a subpoena; and if the same were not paid, he shall not be required to remain.

Section 4-6-4. Witness Fee.

A fee shall be paid to witnesses of not less than the hourly minimum wage scale plus actual expenses incurred. Mileage fees shall not exceed the federal mileage rate. These fees shall be taxes as costs to the pending action.

**CHAPTER 4-7
JURORS**

Section 4-7-1. Jury Roll.

It shall be the duty of the Court Clerk to maintain at all times a jury selection roll upon which any person who is or may be eligible for jury service may enter their name, date of birth, and place of residence.

Section 4-7-2. Jury Listing.

In obtaining the names of all persons qualified for jury service, each list shall contain, insofar as is known, the date of birth or age, name, and actual place of residence of each person within the category on the list. These lists shall be prepared annually. It shall be the duty of the following to provide the following lists of qualified prospective jurors to the Court Clerk:

(A) The Enrollment Department shall supply a list consisting of the names and addresses of all enrolled tribal members over eighteen (18) years of age who are (1) residents of the Prairie Band Potawatomi Reservation, (2) residents of the surrounding counties of Jackson County, Brown County, Shawnee County or Douglas County or (3) residents of another county residing at an address having a U.S. Post Office zip code which is used in one or more of these four other counties.

(B) The Housing Authority Board of Commissioners shall supply a list consisting of the names and addresses of all known tenants in housing operated by the Housing Authority and members of their households irrespective of tribal membership over eighteen (18) years of age.

(Amended by PBP TC No. 2003-135, September 4, 2003, amended by PBP TC No. 2004-083, May 20, 2004, amended by PBP TC No. 2005-127, August 19, 2005, amended by PBP TC No. 2007-174, September 20, 2007)

Section 4-7-3. Preparation of Jury Wheel.

The Court Clerk shall prepare a finalized qualified jurors listing on separate cards of uniform size and color listing the name of each prospective juror. The jury wheel preparation

expenses shall be paid from the Court fund. Said cards shall be deposited in an empty circular hollow wheel provided for such purposes by the Court Clerk.

The hollow wheel drum shall be made of substantial material, and shall be so constructed as to freely revolve on its axle to freely mix all the cards placed therein. The hollow wheel drum shall be locked at all times, except when in use. The keys shall be kept by the Court Clerk. The Court Clerk shall not open such wheel, nor permit the same to be opened by any person, except at the time and in the manner prescribed and shall keep such wheel, when not in use, in a safe and secure place where the same cannot be tampered with.

(Amended by PBP TC No. 2003-135, September 4, 2003)

Section 4-7-4. General Jury Panel.

More than twenty (20) days prior to a jury trial, the presiding judge, or the designated representative shall draw from the jury wheel a minimum of eighteen (18) names which will represent the general panel. The Court may excuse or discharge any person drawn.

(Amended by PBP TC No. 2003-135, September 4, 2003; amended by PBP TC No. 2004-083, May 20, 2004; amended by PBP TC No. 2007-174, September 20, 2007)

Section 4-7-5. Summoning Jurors.

The summons for jury duty on the general panel shall be mailed by U.S. Mail standard delivery no less than ten (10) days prior to their appearance as a juror in the Court. The summons shall contain the time, place, and the name of the Court where the jurors are required to attend.

(Amended by PBP TC No. 2007-173, September 20, 2007)

Section 4-7-6. Examination of Jurors.

Prospective jurors from the general panel shall be drawn until six (6) jurors have been selected to serve. The Court may permit challenges for cause of a prospective juror if it appears that the juror has a financial stake in the case, or in similar litigation, if members of the juror's immediate family have an interest, or if there is other sufficient reason to believe that the juror may be unable to render impartial service. The validity of all challenges for cause shall be determined by the Court.

Further, each party will be allowed three (3) preemptory challenges which will give each side the opportunity to act upon biases that may not be demonstrated or even be rational. In this way, those persons most distrusted by either side are removed from the jury.

Section 4-7-7. Alternate Jurors.

The Court may direct that not more than two (2) jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. Alternate jurors are subject to the same criteria

and examination as regular jurors. An alternate juror who does not replace a regular juror shall be discharged after the jury retires to consider its verdict.

Section 4-7-8. Exemptions.

The following persons are not qualified to serve as jurors

- (A) Judges and Justices of the Court or their employees.
- (B) Practicing attorneys or lay advocates.
- (C) Persons who have been convicted of any felony or crime involving moral turpitude, unless such person have been fully restored to their civil rights.

Section 4-7-9. Jury Oath.

After selection of the jury, and prior to the opening statements of the parties, the Court or Clerk shall place the jury under oath or affirmation to determine the action before them exclusively upon the evidence presented in the Court and the law as given by the Court, and to return their true verdict without partiality for any unlawful cause or reason.

Section 4-7-10. Jury Verdict.

An unanimous verdict shall be required, except when parties stipulate a jury of less than six (6) then a verdict of the jury majority shall be taken.

(Amended by BBPN Resolution No. 2003-135, September 4, 2003)

**CHAPTER 4-8
TRIALS**

Section 4-8-1. Issues.

Issues of fact for which a jury trial is provided by law may be tried by a jury, if demanded. All other issues of fact and issues of law shall be tried by the Court. The Court may order a separate trial of any claim or issue, always preserving the right to trial by jury.

Section 4-8-2. Jury Trial of Right.

- (A) The right to trial by jury as declared by the Constitution, statute, or the Indian Civil Rights Act of 1968 shall not be violated.
- (B) Any party demanding a trial by jury shall serve upon the other party, at any time after the commencement of the action and not later than ten (10) days after the service of the last pleading directed to such issue, a written demand that specifies the issues.

(C) The failure of a party to serve a demand constitutes a waiver of a trial by jury. A demand for trial by jury may not be withdrawn without the consent of the parties.

Section 4-8-3. Trial by Jury.

When a jury trial has been demanded all the issues demanded shall be by jury, unless the parties otherwise consent.

Section 4-8-4. Order of Trial.

The trial shall proceed with opening statements, presentations of evidence, closing arguments, jury instruction, jury deliberation, and jury verdict unless the Court otherwise directs.

Section 4-8-5. Opening Statements.

Each party may give a general outline or summary of their case and its nature before any evidence is submitted for trial. Its purpose is to advise and give the fact finder a general picture of the facts and situation creating a better understanding of the evidence.

Section 4-8-6. Burden of Proof.

In civil cases, the party bringing the action shall have the obligation to persuade the fact finder by preponderance of the evidence, meaning more-probable-than-not that the action occurred. However, those cases involving issues of fraud duress or undue influence, the obligation to persuade must be by clear and convincing evidence.

Section 4-8-7. Evidence.

All evidence must be presented in accordance with the General Rules of Evidence as described by this Code. Such evidence will have to be good and sufficient to show the tendency of proving each element of the action.

Section 4-8-8. Testimony.

Testimony of witnesses shall be taken orally in open Court and under oath, unless otherwise provided by a law.

Section 4-8-9. Exceptions Unnecessary.

Formal exception to court rulings or orders are unnecessary, but it is sufficient that a party makes known to the Court his desires or objections to the action and the grounds. If a party has no opportunity to object to a ruling when it is made, the absence of an objection does not prejudice him.

Section 4-8-10. Closing Arguments.

The final statements made by each party summarizing the evidence that has, or has not, been established.

Section 4-8-11. Jury Instruction.

Any party may file written requests that the Court instructs the jury on the law as set forth in the requests. The court shall instruct the jury as to the law of the case, and shall give the jury a copy of the written instructions. The Judge must explain to the jury which party has the burden of persuasion concerning each issue of fact.

Section 4-8-12. Jury Deliberations.

Upon retiring the jury must be kept together in a convenient place and under the charge of a court officer until they reach a verdict or be discharged. Prior to rendering the verdict, communication to any person concerning the state of their deliberation or the verdict agreed upon is prohibited.

Section 4-8-13. Information After Retirement.

After retiring, if there are disagreements as to testimony or points of law, the jury may request information. The Court shall notify the parties of such requests. All information presented to the jury after retirement shall be made in the presence of the parties and points of law shall be clarified in writing.

Section 4-8-14. Jury Discharge.

The jury may be discharged by the Court when:

- (A) Sickness or calamity requires, or
- (B) By consent of both parties, or
- (C) There is no probability of agreement, or
- (D) Upon reaching a verdict.

Section 4-8-15. Re-trial.

In all cases where the jury is discharged in accordance with Subsection 4-8-14(A), 4-8-14(B), or 4-8-14(C), the case may be tried again as the Court may direct.

Section 4-8-16. Jury Verdict.

When jury agreement is reached, the verdict shall be written and signed by the foreman and presented to the Court. When the verdict is announced, either party may request polling of the jury. If any juror answers in the negative, the jury must be sent out for further deliberations.

Section 4-8-17. Assessing Recovery Amount.

When either party is entitled to recover money of the adverse party, the jury, in their verdict, must assess the amount of recovery.

Section 4-8-18. Court Verdict.

(A) In all actions tried upon the facts without a jury, the Court shall find the facts specially and state separately its conclusions of law, and judgment shall be entered pursuant to Section 4-10-6.

(B) Findings of fact shall not be set aside unless clearly erroneous and due regard shall be given the Trial Court concerning the credibility of witnesses.

**CHAPTER 4-9
REMEDIES**

Section 4-9-1. Scope.

Remedies are measured where the private and individual rights of a person are enforced or its violation is prevented. Every order granting such remedies shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail the act sought to be restrained; and is binding upon the parties who receive actual notice of the order by personal service or otherwise.

Section 4-9-2. Types of Remedies.

(A) The restraining order is intended to forbid and limit the performance of particular acts, or threatened acts, until such time when a hearing can determine whether an injunctive relief should be issued and is generally a provisional remedy.

(B) The injunction is a command to refrain from or perform a particular act for the benefit of another. Generally, it is a preventive and protective remedy, aimed at future acts, and it is not intended to redress past wrongs. The injunction may be a temporary or final remedy.

Section 4-9-3. Temporary Restraining Order.

A temporary restraining order may be granted without written or oral notice to the adverse party only if it clearly appears from specific facts shown that immediate and irreparable injury, loss, or damage will result. Temporary restraining orders should not be granted except in cases of extreme urgency.

Every temporary restraining order granted shall be endorsed with the date of issuance; in the clerk's office and entered of record; and why the order was granted; and shall expire by its terms within ten (10) days, unless for good cause shown, is extended for a longer period and shall be served. On two (2) days notice the adverse party may appear and move its dissolution or modification and the Court shall proceed to hear and determine such motion as expeditiously as justice requires.

Section 4-9-4. Preliminary Injunction.

No preliminary injunction shall be issued without notice to the adverse party. Notice may be in the form of an order to appear or in such form as the Court shall direct. The burden of showing the criteria for issuance of a preliminary injunction remains with the moving party.

Section 4-9-5. Preliminary Injunction—Criteria.

Unless a statute of the Tribe provides specifically for preliminary injunctive relief upon a showing of particular circumstances, no preliminary injunction shall be granted unless upon hearing the evidence presented by the parties the Court determines that:

- (A) There is substantial likelihood that the moving party will eventually prevail on the merits of their claim for a permanent injunction or other relief, and
- (B) The moving party will suffer irreparable injury unless the preliminary injunction issues. Irreparable injury means an injury which cannot be adequately remedied by a judgment for money damages, and
- (C) The threatened injury to the moving party outweighs whatever damage or injury the proposed preliminary injunction may cause the opposing party, and
- (D) The preliminary injunction, if used, would not be adverse to the public interest, and would not violate the public policy of the Tribe or the United States.

Section 4-9-6. Injunction is Equitable.

- (A) Relief by way of a restraining order or injunction is and shall be issued, or refused, in the sound discretion of the Court.
- (B) No injunction shall be issued to control the discretion or action of a Governmental officer or employee when such has been delegated the authority to exercise his discretion

in determining how to act upon the subject matter, and is acting or refusing to act in a manner not prohibited by tribal law or the Indian Civil Rights Act.

(C) The tribal court shall not issue any injunction, writ or other order to restrain, enjoin, direct or determine the actions of Tribal Council or tribal government in carrying out the discretionary functions provided for in Article X, Sec. 2(b).

(1) The Tribal Council's discretionary functions in this respect include, without limitation, (a) the discretion to determine the sufficiency of the form and extent of the detailed statement of charges, (b) the discretion to determine the particular manner and extent of any procedures for providing an opportunity to appear and answer the charges, (c) the discretion to determine the particular manner and extent of any procedures for initiating, conducting and determining the Article X, Sec. 2(b) meeting in general and (d) the discretion to finally determine whether the facts have shown that a Council member has committed an act of moral turpitude, nonfeasance or malfeasance in office, gross neglect of duty, misconduct reflecting on the dignity and integrity of the tribal government or embezzlement of tribal property or assets. These discretionary functions of the Tribal Council shall not be subject to judicial direction, appeal or review.

(2) Under no circumstances whatsoever shall any tribal judge issue any order or be involved in any judicial proceeding involving an Article X, Sec. 2(b) matter when any aspect of the Sec. 2(b) charges involves a judicial proceeding over which the judge presided or for which the judge has issued any order.

(3) With respect to any non-discretionary functions under Article X, Sec. 2(b), no temporary restraining order or temporary injunction shall be requested or considered before the final decision is rendered by the Tribal Council on the question of removal.

(4) Any tribal court order issued in violation of any part of this section is void and shall not be enforced in any respect.

(5) Nothing in the tribal code shall be construed to limit or modify the Tribal Council's authority to remove a Council member as provided for in Article X, Sec. 2(b). The provisions of this section shall supercede and shall be fully enforced notwithstanding any other tribal code provisions to the contrary.

(Amended by PBP TC No. 2000-187, September 27, 2000)

Section 4-9-7. Enforcement.

(A) A restraining order or injunction granted by a Judge may be enforced as the act of the Court. Disobedience of any order or injunction may be treated as contempt.

(B) Any domestic violence protection order issued by a State or Indian tribe that is consistent with this subsection shall be accorded full faith and credit by the Prairie Band Potawatomi Nation and enforced as if it were the order of the Prairie Band Potawatomi Nation.

(1) A domestic violence protection order issued by a State or Tribal Court is consistent with this subsection if:

(a) such Court has jurisdiction over the parties and matter under the law of such State or Indian tribe; and

(b) reasonable notice and opportunity to be heard is given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex-parte orders, notice and opportunity to be heard must be provided within the time required by State or Tribal law, and in any event within a reasonable time after the order is issued.

(2) Mutual domestic violence protection orders issued by another State, Tribal, or territorial court are not entitled to full faith and credit. Mutual protection orders are:

(a) Protection orders issued against both parties in which the original defendant did not file a cross or counter petition, complaint or other written pleading seeking such a protection order; or

(b) Protection orders issued against both parties in which the original defendant filed a cross or counter petition and the court did not make specific findings that each party was entitled to such an order.

(C) Contempt shall be punishable by a fine not to exceed \$5,000 or by a term of imprisonment in the tribal jail not to exceed six months, or both.

(Amended by PBP TC No. 2008-166, July 17, 2008)

Section 4-9-8. Modification.

A judgment containing an injunction may be modified or dissolved by separate action upon showing that the facts and circumstances have changed to the extent that the injunction is no longer just and equitable, or that the injunction is no longer needed to protect the rights of the parties.

Section 4-9-9. Order of Protection from Domestic Violence.

(A) Petition for an order of protection. A petition to obtain an order of protection under this section may be filed by:

(1) Any person claiming to be the victim of domestic violence,

(2) Any family member or household member of a person claimed to be the victim of domestic violence, on behalf of the alleged victim, or

(3) The Tribal Prosecutor

(B) Petition Process.

(1) A petition shall allege the existence of domestic violence, and shall be verified or supported by an affidavit made under oath stating the specific facts and circumstances justifying the requested order.

(2) No filing fee shall be required for a petition under this section.

(3) Standard, simplified forms with instructions for completion shall be

available for persons not represented by counsel.

(C) Temporary Ex-parte Order of Protection.

A temporary ex-parte order of protection may be granted with or without written or oral notice to the adverse party only if it appears from specific facts shown that immediate threat will result in the absence of the order of protection. Temporary ex-parte orders of protection should only be issued in cases of extreme urgency.

Every temporary ex-parte order of protection granted shall be endorsed with the date of issuance; in the clerk's office and entered of record; and why the order was granted; and shall expire by its terms within fifteen (15) days, unless for good cause shown, is extended for a longer period and shall be served. On two (2) days notice the adverse party may appear and move its dissolution or modification and the court shall proceed to hear and determine such motion as expeditiously as justice requires.

Within fifteen (15) days after the granting of the ex-parte order of protection the Court shall hold a hearing to determine whether the order should be vacated, extended for an additional fifteen (15) days, or modified in any respect.

If an ex-parte order is not granted the court shall serve notice to appear upon both parties and hold a hearing on the petition for order of protection within seventy two (72) hours after filing the petition; Provided that, if notice cannot be personally served within twenty four (24) hours, the parties shall be served by posted notice, and the court shall hold a hearing on the petition within fifteen (15) days after the filing of the petition.

(D) Permanent Order of Protection.

The court may grant a permanent order of protection for duration not to exceed twelve (12) months unless extended by the court at the request of the victim or the court.

(Amended by PBP TC No. 200-187, September 27, 2000; amended by PBP TC No. 2008-166, July 17, 2008)

CHAPTER 4-10 JUDGMENT

Section 4-10-1. Judgments.

A judgment shall not contain a recital of pleadings or the record of prior proceedings. Any order or decision which adjudicates less than all the rights and liabilities of the claims or parties shall not terminate the action and such an order or decision is subject to revision prior to the final entry of judgment adjudicating all the claims.

Every final judgment shall grant the entitled relief to the prevailing party, even if the party has not demanded such relief in his pleadings, except when judgment is entered by default.

A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the Tribal Court in the distribution of decedent's estate.

Section 4-10-2. Default.

Judgment by default shall be entered when a party has failed to plead or defend a claim that has been brought. A judgment by default shall not be different in kind from or exceed in amount that was demanded for judgment by another party.

(A) No judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian who has appeared.

(B) No judgment by default may be entered against the Tribe, unless sixty (60) days written notice has been served upon the Tribe. If during such sixty (60) day period the Tribe is without counsel, and the Tribe has submitted contract for approval, no default may be entered until thirty (30) days after approval of the contract.

(C) For good cause shown the Court may set aside an entry of default.

Section 4-10-3. Offer of Judgment.

When the liability of one party to another has been determined by verdict, order, or judgment, but the amount or extent of the liability remains to be determined by further proceedings, the party adjudged liable may make an offer of judgment, which shall have the same effect as an offer made before trial if it is served within a reasonable time not less than ten (10) days prior to the commencement of hearings to determine the amount or extent of liability.

Section 4-10-4. Summary Judgment.

A summary judgment, interlocutory in character and where there are no issues of material fact, may be entered on the issue of liability alone although there is a genuine issue as to the amount of damages. A party may move for a summary judgment in his favor at any time after the expiration of twenty (20) days from the commencement of the action.

Section 4-10-5. Declaratory Judgments.

A declaratory judgment is when a binding adjudication of the litigants' rights and status even though no consequent relief is awarded. The procedure for obtaining a declaratory judgment in actions arising in equity, or through contract, or pursuant to any specific tribal law authorizing a declaratory judgment, shall be in accordance with this Title, and the right to trial by jury may be demanded. The existence of any other adequate remedy does not preclude a judgment for declaratory relief in cases where it is appropriate.

Section 4-10-6. Entry of Judgment.

A judgment is effective only when entered in the civil docket book. Entry of the judgment shall not be delayed for the taxing of costs. Attorneys shall not submit forms of judgment except upon direction of the Court.

Section 4-10-7. New Trials.

A new trial may be granted upon filing a motion which specifies the grounds for prejudicial error that were improper and unfair or that occurred because of newly discovered evidence. A motion for a new trial shall be served not later than ten (10) days after the entry of the judgment, except that a motion based upon newly discovered evidence shall be made within one year from the date of judgment.

Section 4-10-8. Clerical Error.

Clerical mistakes in judgments, arising from oversight or omission may be corrected. Such mistakes may be so corrected before the appeal is docketed in the Court of Appeals, and thereafter while the appeal is pending may be so corrected with leave of the Court of Appeals.

Section 4-10-9. Harmless Error.

Harmless error is not a ground for granting a new trial or for setting aside a verdict unless such refusal appears to the Court inconsistent or prejudicial to the party's substantial rights.

Section 4-10-10. Judgment Lien.

A judgment entered by the District Court become and remain in lien upon the judgment debtor's property until satisfied. A Judgment satisfied in whole with such fact entered in the judgment record shall cease to operate as a lien on the judgment debtor's property. A partially satisfied judgment or an unsatisfied judgment shall continue in effect until satisfied in full.

(Amended by PBP TC No. 92-60, November 18, 1992)

Section 4-10-11. Execution of Judgment.

(A) Order of Execution. If at any time 10 days after entry of judgment awarding money or costs against a party, it is made to appear to the District Court that the judgment debtor has not paid the judgment in full or is not current in making installment payments in a manner agreed to by the parties in writing and filed with the District Court, the District Court shall, upon motion of the judgment creditor heard *ex parte*, order the Tribal Police to levy and execute upon the personal property of the judgment debtor as provided herein.

(B) Levy Upon and Sale of Judgment Debtor's Property. The Tribal Police shall forthwith attempt to locate all personal property of the judgment debtor within the jurisdiction of the District Court and seize the same and transport it to a safe, convenient

place. The Tribal Police shall then, as soon as may reasonably be done, make arrangements to sell such property at a public auction conducted by the Tribal Police.

(C) Notice of Sale. Sale of the seized property shall be conducted after the Tribal Police have given at least ten (10) days public notice posted in three conspicuous public places on the Reservation together with a notice of sale published in a local newspaper of general circulation at least seven (7) days prior to the date fixed for the sale.

(D) Sale to Highest Bidder; Postponement. The property shall be sold to the highest bidder for cash at the time of the sale. The person conducting the auction may postpone such in his discretion if there is an inadequate response to the auction or the bidding and may reschedule such upon giving the required notice.

(E) Return of Sale. The person conducting the sale shall make a return of sale to the District Court including an inventory of the items taken into possession, the amounts received therefor, the persons who bought the same, and shall deposit the proceeds thereof with the District Court for distribution to the judgment creditor to be credited against the judgment.

(F) Levy Upon Property Which Cannot be Moved. The Tribal Police may also levy and execute upon items of personal property which cannot be conveniently moved such as bank accounts, accounts receivable, wages and other such items. The levy and execution shall be made by serving upon the holder of such item of personal property a copy of the order of the District Court. Upon receipt of such order of the District Court, the person in whose possession the property then is shall execute whatever legal instruments are necessary to transfer the property to the Tribal Police for either public auction sale or crediting on the judgment if the property is cash or its equivalent.

(G) Examination of Judgment Debtor. If sufficient property is not found by the Tribal Police in order to sell and satisfy the judgment, upon application of the judgment creditor. The Tribal Police shall order the judgment debtor to appear in Tribal Court and answer questions under oath regarding all of his personal property. The District Court shall then determine what property of the judgment debtor is available for execution and order the Tribal Police to take appropriate measures to convert the property to cash and apply the same to the judgment. Failure of the judgment debtor to appear or fully answer questions shall be deemed contempt of District Court.

(H) Satisfaction of Judgment. A judgment may be satisfied in whole or in part whenever the owner thereof or his attorney shall execute under oath and file an acknowledgement of satisfaction specifying the amounts paid and whether such is in full or partial satisfaction. A Judge may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction.

(Amended by PBP TC No. 92-61, November 18, 1992)

Section 4-10-12. Stay of Proceedings.

No execution shall be issued on a judgment or proceeding until the expiration of ten (10) days after its entry. The provisions in this Section do not limit any power of the Court of Appeals or a judge to stay proceedings during the pendency of an appeal or to suspend modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve or the effectiveness of the judgment subsequently to be entered.

Section 4-10-13. Garnishment.

(A) Issuance of Writ. The District Court may issue a writ of garnishment for the benefit of a judgment creditor who has a judgment wholly and partially unsatisfied. Prejudgment writs of garnishment may also be issued by the District Court at the time of commencement of an action or at any time afterward, subject to the requirements of Section 4-10-14.

(B) Application for Writ. The judgment creditor as the plaintiff or someone in the judgment creditor's behalf shall apply for a writ of garnishment by affidavit, stating the following facts:

- (1) the plaintiff has a judgment wholly or partially unsatisfied in the District Court;
- (2) the amount alleged to be due under that judgment;
- (3) the plaintiff has reason to believe, and does believe that the garnishee, stating the garnishee's name and residence or place of business, is indebted to the defendant in amounts exceeding those exempted from garnishment under tribal law, or that the garnishee has possession or control of personal property or effects belonging to the defendant which are not exempted from garnishment by tribal law; and
- (4) whether or not the garnishee is the employer of the judgment debtor.

(C) Issuance of Writ. When application for writ of garnishment is made by a judgment creditor and the requirements of Subsection 4-10-13(B) have been complied with, the District Court shall docket the case in the names of the judgment creditor as plaintiff, the judgment debtor as defendant, and the garnishee as garnishee defendant, and shall immediately issue and deliver a writ of garnishment to the judgment creditor, directed to the garnishee, commanding the garnishee to answer the writ within twenty days after service of the writ upon the garnishee.

(D) Amount Garnishee Required to Hold. The writ of garnishment shall set forth in the first paragraph the amount that the garnishee is required to hold, which shall be an amount determined as follows:

- (1) If after judgment, the amount of the judgment remaining unsatisfied plus interest to the date of garnishment, plus taxable costs and attorney's fees, or

(2) if before judgment, the amount paid for in the complaint plus estimated taxable costs of suit and attorney's fees.

(E) Contents of Writ. In addition to the requirements of Subsection 4-10-13(D), the writ of garnishment shall:

- (1) inform the defendant that the plaintiff has applied for a writ of garnishment against him,
- (2) command the garnishee not to pay any debt owed to the defendant at the time the writ is served,
- (3) command the garnishee to answer the writ within twenty days (20) of having been served the writ, and
- (4) inform the garnishee that failure to answer will result in judgment being entered for the full amount of the plaintiff's claim against the defendant with interest.

The writ shall also inform the garnishee that the defendant is entitled to receive amounts that are exempt from garnishment under Section 4-10-16.

(F) Service of the Writ. Service of the writ of garnishment shall be by certified mail, return receipt requested, addressed in the same manner as a summons in a civil action, and shall be binding on the garnishee on the day set forth in the return receipt. In the alternative, the writ shall be served by the Tribal Police or by any person qualified to serve process in the same manner as a summons in a civil action is served.

(G) Mailing of Writ and Judgment or Affidavit to Debtor. When the writ is issued under judgment, on or before the date of service of the writ on the garnishee, the judgment creditor shall mail or cause to be mailed to the judgment debtor, by certified mail, addressed to the last known office address of the judgment debtor, a copy of the writ and copy of the judgment or a copy of the judgment creditor's affidavit submitted in application for the writ.

(H) Answer of Garnishee. The answer of the garnishee shall be signed by the garnishee or attorney or agent of the garnishee, and the original delivered either in person or via mail to District Court. The answer shall include the following:

- (1) the amount due and owing from the garnishee to the defendant with an explanation of the dollar amount stated;
- (2) if the amount due and owing from the garnishee to the defendant is for personal earnings, the amount of property which is exempt under Section 1016 which amount shall equal three-fourths (3/4) of the net wages earned per week by the defendant or an amount equivalent to forty (40) times the federal minimum hourly wages per week, whichever is greater.
- (3) the total amount due and owing from the garnishee to the defendant minus the exemption amount; and

(4) a list of all the personal property or effects of the defendant in the garnishee's possession or control when the writ was issued.

(I) Default Judgment. If the garnishee fails to answer the writ within the time proscribed, it shall be lawful for the District Court to render judgment by default against such garnishee, in accordance with the rules pertaining to default judgments, for the full amount claimed by the plaintiff against the defendant with all accruing interest.

(J) Judgment Against Garnishee. If it appears from the answer of the garnishee that the garnishee was indebted to the defendant in any amount, not exempt by tribal law, when the writ of garnishment was served, the District Court shall render judgment for the plaintiff and against such garnishee for the amount so admitted, unless such amount exceeds the amount of the plaintiff's claim with interest, in which case it shall be for the amount of such claim with interest and fees.

(K) Execution on the Judgment. Execution may be issued on the judgment against the garnishee in the same manner as upon any other judgment of the District Court.

(L) Discharge of Garnishee. If it appears for the answer of the garnishee that the garnishee was not indebted to the defendant when the writ of garnishment was served, and that the garnishee did not have possession or control of any personal property of the defendant, the garnishee shall stand discharged without further action by the District Court.

(M) Decree Directing Garnishee to Deliver. If it appears from the garnishee's answer that the garnishee has possession of any personal property or effects of the defendant liable to execution, the District Court shall render a decree requiring the garnishee to deliver up to the Tribal Police such personal property or effects or so much of them as may be necessary to satisfy the plaintiff's claim. Such personal property shall be sold in accordance with the provisions of Section 4-10-11. Failure of garnishee to deliver property or effects under this Section shall expose the garnishee to a contempt citation and or imprisonment.

(N) Garnishee Protected Against Claims of Defendant. It shall be sufficient answer to any claim of the defendant against the garnishee founded on any indebtedness of the garnishee or on the possession or control by the garnishee of any personal property or effects, for the garnishee to show that such indebtedness was paid under the judgment of the District Court in accordance with this Section.

(O) Inapplicability to Tribe. Garnishment shall not lie against the Tribe, its political subdivisions or any tribal enterprise.

(Amended by PBP TC No. 92-63, November 18, 1992)

Section 4-10-14. Prejudgment Garnishment.

(A) Prejudgment Writ of Garnishment. The plaintiff at the time of commencing an action, or at any time thereafter before judgment in an action, may obtain a prejudgment writ of garnishment from the District Court on the following grounds:

- (1) If the writ is issued for a purpose other than garnishing a defendant's earnings,
 - (a) on the grounds that an attachment has been issued in accordance with Section 4-10-15,
 - (b) on the grounds that the plaintiff sues on a debt that is due and owing and unpaid, or
 - (c) on one or more of the grounds for issuance of attachment stated in Section 4-10-15; or
- (2) If the writ is directed to an employer for the purpose of garnishing earnings of a defendant, on the grounds that the defendant:
 - (a) is not a resident of the Reservation,
 - (b) has concealed himself so that ordinary process of law cannot be served on him, or
 - (c) has removed or is about to remove any of his property from the Reservation, with the intent to delay or defraud his creditors.

(B) Application for Prejudgment Writ of Garnishment. The plaintiff shall apply for a prejudgment writ of garnishment by affidavit, alleging that the garnishment is not sought and the action is not prosecuted to hinder, delay, or defraud any creditor of the defendant and also alleging that the affiant has reason to believe and does believe the following, together with specific facts on which the affiant's belief in the allegations is based:

- (1) that the defendant is indebted to the plaintiff (specifying the nature of the claim and the amount of such indebtedness);
- (2) that one or more of the grounds for prejudgment garnishment established in Subsection 4-10-14(A) exists;
- (3) that the plaintiff has reason to believe and does believe that the garnishee, stating the garnishee's name and residence or place of business, is indebted to the defendant in amounts exceeding those exempted from garnishment under tribal law, or that the garnishee has possession or control of personal property or effects belonging to the defendant which are not exempted from garnishment under tribal law;
- (4) whether the garnishee is the employer of the judgment debtor; and
- (5) if the action is based on a debt not due, that nothing but time is wanting to fix an absolute indebtedness due from the defendant.

(C) Garnishment Bond. Before the writ of garnishment shall issue, the plaintiff, or someone on the plaintiff's behalf, shall file with the District Court a cash bond in the sum of one hundred dollars (\$100.00) or such lesser amount as is set by the District Court;

provided, that in any action filed by the Tribe and in which the Tribe seeks a writ of garnishment, it shall not be necessary for the Tribe to file a bond.

(D) Issuance of the Writ. When application is made for a prejudgment writ of garnishment, the District Court shall issue the writ in substantially the form prescribed in Subsection 4-10-13(D) and 4-10-13(E), but such writ shall only issue after an *ex parte* hearing at which the plaintiff shall establish the probable validity of the plaintiff's claim and that there is probable cause to believe that the alleged ground for garnishment exists.

(E) Application of Section 4-10-13 to Prejudgment Garnishment. Except as otherwise provided, the provisions of Section 4-10-13 concerning garnishments apply to prejudgment garnishments.

(F) Action on Bond for Wrongful Garnishment. In an action on the bond, if it is shown that the garnishment was wrongfully sued out, the defendant may recover the actual damages sustained and reasonable attorney's fees to be fixed by the District Court.

(G) Action Against Plaintiff for Wrongful Garnishment. In any action in which a prejudgment writ of garnishment has been issued by the District Court and served upon the garnishee, in the event judgment is not entered for the plaintiff on the claim sued upon by the plaintiff, and the claim has not been voluntarily settled or otherwise satisfied, the defendant shall have an action for damages against the plaintiff; provided, that this Section shall not constitute a waiver of sovereign immunity of the Tribe, its officers, employees, agents, or political subdivisions.

(H) Inapplicability to Tribe. Garnishment shall not lie against the Tribe, its political subdivisions or any tribal enterprise.

Section 4-10-15. Attachment.

(A) Time for Granting. A plaintiff at the time of commencing an action in the District Court, or at any time afterward before judgment, may have the property of the defendant attached in the manner prescribed in this Section, as security for the satisfaction of such judgment as the plaintiff may recover.

(B) Grounds for Issuance. A writ of attachment may be issued by the District Court on one or more of the following grounds:

- (1) That the defendant is a foreign corporation or is a nonresident of the Reservation; or
- (2) That the defendant conceals himself so that the ordinary process of law cannot be served upon him; or
- (3) That the defendant has absconded himself from his usual place of abode, so that the ordinary process of law cannot be served upon him; or
- (4) That the defendant has removed or is about to remove any property from the Reservation, with the intent to delay or defraud his creditors; or

- (5) That the defendant has assigned, secreted, or disposed of or is about to assign, secrete, or dispose of, any of his property, with the intent to delay or defraud his creditors; or
- (6) That the defendant is about to convert his property, or a part thereof, into money, for the purpose of placing it beyond the reach of his creditors; or
- (7) That the damages for which the action is brought are from injuries arising from the commission of a crime; or
- (8) That the object for which the action is brought is to recover on a contract, express or implied.

(C) Application of a Writ of Attachment. The plaintiff shall apply for a writ of attachment from the District Court by affidavit, alleging that the attachment is not sought and the action is not prosecuted to hinder, delay or defraud any creditor of the defendant and also alleging that the affiant has reason to believe and does believe the following, together with specific facts on which affiant's belief in the allegations is based:

- (1) That the defendant is indebted to the plaintiff, and
- (2) That one or more of the grounds stated in Subsection 4-10-15(B) of this Section for writ of attachment exists.

(D) Issuance of Writ of Attachment and Notice. The District Court shall issue a writ of attachment only after an *ex parte* hearing, at which the plaintiff shall establish the probable validity of the claim sued on and that there is probable cause to believe that the alleged ground for attachment exists.

(E) Notice of Attachment. Notice shall be served in the same manner as a summons in a civil action and shall be served with a copy of the plaintiff's affidavit. The notice shall inform the defendant that a writ of attachment has issued and that the defendant has the right to a hearing on the matter.

(F) Attachment Bond. Before the writ of attachment shall issue, the plaintiff, or someone on the plaintiff's behalf, shall file with the District Court a cash bond in the sum of one hundred dollars (\$100.00) or such lesser amount as is set by the District Court; provided, that in any action filed by the Tribe and in which the Tribe seeks a writ of attachment, it shall not be necessary for the Tribe to file a bond.

(G) Levy of Attachment. The writ of attachment shall be directed to the Tribal Police and shall require the Tribal Police to attach and safely keep the property of such defendant, to the requisite amount, which shall be stated in conformity with the affidavit. The Tribal Police shall levy on the property in the same manner as provided for in Section 4-10-11.

(H) Appointment of Receiver. The District Court may, at any time, appoint a receiver to take possession of property attached under the provisions of this Title and to collect, manage, and control the property and pay over the proceeds according to the nature of the property and the exigency of the case.

(I) Sale of Property before Judgment. If any property attached be perishable or in danger of serious of immediate waste, the Tribal Police shall sell the same in the manner proscribed in Section 4-10-11. All monies received by the Tribal Police under this Subsection shall be paid to the clerk of the District Court to be held to be applied to any judgment that may be recovered in the action.

(J) Subjection of Property to Judgment. If judgment is recovered by plaintiff, it shall be paid out of any proceeds held by the District Court and out of the property retained by the Tribal Police. The Tribal Police shall, in accordance with the provisions of Section 4-10-11, sell so much of the personal or real property as may be necessary to satisfy the balance. Whenever the judgment has been paid, the Tribal Police, upon reasonable demand, shall deliver to the defendant any remaining proceeds of the property attached as is necessary to satisfy the judgment.

(K) Procedure When Judgment for Defendant. If the defendant recovers judgment, all the proceeds of the sales and the monies collected by the Tribal Police and deposited with the District Court together with all attached property shall be delivered to the defendant.

(L) Action on Bond for Wrongful Attachment. In an action on the bond, if it is shown that the attachment was wrongfully sued out, the defendant may recover the actual damages sustained and reasonable attorney's fees to be fixed by the District Court; provided, that this Section shall not constitute a waiver of sovereign immunity of the Tribe, its officers, employees, agents, or political subdivisions.

(Amended by PBP TC No. 92-64, November 18, 1992)

Section 4-10-16. Exempt Property.

The following property shall be exempt, from garnishment, attachment, execution, sale, and other process for the payment of principal and interest, costs, and attorney fees upon any judgment of the Tribal Court:

(A) Three-fourths (3/4) of the net wages earned per week by the person or an amount equivalent to forty (40) times the federal minimum hourly wages per week, whichever is greater, except as may be specifically provided by law for child support payments.

(B) One automobile of fair market value not exceeding one thousand dollars (\$1,000.00).

(C) Tools, equipment, utensils, or books necessary to the conduct of the person's business but not including stock or inventory.

(D) Actual trust or restricted title to any lands held in trust by the United States, or subject to restrictions against alienation imposed by the United States but not including leasehold and other possessory interests in such property.

(E) Any dwelling used as the actual residence of the judgment debtor, including up the five (5) acres of land upon which such dwelling is located.

(F) Household goods, furniture, wearing apparel, personal effects, but not including recreational or luxury items.

(G) All ceremonial or religious items.

(H) Gaming revenue per capita payments to Prairie Band Potawatomi Nation tribal members, provided that this exemption shall not apply to Potawatomi Nation Tribal Court actions to enforce or satisfy child support obligations of a tribal member of the Nation

Section 4-10-17. Taxable Costs.

The Court by rule may set the fees and costs of any service performed by the Court Clerk on behalf of the parties when such fees and costs are not provided for by tribal statute. Such fees and costs shall be maintained at a minimum level. Costs include, but not limited to, fees required for the filing of any paper in an action, expense for service of process, costs of transcripts, service of papers and mileage, costs of publication of any notice required to be published, printing of briefs or other documents required by the Court to be printed, and any other items made recoverable as costs by court rule. The prevailing party shall be allowed a reasonable attorney fee to be set by the Court, to be taxed and collected as costs.

Section 4-10-18. Awarding Costs.

The Clerk of the Court shall tax the costs in each case, and insert the same in their respective judgments, subject to re-taxation by the Court, costs shall be allowed as a matter of course to the prevailing party. In actions for the recovery of money or for specific real or personal property, unless the Court otherwise directs, however, costs against the Tribe shall be imposed only to the extent specifically permitted by tribal law.

Section 4-10-19. Foreign Judgments.

Recognition, implementation and enforcement of orders, judgments and/or decrees from courts other than the District Court of the Prairie Band Potawatomi Nation, hereinafter the "District Court", shall be allowed in accordance with this Code if it has been registered with the district court by filing a certified copy of the order, judgment and/or decree with the District Court clerk, paying any necessary filing fee and obtaining service on the judgment debtor in accordance with the provisions of this Code.

Section 4-10-20. Definitions. As used in this section:

Foreign Judgment means any judgment, decree or order by any other tribal court, any court of the United States or any other court which is entitled to full faith and credit in the Prairie Band Potawatomi Nation.

Section 4-10-21. Full Faith and Credit. The District Court shall grant full faith and credit to judgments, decrees or orders from other courts, provided that all four of these conditions are met:

- (A) The other court provides reciprocal full faith and credit to the judgments, decrees or orders of the District Court.
- (B) The party seeking full faith and credit complies with the conditions and procedures set forth in section 4-10-23.
- (C) The judgment, decree or order does not violate tribal public policy.
- (D) The judgment, decree or order was not reached through procedures deemed by the District Court to be fundamentally unfair.

(Amended by PBP TC No. 2008-077, March 19, 2008)

Section 4-10-22. Filing and Status of Foreign Judgment.

The clerk of the District Court shall treat the foreign judgment in the same manner as a judgment of the District Court. A judgment filed pursuant to Section 4-10-23 has the same effect and is subject to the same procedures, defenses, and proceedings as a judgment of the District Court, and may be enforced or satisfied in like manner.

Section 4-10-23. Filing a Foreign Judgment. Enforcement.

- (A) Any party seeking to have a foreign judgment recognized and enforced in the District Court, may do so by filing:
 - (1) A certified copy of the foreign judgment; and
 - (2) A sworn affidavit by the judgment creditor or lawyer, if any, which includes the following:
 - (a) The name and last known post office address of the judgment debtor and the judgment creditor;
 - (b) The name of the court in which the judgment was obtained;
 - (c) The amount of judgment;
 - (d) The name and address of the judgment debtor's place of employment.

- (B) The District Court shall not act upon any foreign judgment until the expiration of 20 days from the filing of the items required by Section 4-10-23 (A). A party may file an

objection to the recognition and enforcement of a foreign judgment within 20 days from the filing of the items required by Section 4-10-23 (A).

Section 4-10-24. Notice of Filing.

Upon the filing of the petition for foreign judgment, recognition or enforcement, the clerk of the District Court shall promptly mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make note of the mailing in the docket and/or complete a proof of mailing. The notice to the judgment debtor shall include the name and post office address of the judgment creditor and judgment creditor's lawyer, if any, in this Court. In addition, the judgment creditor shall mail a notice of the filing along with a copy of the foreign judgment and affidavit and shall file proof of mailing with the clerk of the District Court. Such notice shall be served on the judgment debtor in a manner consistent with the proof of service provision set forth in this Code. The District Court shall not act on any foreign judgment for a period of 20 days from the filing thereof, and no action to enforce such judgment shall be taken until proof of service has been filed with the District Court.

Section 4-10-25. Stay of Enforcement.

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

Section 4-10-26. Filing Fees.

Any person filing a foreign judgment shall pay the court clerk a docket fee. Any additional fees or charges not specifically covered by the docket fee shall be assessed as additional court costs in the same manner and to the same extent as if the action had been originally commenced in the court where the foreign judgment is filed.

(Amended by PBP TC No. 2008-067, March 6, 2008)

**CHAPTER 4-11
LIMITATION OF ACTIONS**

Section 4-11-1. When Appropriate.

Civil suits, after the cause of action happens, can only be brought within the periods described and at no other time. There shall be no limitation against civil actions brought by the Tribe, on its own behalf, except when expressly stated otherwise.

Section 4-11-2. Real Actions.

Actions for the recovery of real property or for the determination of any adverse right or interest can only be brought within:

- (A) Five (5) years after the passage of this Title.
- (B) Three (3) years when the action is for the forcible entry and detention of real property.
- (C) Nothing in this Section should be construed to impose any limitation upon the enforcement of a right to possession of real property held by the United States in trust for any Indian or Indian tribe under any law of the United States or restricted against alienation by any law of the United States in conformity to the laws of the United States relating to such real property.

Section 4-11-3. Other Actions.

Civil actions other than for the recovery of real property can only be brought within:

- (A) Seven (7) years when an action is on any written contract, agreement or promise.
- (B) Five (5) years when an action is on an unwritten contract, agreement or promise.
- (C) Three (3) years when an action for trespass on real property, an action for personal property, an action for injury to the rights of another, not arising on contract except as otherwise provided in construction tort claims, an action for fraud.
- (D) One (1) year when an action is for libel, slander, or malicious prosecution.
- (E) Five (5) years when an action is on the official bond or undertaking of an executor, administrator, guardian.
- (F) Five (5) years for another action not provided for.

Section 4-11-4. Survival of Action.

A representative of a deceased person may initiate a new action within two (2) years provided that the deceased had already initiated the original action within the proper time frames.

Section 4-11-5. Construction Tort Claims.

No action in tort to recover damages:

- (A) For any deficiency in the design, planning, supervision or observation of construction or construction of an improvement to real property,

- (B) For injury to property, real or personal, arising out of any such deficiency, or
- (C) For injury to the person or for wrongful death arising out of any such deficiency,

shall be brought against any person owning, leasing, or in possession of such an improvement or performing or furnishing the design, planning, supervision or observation of construction or construction of such an improvement more than ten (10) years after substantial completion of such an improvement.

Section 4-11-6. New action, saving statute.

If any action be commenced within due time in tribal court or another court, and the plaintiff fail in such action otherwise than upon the merits, and the time limited for the same shall have expired, the plaintiff, or, if the plaintiff die, and the cause of action survive, his or her representative may commence a new action within six months after such failure. This section shall also be applied retroactively to all of such new actions.

(Title 4, enacted by PBP TC No. _____, _____; amended by PBP TC No. 92-60 through 92-65, November 18, 1992; amended by PBP TC No. 93-2, January 6, 1993 and Gen. Council No. 93-1, January 23, 1993; Section 4-11-6, enacted by PBP TC No. 2004-061, April 8, 2004)

**CHAPTER 4-12
WORTHLESS CHECK**

Section 4-12-1. Civil liability for worthless check.

(A) If a person gives a worthless check, the person shall be liable to the holder of the check for the amount of the check, the incurred court costs, the incurred service charge, interest at the statutory rate and the costs of collection, including but not limited to reasonable attorney fees, plus an amount equal to the greater of the following:

- (1) Damages equal to three times the amount of the check but not exceeding the amount of the check by more than \$500; or
- (2) \$100.

The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check.

(B) The amounts specified by subsection (A) shall be recoverable in a civil action in tribal court brought by or on behalf of the holder of the check only if: (1) Not less than 14 days before filing the civil action, the holder of the check made written demand on the maker or drawer for payment of the amount of the check, the incurred service charge and accrued interest; and (2) the maker or drawer failed to tender to the holder, prior to the filing of the action, an amount not less than the amount demanded. The written demand

shall be sent by first class mail, to the person to be given notice at such person's address as it appears on such check, draft or order or to the last known address of the maker or drawer. The written demand shall include notice that, if the money is not paid within 14 days, triple damages in addition to an amount of money equal to the sum of the amount of the check, the incurred service charge, court costs, accrued interest, the costs of collection including but not limited to reasonable attorney fees unless the court otherwise orders, may be incurred by the maker or drawer of the check. Notice required by subsection (B)(1) shall state the exact amount and date due, as well as an estimate of the amount that may be incurred if the amount demanded is not paid by the specified date.

(C) Subsequent to the filing of an action under this section but prior to the commencement of a dispositional hearing by the court, the defendant may tender to the plaintiff as satisfaction of the claim, an amount of money equal to the sum of the amount of the check, the incurred service charge, accrued interest, the costs of collection including but not limited to reasonable attorney fees and court costs. The plaintiff shall include in the petition a statement alleging that the defendant may tender such amount as satisfaction of the claim as provided in this subsection. If the amount alleged in the petition is tendered to the plaintiff in full satisfaction of the debt prior to the commencement of the dispositional hearing by the court, the case shall be dismissed by the plaintiff. For purpose of this subsection only, the amount tendered as satisfaction of the claim shall not include triple damages or damages of \$100 as provided in subsections (A)(1) and (2). For purposes of this subsection, a dispositional hearing means a trial or other hearing by the court in which the plaintiff is seeking the entry of judgment against the defendant. The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check.

(D) If the trier of fact determines that the failure of the defendant to satisfy the dishonored check was due to economic hardship, the court may waive all or part of the damages provided for by this section, but the court shall render judgment against defendant for not less than the amount of the dishonored check, the incurred court costs, service charge, costs of restricted mail and the costs of collection, including but not limited to reasonable attorney fees, unless otherwise provided in this subsection. The court may waive all or part of the attorney fees provided for by this subsection, if the court finds that the damages and other amounts awarded are sufficient to adequately compensate the holder of the check. In the event the court waives all or part of the attorney fees, the court shall make written findings of fact as to the specific reasons that the amounts awarded are sufficient to adequately compensate the holder of the check.

(E) Any amount previously paid as restitution or reparations to the holder of the check by or on behalf of its maker or drawer shall be credited against the amount for which the maker or drawer is liable under subsection (A).

(F) Conviction of giving a worthless check under PBP Code § 15-1-40 or otherwise shall not be a prerequisite or bar to recovery pursuant to this section.

(G) The service charge on a check which is dishonored by the drawee because the maker or drawer had no deposits in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of each check, order or draft in full upon its presentation, shall not exceed \$30.

(H) As used in this section giving a "worthless check" means the making, drawing, issuing or delivering or causing or directing the making, drawing, issuing or delivering of any check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent:

- (1) With intent to defraud or in payment for a preexisting debt; or
- (2) Which is dishonored by the drawee because the maker or drawer had no deposits in or credits with the drawee or has not sufficient funds in, or credits with, the drawee for the payment of such check, order or draft in full upon its presentation; and
- (3) for which the maker or drawer has not tendered to the holder's agent the amount of money demanded and within the time allowed by the demand required in subsection (B).

Section 4-12-2. Civil action to collect on check or order; reasonable attorney fees assessed as costs.

In any civil action to enforce payment of or to collect upon a check, order or draft on any bank, credit union, savings and loan association or depository for the payment of money or its equivalent, payment upon which such instrument has been refused because of insufficient funds or no account, the party prevailing on such cause of action shall be awarded reasonable attorney fees. Such fees shall be assessed by the court as costs against the losing party. The fees shall not be allowed unless the plaintiff offers proof during the trial of such action that prior to the filing of the petition in the action demand for payment of the check or order had been made upon the defendant by first class mail not less than 14 days prior to the filing of such suit.

**CHAPTER 4-13
MISCELLANEOUS PROVISIONS**

Section 4-13-1. Tortious Interference with a Business or Governmental Relationship.

(A) **Business Relationship.** An action may be brought in Tribal Court to recover damages for tortious interference with a business relationship. To recover the plaintiff must show that (i) the plaintiff had a current or prospective business relationship with a third party; (ii) the defendant interfered with that relationship; (iii) the defendant acted for a wrongful or unjustified purpose or used dishonest, unfair, or improper means; and (iv) the defendant's acts injured the relationship.

(B) Governmental Relationship. An action may be brought by the Nation in Tribal Court to recover damages for tortious interference with a governmental relationship. To recover the Nation must show that (i) it had a current or prospective governmental relationship with a third party; (ii) the defendant interfered with that relationship; (iii) the defendant acted for a wrongful or unjustified purpose or used dishonest, unfair, or improper means; and (iv) the defendant's acts injured the relationship.

(C) Civil Penalty. In addition to damages specifically proven, when the Nation is the plaintiff in either of the above actions, it may recover from the defendant a \$10,000 civil penalty as additional damages for each act of interference along with its attorneys fees and costs.

(D) Proof of malice not required. In an action for tortious interference with a business or governmental relationship, proof of malice shall not be required.

(Amended by PBP TC No. 92-63, November 18, 1992)

(Amended by PBP TC No. 2001-156, December 11, 2001; amended by PBP TC No. 2006-106, June 2, 2006 (Title 4, enacted by PBP TC No. 92-60 through 92-65, November 18, 1992; amended by PBP TC No. 92-63, November 18, 1992; amended by PBP TC No. 93-2, January 6, 1993 and Gen. Council No. 93-1, January 23, 1993; Sec. 4-12-1 and 4-12-2, enacted by PBP TC No. 2000-134, June 20, 2000; amended by PBP TC No. 2000-154, July 25, 2000; amended by PBP TC No. 2000-187, September 27, 2000; amended by PBP TC No. 2003-135, September 4, 2003; amended by PBP TC No. 2004-061; April 8, 2004; PBP TC. No. 2004-083, May 20, 2004; amended by PBP TC No. 2005-127, August 19, 2005; amended by PBP TC No. 2006-106, June 2, 2006; amended by PBP TC No. 2007-174, September 20, 2007; amended by PBP TC No. 2008-067, March 6, 2008; amended by PBP TC No. 2008-077, March 19, 2008)

