

**TITLE VI
JUDICIAL REMEDIES**

**CHAPTER 1
GENERAL PROVISIONS**

Section 6-1-1. Purpose. The purpose of this title is to provide rules and procedures for certain forms of relief, including garnishment, injunctions, protection orders, declaratory judgments, mandamus and prohibition as well as provide procedures for notifying the Tribe of any action which involves the validity of a law of the Tribe. This Title shall not be construed as limiting other forms of judicial remedies and relief as are necessary for adjudication of individual rights.

Section 6-1-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular chapter or section, in this Title:

1. "Court" means the Ponca Tribe of Nebraska Tribal Court, including the Court of Appeals and Trial Court.
2. "Court of Appeals" means the Court of Appeals of the Court.
3. "Trial Court" means the Trial Court of the Court.

Section 6-1-3. Procedure. Proceedings brought pursuant to or requesting relief permitted under this Title shall be brought by and governed by the rules of procedure for the Court which are not in conflict with this Title.

Section 6-1-4. Rights of Parties.

1. Every party to a proceeding under this Title has the following rights:
 - a. To be represented by legal counsel at his or her own expense in all proceedings in the matter;
 - b. To introduce evidence;
 - c. To be heard on his or her own behalf;
 - d. To have the Court compel the attendance of a witness on his or her behalf as permitted in this Chapter; and

e. To examine witnesses.

2. All parties shall be entitled to advance copies of court documents, including petitions and reports, unless deemed inappropriate by the Court.

Section 6-1-5. Trial of Issues of Fact. When a proceeding under this Title involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the Court.

Section 6-1-6. Severability. If any chapter, section or provision of this Title or amendment made by this Title is held invalid, the remaining chapters, sections and provisions of this Title and amendments made by this Title shall continue in full force and effect.

Section 6-1-7. Sovereign Immunity. Except where expressly waived by a section of this Title specifically referring to a waiver of sovereign immunity, nothing in this Title shall be construed as limiting, waiving or abrogating the sovereignty or the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials or employees.

CHAPTER 2 GARNISHMENT AND EXECUTION

Section 6-2-1. Power of Court. The Court may issue writs of garnishment and execution to satisfy judgments in accordance with this Chapter.

Section 6-2-2. Applicability. This Chapter does not apply to:

1. The debts owed by or obligations required to be performed by the Tribe or any of its departments, agencies, boards, commissions, instrumentalities, or economic enterprises or any of their employees in their official capacities;

2. Income withholding as result of a child support order subject to Title IV of this Code; or

3. Mandatory deductions under other provisions of the laws of the Tribe.

Section 6-2-3. Definitions. Unless the context requires otherwise, in this Chapter:

1. "Creditor" means a person that has an enforceable money judgment against a debtor.

2. "Debtor" means a person against whom a creditor has an enforceable money judgment, but only under and to the extent of the judgment.

3. "Garnishee" means a person other than a debtor or creditor who is in possession of, controls, or has custody of funds or property of a debtor or owes funds or property to a debtor, including wages, which has been or is proposed to be garnished in accordance with this Chapter.

4. "Garnishment" means a proceeding whereby a debtor's money or credits, including salary and wages, in possession, under control, in the custody of, or owed by a garnishee are sought to be applied to payment of the debtor's debt to a creditor by properly authorized process against the debtor.

5. "Execution" means a proceeding whereby property belonging to and in the possession of a debtor or garnishee is attached by the Court to be sold in order to satisfy all or part of a judgment rendered against the debtor.

6. "Judgment" includes a judgment of the Court and any judgments of other jurisdictions recognized by the Court in accordance with the laws of the Tribe governing the recognition and enforcement of foreign orders and judgments.

Section 6-2-4. Jurisdiction. In addition to the Court's general jurisdiction, the Court shall have jurisdiction to issue a writ of garnishment or execution regardless of the Court's jurisdiction over the debtor, if:

1. The garnishee is subject to the personal jurisdiction of the Court; or

2. The funds or property to be garnished are subject to the jurisdiction of the Court or located within the territory of the Tribe.

Section 6-2-5. Limitations. A writ of garnishment or execution may not be issued or granted:

1. If the debtor is the Tribe or any of its departments, agencies, boards, commissions, instrumentalities, or economic enterprises or any of their employees in their official capacities;

2. If the judgment on which the action is based is a foreign judgment which has not been recognized by the Court in accordance with the laws of the Tribe applicable to the recognition and enforcement of foreign orders and judgments;

3. If the judgment on which the action is based is not filed with the Court;

4. If the judgment on which the action is based has been satisfied or a satisfaction of the judgment has been filed; or

5. If the judgment on which the action is based is only for non-monetary relief.

Section 6-2-6. Grounds for Garnishment. A writ of garnishment or execution may be issued to any person who has possession, custody or control of funds or property of the debtor or owes funds or property to the debtor if:

1. The creditor has obtained a judgment against the debtor;

2. The judgment is for the payment of money to the creditor;

3. The debtor has not paid the amount of money provided in the judgment or otherwise satisfied the judgment;

4. The funds or property of the debtor are not exempt from garnishment or execution; and

5. The creditor has otherwise complied with the procedures and requirements of this Chapter.

Section 6-2-7. Initiation of Proceedings.

1. Proceedings in the Court to obtain a writ of garnishment or execution shall be initiated by the filing of a complaint.

2. Complaints may be filed by the creditor and shall be captioned: "(name(s) of creditor(s)), Creditor(s) vs. (name(s) of debtor(s), Debtor(s) and (name(s) of garnishee(s)), Garnishee".

3. In addition to any other information required by the laws of the Tribe, all complaints under this Section shall contain the following information:

a. The name, address, and tribal affiliation of the creditor;

b. The name, tribal affiliation, and last four digits of the social security number of the debtor, or a statement that the information is not known;

c. The physical and mailing addresses and employment of the debtor, or a statement that the information is not known;

d. The name and address of the garnishee, if any;

e. The basis for the Court's jurisdiction;

f. The total amount the creditor claims is owed by the debtor;

g. A description of the action and findings of the court which entered the judgment on which the action is based;

h. If the judgment on which the action is based is a foreign judgment which has not been recognized by the Court, allegations necessary for the Court to recognize the judgment in accordance with the laws of the Tribe governing recognition and enforcement of foreign judgments and a request to recognize the judgment;

i. A description of the funds or property sought to be garnished or executed against, the location of such funds or property, and the name of the person in possession of the funds or property;

j. Reasonable instructions on how to remit to the creditor any amount withheld from the funds or property of the debtor, if appropriate; and

k. A request that the Court enter a writ of garnishment or execution, as appropriate.

4. A complaint filed under this Section shall be accompanied by a copy of the judgment on which the action is based as an exhibit. If the judgment on which the action is based is a foreign judgment which has not been recognized by the Court, the copy of the judgment attached to the complaint must be a certified copy of the original judgment. If the foreign judgment on which the action is based has been recognized by the Court, a copy of

the order recognizing the judgment shall be included along with a copy of the foreign judgment on which the action is based.

5. Two (2) or more garnishees may be included in the same complaint for the same debtor.

6. A complaint which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 6-2-8. Summons and Service of Process. Upon the filing of a complaint, a summons shall be issued to and served upon the debtor and garnishee, if any, in accordance with the general rules governing the issuance of summons by the Court.

Section 6-2-9. Responsive Pleading.

1. The debtor and garnishee may file a responsive pleading.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of procedure for the Court for answering or responding to a claim.

Section 6-2-10. Hearing on Complaint.

1. Upon the filing of a complaint under this Chapter, the Court shall schedule and conduct a hearing on the complaint.

2. The primary purpose of a hearing on the complaint is to determine whether a writ of garnishment or execution should issue.

3. The Court shall consider any and all relevant testimony or evidence presented at hearing.

4. The Court shall determine whether a writ of garnishment or execution shall be issued in accordance with the provisions of this Chapter.

5. The burden of proof shall lie with a creditor to demonstrate that a writ of garnishment or execution should issue by a preponderance of the evidence.

Section 6-2-11. Writ.

1. In addition to any other matters necessary for an order of the Court, a writ of garnishment or execution shall include:

- a. The name and address of the creditor;
- b. The name, address, and last four digits of the social security number of the debtor;
- c. The title and location of the court action under which the judgment on which the writ is based was issued;
- d. The amount of the judgment on which the writ is based, including any applicable interest;
- e. The name and address of the garnishee, if any;
- f. A description of the funds or property to be garnished or executed against;
- g. The address of the location of the funds or property;
- h. If appropriate, an authorization for law enforcement to take possession of property to be executed against and deliver possession thereof to the creditor, if necessary;
- i. The rate at which the funds will be garnished as provided in this Chapter, if applicable; and
- j. The amount of any applicable costs allowed by the Court in obtaining the writ.

2. A writ of garnishment or execution is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-2-12. Service of Writ.

1. A writ of garnishment or execution shall be served on the garnishee as follows:

- a. If the garnishee has not appeared in the proceeding, the writ shall be served in accordance with the rules of procedure of the Court governing service of a summons and original complaint, provided that service by publication shall not be permitted; and

b. If the garnishee has appeared in the proceeding, the writ may be served in accordance with the rules of procedure of the Court governing service of papers other than the summons and original complaint.

2. Unless an appeal is filed, a writ of garnishment or execution shall become effective as against the garnishee upon proper service of the writ on the garnishee and shall be effective to garnish all non-exempt property of the debtor or execute against the non-exempt property of the debtor described in the writ which is in the garnishee's possession, custody or control at the time of service of the writ.

3. Unless an appeal is filed, a writ of execution shall become effective as against the debtor upon proper service of the writ on the debtor and shall be effective to execute against the non-exempt property of the debtor described in the writ of execution which is in the debtor's possession, custody or control at the time of service of the writ.

Section 6-2-13. Execution.

1. A creditor may seek a writ of execution upon any specific property of the debtor, whether such property is in the possession, custody, or control of the debtor or a garnishee. Upon the writ becoming effective under this Chapter, the debtor or garnishee shall deliver such property to the creditor for sale in accordance with this Section.

2. Upon receipt of property as a result of execution, the creditor shall sell the property in any commercially reasonable manner. The creditor shall apply an amount equal to the proceeds of the sale or the fair market value of the property, whichever is more, as follows:

a. First, to satisfy any actual out of pocket costs of the sale;

b. Second, to satisfy any unpaid court costs;

c. Third, to satisfy any portion of the judgment still owing; and

d. Finally, to pay over to the debtor any amount remaining.

3. The debtor or garnishee shall execute any and all necessary documents to accomplish the transfer of any property subject to a writ of execution to the creditor or a purchaser from the creditor.

4. Nothing in this Section shall limit or prohibit law enforcement from taking possession of property described in a writ of execution to be executed against and deliver possession thereof to the creditor.

Section 6-2-14. Review of Garnishment.

1. A garnishee, creditor, or debtor may request a review of a garnishment any time, but no more frequently than every ninety (90) days, to determine whether the garnishment should be continued or revised.

2. A debtor may request a review of garnishment at any time to claim an exemption or limit under law, including this Chapter.

Section 6-2-15. Rate of Garnishment.

1. The Court shall determine the amount of money which may be withheld from all sources of income of a debtor in accordance with this Section. Factors which shall be considered in determining the amount of money to garnish shall include, but not be limited to:

a. Total income versus the amount of the debt for the debtor and the creditor each;

b. The priority of the debt in relation to other obligations owed;

c. The type of debt;

d. The needs of the creditor;

e. The needs of the debtor;

f. The nature of the income to be garnished; and

g. Other sources of financial support for the creditor and the debtor.

2. The maximum amount of money from all sources of income received by a debtor that may be subject to garnishment during any week is the lesser of:

a. Twenty-five percent (25%) of the total of all such sources of income for that week;

b. The amount by which the total from all such sources of income for that week exceeds forty (40) times the minimum hourly wage in effect in the location of the debtor at the time the income is payable; or

c. The amount by which the total from all such sources of income for that week exceeds the official federal poverty guideline for the family size and location of the debtor.

3. For any income received by a debtor at a rate other than weekly, the maximum amount subject to garnishment shall be determined by calculating a weekly amount of income based on the rate of receipt of such income.

4. Subject to the priority of child support and maintenance orders in this Chapter, which shall be paid to the maximum amount available for those orders before any withholding is made for another garnishment, when a debtor is subject to multiple orders for garnishment and withholding amounts from all garnishment orders will result in exceeding the maximum amount permitted under this Section, each creditor shall receive a pro rata share of the total amount withheld based on the writs of garnishment being enforced.

Section 6-2-16. Priority of Garnishment Orders. Except where another order is required to be given priority by applicable law, when a debtor is subject to multiple orders for garnishment or income withholding, the orders shall be given priority in the following descending order:

1. Child support orders issued or recognized and enforced by the Court pursuant to Title IV of the Code;

2. Any other child support order;

3. Other personal support orders, including spousal maintenance; and

4. All other garnishments in accordance with the time they are issued such that a garnishment issued first shall have priority over a garnishment issued later.

Section 6-2-17. Exempt Property.

1. The following property shall be exempt from garnishment and execution:

a. All wearing apparel and personal effects of every person in the family, but not to exceed five hundred dollars (\$500.00) of value in furs, jewelry, beadwork, or personal ornaments for any one person;

b. Household goods and furniture, but not including televisions, radios, stereo equipment, tape recorders, more than two (2) firearms, works of art and other recreational or luxury items;

c. Domesticated animals which are bona fide pets;

d. Items of bona fide religious or cultural significance;

e. Fishing, hunting, or farming equipment of reasonable value;

f. A minimum amount of tools, instruments, and materials sufficient to allow a debtor to carry on his or her trade;

g. Provisions and fuel for the comfortable maintenance of the home for three (3) months;

h. Land or interests in land or other property held in trust by, or subject to restrictions on alienation imposed by, the United States;

i. Land and real property which is the debtor's principal residence;

j. An automobile of reasonable value necessary for personal or family use;

k. Equitable interests in property;

1. Property in the custody of a court or law enforcement agency;

m. Property in the possession of a conservator or personal representative; and

n. Property constituting the subject matter of a trust.

2. The exemptions provided in this Section shall apply to any garnishment or execution under any law of the Tribe unless:

a. Such law expressly permits garnishment or execution against such property; or

b. The property, with the exception of land held in trust by or subject to restrictions on alienation imposed by the United States, was specifically pledged to the creditor as collateral or security.

Section 6-2-18. Collection of Funds.

1. Any funds recovered under a writ of garnishment shall be delivered directly to the creditor, except that the creditor may choose to have the funds delivered to the Tribal Court Administrator.

2. If funds are delivered to the Tribal Court Administrator, at the election of the creditor or otherwise, upon receipt of the funds the Tribal Court Administrator shall, at the election of the creditor, either:

a. Forward the funds to the creditor by whatever means is appropriate; or

b. Inform the creditor that the funds are in the custody of the Court and will be made available for pickup at a reasonable time.

3. In the event a creditor elects to have funds delivered to the Tribal Court Administrator, the Court may order that the Tribal Court Administrator deduct an appropriate amount, not to exceed five dollars (\$5.00), from the funds upon each delivery to cover administrative costs.

Section 6-2-19. Penalties.

1. If a garnishee or debtor knowingly fails to withhold monies or remit property or withheld monies as required by this Chapter after being served with a writ of garnishment or execution, the Court may:

a. Find the garnishee or debtor, as appropriate, in contempt in accordance with the laws of the Tribe;

b. Hold the garnishee liable for one hundred percent (100%) of the amount of monies that should have been withheld; and

c. Impose a civil fine on the garnishee or debtor, as appropriate, in an amount not to exceed eight hundred dollars (\$800).

2. It shall be a defense to any failure to withhold or remit monies or property that:

a. The writ of garnishment or execution is not enforceable under this Chapter or other applicable law;

b. The funds or property to be garnished or executed against are exempt from garnishment and execution; or

c. The garnishee or debtor did not have possession, custody, or control of any non-exempt funds or property of the debtor subject to the writ at the time the writ became effective and the garnishee or debtor did not transfer or convey the funds or property to avoid enforcement of the writ.

3. The Tribe shall withhold and remit funds in accordance with a writ of garnishment issued by the Court in accordance with this Chapter, provided that the Tribe shall not be subject to any fines, penalties, or other enforcement provisions in this Chapter, except that the Court may find an officer or employee of the Tribe responsible for withholding in contempt in accordance with the laws of the Tribe for refusal to comply with a writ of garnishment issued by the Court in accordance with this Chapter without regard to any immunity of such officer or employee.

Section 6-2-20. Protection of Employees.

1. An employer shall not discipline, discharge from employment, or refuse to employ any person because his or her wages are subject to garnishment.

2. An employer who disciplines, discharges from employment, or refuses to employ a person because of a writ of garnishment shall be subject to a civil fine not to exceed eight hundred dollars (\$800).

Section 6-2-21. Foreign Writ of Garnishment.

1. Any writ of garnishment or execution issued by a court of another jurisdiction may be recognized and enforced in accordance with the laws of the Tribe governing the recognition and enforcement of foreign orders generally, provided that the Court shall not recognize a writ of garnishment or execution unless and until it recognizes the judgment on which the writ is based in accordance with the laws of the Tribe.

2. The provisions of this Chapter governing exempt property, the maximum amount of income that can be withheld, priority of garnishment orders, and any other provisions governing or related to the enforcement of a writ of garnishment or execution shall apply to the enforcement of any foreign writ recognized and enforced by the Court.

3. No writ of garnishment or execution issued by a foreign court shall be enforced until it has been recognized by the Court in accordance with the laws of the Tribe.

**CHAPTER 3
INJUNCTIONS**

Section 6-3-1. Power of Court.

1. The Court, in a civil cause of action and controversy within its jurisdiction, shall have the authority to grant injunctions:

a. When it appears that the party applying for the injunction is entitled to the relief demanded and such relief, or any part thereof, requires the restraint of some act prejudicial to the party;

b. When it appears during litigation that a party is doing some act or has threatened or is about to do some act respecting the subject of the litigation that is in violation of the rights of another party and would tend to render the judgment ineffectual; and

c. In all other cases when a party is entitled to an injunction under the principles of equity.

2. Unless such injunction or order is specifically governed by another law of the Tribe, the provisions of this Chapter shall apply to all injunctions and orders enjoining or requiring conduct issued by the Court whether denominated permanent injunctions, final injunctions, mandatory injunctions, prohibitory injunctions, preliminary injunctions, interlocutory injunctions, temporary restraining orders, or otherwise.

3. Nothing in this Chapter shall be construed as creating a cause of action.

Section 6-3-2. Limitations. An injunction shall not be granted:

1. When there is no proper civil cause of action or actual controversy between the parties;

2. To stay a judicial proceeding pending at the commencement of the action in which the injunction is demanded, unless the restraint is necessary to prevent a multiplicity of such proceedings;

3. To stay proceedings in a court or administrative agency of the Tribe except:

a. As expressly authorized by the laws of the Tribe;

b. When necessary to aid or protect the Court's jurisdiction; or

c. When necessary to protect or effectuate the Court's judgments;

4. To stay proceedings in another jurisdiction upon a judgment of a court of that jurisdiction;

5. To prevent, suspend, or restrain enforcement of a law of the Tribe by officials, officers, or employees of the Tribe for the public benefit;

6. To prevent or restrain breach of a contract, the performance of which would not be specifically enforced;

7. To prevent, suspend, or restrain the exercise of a Tribal office in a lawful manner by the person in possession;

8. To prevent, suspend, or restrain a legislative act by the Tribe or any of its branches, instrumentalities, agencies, or departments;

9. To prevent, suspend, or restrain the exercise of a discretionary act by an official, officer, or employee of the Tribe;

10. To prevent, suspend, or restrain the assessment, levy, or collection of any tax under the laws of the Tribe where an adequate remedy may be had under the laws of the Tribe; or

11. To enjoin a dispute concerning terms or conditions of employment between an employer and employee or person seeking employment, unless necessary to prevent irreparable injury to property or to a property right of the party making the application and there is no adequate remedy at law for the injury.

Section 6-3-3. Temporary Restraining Order.

1. The Court may issue an injunction in the form of a temporary restraining order without a hearing or notice to all parties sought to be enjoined only if the applicant demonstrates by specific facts shown by affidavit or complaint verified by oath:

a. That, assuming such specific facts are true, the applicant would be entitled to a preliminary injunction;

b. That such specific facts clearly and convincingly show that immediate and irreparable harm will result to the applicant before the parties sought to be enjoined can be heard;

c. That there are sufficient reasons to not require notice to the parties sought to be enjoined; and

d. That the plaintiff and/or his or her legal counsel attempted to give written notice to all parties sought to be enjoined and the methods attempted.

2. A temporary restraining order shall not be granted on the complaint unless it is verified by the oath of the plaintiff that he or she has read the complaint, or heard the complaint read, knows the contents thereof, and that it is true of his or her own knowledge, except the matters stated therein on information and belief, and that as to those matters, he or she believes the complaint to be true.

3. If no notice is provided to the parties enjoined by a temporary restraining order, a copy of the complaint and any affidavits shall be served with the temporary restraining order.

4. Unless earlier dissolved or vacated by the Court, a temporary restraining order issued without a hearing shall, unless the Court extends it for good cause shown or consent of all parties, expire at the earlier of:

- a. The date and time provided in the order;
- b. The issuance or denial of a preliminary injunction after hearing; or
- c. Ten (10) days from the entry of the order.

5. Any party may move the Court to dissolve or modify a temporary restraining order any time after it is issued and the Court shall determine such motion as expeditiously as possible.

6. A temporary restraining order may be appealed in the discretion of the Court of Appeals in accordance with the laws of the Tribe governing civil appeals.

Section 6-3-4. Preliminary Injunction.

1. The Court shall not issue a preliminary injunction unless notice, together with a copy of the complaint or affidavits upon which the application for preliminary injunction is based, is served upon all parties sought to be enjoined.

2. The Court may issue a preliminary injunction only after a hearing where the applicant demonstrates by specific facts shown by affidavit, complaint verified by oath, testimony, or other evidence:

- a. That the applicant is likely to succeed on the merits of his or her case;

b. That the applicant is likely to suffer irreparable harm in the absence of a preliminary injunction;

c. That there is no other remedy available to the applicant;

d. That the balance of equities tips in the applicant's favor; and

e. That the preliminary injunction is in the public interest.

3. A preliminary injunction shall not be granted on the complaint unless it is verified by the oath of the plaintiff that he or she has read the complaint, or heard the complaint read, knows the contents thereof, and that it is true of his or her own knowledge, except the matters stated therein on information and belief, and that as to those matters, he or she believes the complaint to be true.

4. Any preliminary injunction issued without notice to all parties sought to be enjoined shall be void and unenforceable as to those parties not notified and shall be dissolved immediately upon motion of any party.

5. Any party may move the Court to dissolve or modify a preliminary injunction after an answer or other responsive pleading is filed.

6. A preliminary injunction shall be subject to appeal in accordance with the laws of the Tribe governing civil appeals without regard to finality or the entry of a final judgment.

Section 6-3-5. Permanent Injunction.

1. A permanent injunction may only be granted as a final judgment or decree in a civil cause of action conducted under and in accordance with the laws of the Tribe governing civil causes of action.

2. A permanent injunction shall be a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-3-6. Security. Except as otherwise provided by law, the Court shall not issue any preliminary injunction or temporary restraining order unless the applicant provides security in an

amount the Court considers proper to pay the costs and damages sustained by any party who is found to have been wrongfully enjoined or restrained, provided that no such security may be required of the Tribe.

CHAPTER 4 PROTECTION ORDERS

Section 6-4-1. Power of Court. The Court may issue orders for protection in accordance with this Chapter without regard to whether the parties are family or household members or otherwise related.

Section 6-4-2. Applicability. This Chapter does not apply to:

1. A case or controversy involving or growing out of a labor dispute;
2. Any activity, including speech, that is constitutionally protected or otherwise protected by another law of the Tribe;
3. The activities of the Tribe; or
4. Where the Court would be prohibited from issuing an injunction under this Title.

Section 6-4-3. Definitions. Unless the context requires otherwise, in this Chapter:

1. "Assault" means, other than lawful acts of self-defense or defense of others:
 - a. An attempt to cause or purposely, knowingly, or recklessly causing physical harm to another;
 - b. Negligently, purposely, or knowingly causing physical harm to another with a deadly weapon; or
 - c. Attempting by physical menace to put another in fear of imminent physical harm.
2. "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, indicating a continuity of purpose.
3. "Credible threat of violence" means a knowing and willful

statement or course of conduct that does not serve a legitimate purpose and that causes a reasonable person to fear for the person's safety or for the safety of the person's immediate or extended family, household member, friend, pet, service animal, emotional support animal, horse, or livestock.

4. "Department" means the Ponca Tribe of Nebraska Domestic Violence Department.

5. "Emotional abuse" means a pattern of ridiculing or demeaning, making derogatory remarks, verbally harassing, or threatening to inflict physical or emotional harm on another person.

6. "Emotional support animal" means an animal that is used to assist, support, or provide service to persons with disabilities and that is not a service animal or pet.

7. "Harassment" means willfully and maliciously engaging in a knowing course of conduct or series of acts over a period of time directed at a specific person that would cause a reasonable person to be seriously alarmed, annoyed, or harassed and the conduct in fact seriously alarms, annoys, or harasses the person and serves no legitimate purpose. A person's acts constitute harassment if, with intent to harass or with knowledge that the person is harassing another person, the person:

a. Anonymously or otherwise contacts, communicates, or causes a communication with another person by verbal, electronic, mechanical, telegraphic, telephonic, or written means in a manner that harasses;

b. Continues to follow another person in or about a public place for no legitimate purpose after being asked to desist;

c. Repeatedly commits an act or acts that harass another person or his or her pet, service animal, emotional support animal, horse, or livestock;

d. Surveils or causes another person to surveil a person for no legitimate purpose;

e. On more than one occasion makes a false report to a law enforcement, credit, or social service agency about the person or his or her pet, service animal, emotional support animal, horse, or livestock;

f. Engages in a pattern of attending public events after being notified that the person's presence at the event is harassing to another; or

g. Prevents an occupant of a dwelling from gaining access to or exiting from the dwelling or property on which the dwelling is located.

8. "Household member" means a person who lives or has lived with another person in the same residence.

9. "Intimidation" means communicating a threat to another person, with the intent:

a. That the other person engage in conduct against the other person's will;

b. That the other person be placed in fear of retaliation for a prior lawful act; or

c. Of causing the other person to evacuate or abandon a dwelling, building, or other structure.

10. "Pet" means a domesticated animal, such as a dog, cat, bird, rodent, fish, turtle, or other animal, that is kept for pleasure rather than for commercial purposes.

11. "Physical injury" means the impairment of physical condition and includes any skin bruising, pressure sores, bleeding, failure to thrive, malnutrition, dehydration, burns, fracture of any bone, subdural hematoma, soft tissue swelling, injury to any internal organ, or any physical condition that imperils health or welfare.

12. "Service animal" means an animal that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability, and that are directly related to the individual's disability, such as assisting with navigation and other tasks, alerting to the presence of people or sounds, providing non-violent protection or rescue work, pulling a wheelchair, assisting during a seizure, alerting to the presence of allergens, retrieving items such as medicine or the telephone, providing physical support and assistance with balance and stability, and preventing or interrupting impulsive or destructive behaviors, but excluding crime deterrence and the

provision of emotional support, well-being, comfort, or companionship.

13. "Stalking" means purposefully engaging in a course of conduct where a person maintains visual or physical proximity to a specific person or directs verbal, written, or other threats whether express or implied, to a specific person on two or more occasions over a period of time, however short, but does not include constitutionally protected activity. A person engages in stalking if the person purposely or knowingly engages in a course of conduct that is directed toward another person and if that conduct either:

a. Would cause a reasonable person to fear for the person's safety or the safety of that person's immediate or extended family member, household member, friend, pet, service animal, emotional support animal, horse, or livestock and that person in fact fears for his or her safety or the safety of that person's immediate or extended family member, household member, friend, pet, service animal, emotional support animal, horse, or livestock; or

b. Would cause a reasonable person to fear death of that person or that person's immediate or extended family member, household member, friend, pet, service animal, emotional support animal, horse, or livestock and that person in fact fears death of that person or that person's immediate or extended family member, household member, pet, service animal, emotional support animal, horse, or livestock.

14. "Targeted residential picketing" means, when committed on more than one occasion, marching, standing, or patrolling by one or more persons which prevents an occupant of a residential building from gaining access to or exiting from the property on which the residential building is located.

Section 6-4-4. Subject Matter Jurisdiction.

1. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, the Court shall have original subject matter jurisdiction over all matters arising under this Chapter.

2. In any matter arising under this Chapter, if a prior action on the same matter has been commenced in the court of another jurisdiction involving the same individuals, the Court shall decline to assert original subject matter jurisdiction

unless and until the prior action is dismissed or the court of the other jurisdiction otherwise declines to hear the matter.

Section 6-4-5. Personal Jurisdiction. Except for limitations, restrictions, or exceptions imposed by or under the authority of the Constitution or laws of the United States or by express provision elsewhere in the laws of the Tribe and in addition to any other personal jurisdiction the Court may exercise pursuant to the laws of the Tribe, the Court shall have jurisdiction over the following persons under this Chapter:

1. Individuals who are members or eligible to be members of the Tribe regardless of residence or domicile;

2. Individuals who are members of another federally recognized Indian tribe and who are residing or domiciled within the territory of the Tribe;

3. Individuals who have committed, are alleged to have committed, or are likely to commit conduct to be restrained within the territory of the Tribe;

4. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, any other individual who resides or is domiciled within the territory of the Tribe where another party to the action is a member of the Tribe or is a member of another federally recognized Indian tribe who is residing or domiciled within the territory of the Tribe;

5. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, any other individual who resides or is domiciled within the territory of the Tribe who consents to the jurisdiction of the Court, provided that such consent, once given, may be revoked only with the permission of the Court;

6. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, any other individual who does not reside and is not domiciled within the territory of the Tribe who:

a. Is personally served with a summons within the territory of the Tribe;

b. Consents to the jurisdiction of the Court, provided that such consent, once given, may be revoked only with the permission of the Court;

c. Is the parent of a child subject of the action and such child resides within the territory of the Tribe as a result of the acts or directives of the individual; or

d. Is otherwise subject to the personal jurisdiction of the Court consistent with the laws of the Tribe;

7. Where the Court asserts jurisdiction over a parent under this Section, the parent's child whenever the Court deems it necessary or appropriate for the purpose of the proceedings; and

8. Where the Court asserts jurisdiction over an individual under this Section, the individual's immediate or extended family member whenever the Court deems it necessary or appropriate for the purpose of the proceedings.

Section 6-4-6. Procedure. The Court may issue orders under this Chapter by telephone, facsimile, or other electronic means and such orders shall have the same force and effect as original written orders. Order issued by telephone shall be followed by a written order as soon thereafter as possible.

Section 6-4-7. Summons and Service of Process.

1. Upon the filing of a petition in a proceeding under this Chapter, a summons shall be issued in accordance with the general rules governing the issuance of summons by the Court to the following:

a. Each respondent;

b. If the proceeding involves a child and his or her parent is not a petitioner or respondent, such child's parent, guardian, or custodian, except for parents whose parental rights to the child have been terminated; and

c. All known interested persons listed in the petition.

2. If the petition declares any person required to be issued a summons under this Section is unknown, the summons shall be issued to "All Whom it May Concern" and shall be deemed sufficient to authorize the Court to hear and determine the action as though such person had been described by his or her proper name.

3. The summons shall be served in accordance with the Tribal Rules of Civil Procedure and shall be made at least ten (10) days before the first hearing on the petition.

Section 6-4-8. Omission of Address from Pleadings.

1. Notwithstanding anything to the contrary in the laws of the Tribe, in any proceeding under this Chapter, if the petition states that disclosure of the petitioner's address could risk the safety of or result in physical or emotional harm to the petitioner, his or her child, any member of the petitioner's immediate or extended family or household, or the petitioner's pet, service animal, emotional support animal, horse, or livestock, the petitioner may omit his or her address from all documents filed with the Court, provided that the petitioner must provide the Court a mailing address in a separate document.

2. If a petitioner has not disclosed an address pursuant to this Section and is not represented by legal counsel, the respondent shall serve all pleadings and other documents on the petitioner by delivering the same to the Court or at an alternative address designated by the petitioner. The Court shall forward all such served documents received from the respondent to the petitioner.

3. If disclosure of a petitioner's address is necessary to determine jurisdiction in a proceeding under this Chapter, the Court may order the disclosure to be made:

a. After receiving the petitioner's consent;

b. Orally and in chambers, out of the presence of the respondent, with a sealed record to be made; or

c. After a hearing, if the Court takes into consideration the safety of petitioner, his or her child, any member of the petitioner's immediate or extended family or household or the petitioner's pet, service animal, emotional support animal, horse, or livestock and finds such disclosure is in the interests of justice.

4. If a petitioner's address is withheld or not disclosed pursuant to this Section, information regarding the petitioner's address shall be held confidential and shall not be provided or open to inspection to any but the following:

a. Personnel of the Court;

- b. The petitioner and his or her legal counsel;
- c. The Department;
- d. The Department of Social Services;
- e. The Tribal Attorney;
- f. Another court having jurisdiction over an action involving the parties to the action;
- g. A law enforcement agency of the Tribe or another government; or
- h. Any other person, by order of the Court, having legitimate interest in the particular case or the work of the Court, provided the Court may place appropriate restrictions on such access to ensure confidentiality.

Section 6-4-9. Responsive Pleading.

1. The respondent and any person issued a summons may file a responsive pleading to any petition filed in a proceeding under this Chapter.

2. Any responsive pleading shall be filed with the Court and served on all parties within the time period provided in the rules of civil procedure for the Court for answering or responding to a claim or at least seven (7) business days before the hearing on the petition, whichever is earlier.

3. Failure to file a responsive pleading shall not constitute an admission of any allegation contained in the petition.

Section 6-4-10. Confidentiality of Court Proceedings.

1. Upon request of a petitioner, the Court may order that proceedings in a case filed under this Chapter shall be confidential if the Court finds it necessary or advisable to protect the safety of or prevent the physical or emotional harm to the petitioner or his or her child, immediate or extended family or household member, pet, service animal, emotional support animal, horse, or livestock.

2. If the Court orders that proceedings in a case filed under this Chapter shall be confidential:

a. The Court record of the proceedings shall be held confidential and shall not be provided or open to inspection to any but the following:

- i. Personnel of the Court;
- ii. The petitioner and his or her legal counsel;
- iii. Legal counsel requesting discovery as permissible under the laws of the Tribe;
- iv. The Department;
- v. The Department of Social Services;
- vi. The Tribal Attorney;
- vii. Another court having jurisdiction over an action involving the parties to the action;
- viii. A law enforcement agency of the Tribe or another government; or
- ix. Any other person, by order of the Court, having legitimate interest in the particular case or the work of the Court, provided the Court may place appropriate restrictions on such access to ensure the confidentiality of records; and

b. The general public shall be excluded from all hearings in the proceeding and only the following shall be allowed to be present in the hearings:

- i. The parties and their legal counsel;
- ii. An advocate accompanying a person seeking an order for protection;
- iii. Any person accompanying a person seeking an order for protection if his or her presence is requested by the person seeking the order for protection;
- iv. Witnesses; and

v. Other persons determined to be appropriate by the Court, in its discretion.

3. Notwithstanding whether the Court orders that proceedings in a case filed under this Chapter shall be confidential, the Court shall not release information on the location or whereabouts of a party, or a party's child, immediate or extended family or household member, pet, service animal, emotional support animal, horse, or livestock to another person if the Court has reason to believe that the release of the information to that person endanger the safety of or result in the physical or emotional harm to the party, his or her child, immediate or extended family or household member, pet, service animal, emotional support animal, horse, or livestock.

4. Any person who willfully discloses confidential information protected under this Section other than as expressly authorized in this Section shall be subject to a civil fine not to exceed eight hundred dollars (\$800) per occurrence.

Section 6-4-11. Privileges.

1. Notwithstanding any other provision of law, there shall be no restrictions concerning a spouse testifying against his or her spouse or any privilege of confidentiality between spouses in any proceeding under this Chapter.

2. Notwithstanding any other provision of law, there shall be no restrictions concerning a physician or other health practitioner testifying about his or her patient or any privilege of confidentiality between a physician or other health practitioner in any proceeding under this Chapter.

Section 6-4-12. Conduct of Hearings. All hearings involving proceedings under this Chapter shall be conducted in accordance with the following:

1. Hearings shall be informal in nature, but orderly;

2. Concerned parties shall be provided an opportunity to introduce evidence, be heard in their own behalf, and examine witnesses;

3. Any matter or information relevant and material to the subject matter of the hearing is admissible and may be received in evidence;

4. Hearsay evidence will not be excluded as long as it is reasonably reliable;

5. A verbatim record shall be taken of all hearings; and

6. A child may be temporarily excluded from any hearing if the Court finds it is in the best interests of the child.

Section 6-4-13. Witness Lists and Subpoenas.

1. In a proceeding under this Chapter, each party shall provide to each other party in the proceeding or their respective legal counsel with a list of names of all witnesses that will be called at any hearing under this Chapter. Such list shall be provided as soon as possible and in no event later than five (5) days prior to the hearing date set.

2. Upon request of a party or on the Court's own motion, the Court shall issue subpoenas requiring attendance and testimony of witnesses and production of papers or other things at any hearing under the provisions of this Chapter.

Section 6-4-14. Notices of Hearings.

1. The Court shall ensure that the following persons are notified of each hearing in a proceeding under this Chapter:

a. Any party to the proceedings, including the petitioner and their legal counsel or advocate;

b. Any person issued a summons who makes an appearance in the proceedings;

c. The parents, guardian, or custodian of any child subject of the proceedings and their legal counsel;

d. Individuals providing care for a child subject of the proceedings; and

e. Any other person the Court may direct to be notified.

2. When a party fails to appear in response to a notice of hearing, the Court may order the party's appearance by summons or subpoena.

Section 6-4-15. Proceedings of a Civil Nature. Proceedings in cases under this Chapter shall be regarded as civil proceedings with the Court exercising both legal and equitable powers.

Section 6-4-16. Grounds for Protection Order. An order of protection may be issued if the respondent:

1. Has committed or is likely to commit assault, harassment, intimidation, stalking, or a credible threat of violence against the petitioner, his or her child, or his or her pet, service animal, emotional support animal, horse, or livestock;

2. Has placed or is likely to place the petitioner or his or her child in fear of physical harm to the petitioner, his or her child, or his or her pet, service animal, emotional support animal, horse, or livestock;

3. Has caused or is likely to cause the petitioner to engage in sexual activity:

a. Involuntarily;

b. Without consent;

c. By use of physical force, physical restraint, or an implied or express threat of physical force, physical injury, physical restraint, or other credible threat of violence;

d. By threatening to inflict physical injury on someone other than the petitioner or by threatening to commit any other crime of violence;

e. When the petitioner is incapable of consenting due to alcohol or drug impairment, being unconscious or asleep, or incapacity, whether temporary or permanent; or

f. With consent obtained by force, threat of force, intimidation, fraud, or duress;

4. Has attempted to cause, is likely to cause, or purposefully, knowingly, or recklessly has caused emotional abuse to the petitioner or his or her child; or

5. Has committed or is likely to commit targeted residential picketing.

Section 6-4-17. Initiation of Proceedings.

1. Proceedings in the Court to obtain an order for protection shall be initiated by the filing of a petition.

2. Petitions may be filed by:

a. A person seeking an order for protection for himself or herself;

b. A parent, guardian, custodian, caretaker, or other representative on behalf of a minor or incapacitated person seeking an order for protection;

c. A next friend of a person seeking an order for protection;

d. An advocate or the Department on behalf of a person seeking an order for protection; or

e. An employer on behalf of his or her employee for conduct which constitutes grounds for issuing an order for protection under this Chapter that can reasonably be construed to be carried out or to have been carried out at the workplace of the employer.

3. Petitions for an order for protection shall be captioned: "(name(s) of petitioner(s)), Petitioner(s) vs. (name(s) of respondent(s)), Respondent(s)", provided that if the petition is filed on behalf of another, the petitioner shall be designated as "(name(s) of person filing petition) ex rel. (name(s) of petitioner(s))".

4. In addition to any other information required by the laws of the Tribe, all petitions under this Section shall contain the following information:

a. The name, tribal affiliation, and, except as provided in this Chapter, address of the petitioner;

b. The name, last known address, employer, employer address, and tribal affiliation of the respondent or the reasons that such information is unavailable;

c. If the petition is filed on behalf of another, the relationship of the petitioner to the person filing the petition;

- d. The basis for the Court's jurisdiction;
- e. A statement listing each civil or criminal action involving both parties;
- f. Information regarding the use, possession, and ownership of firearms by the respondent which shall include a description and location, if known by the petitioner, of each firearm owned and/or possessed by the respondent;
- g. The grounds for the petitioner requesting an order for protection;
- h. A statement, including dates, location, names of persons involved, and specific details supporting the grounds for an order for protection; and
- i. A request that the Court enter an order for protection in favor of the petitioner.

5. In addition to the information required herein, a petition under this Section may also include such supporting documents the petitioner desires to include, such as letters, notes, text messages, and police reports.

6. Two or more petitioners, including the Department, may join in the filing of the same petition involving the same person seeking an order for protection.

7. The Court shall not charge any filing fee for the filing of a pleading under this Chapter.

8. A petition which substantially complies with the requirements of this Section shall not be dismissed for violation of this Section.

Section 6-4-18. Emergency Orders.

1. The Court may issue an emergency order for protection ex parte without a hearing if, and only if, it appears from the face of a verified petition and any supporting affidavits or sworn oral testimony communicated by telephone or other appropriate means that:

a. The respondent has been arrested for an act which constitutes grounds for issuing an order for protection under this Chapter;

b. The life or health of the petitioner, his or her child, immediate or extended family member, household member, pet, service animal, emotional support animal, horse, or livestock is in imminent danger before the matter can be heard on notice;

c. The petitioner or his or her child, immediate or extended family member, household member, pet, service animal, emotional support animal, horse, or livestock is in immediate danger of physical injury before the matter can be heard on notice; or

d. The respondent has committed an act which would constitute grounds for issuing an order for protection under this Chapter within the past year or within a longer period of time if the Court finds that good cause exists to consider a longer period, provided that any time the respondent has been incarcerated or residing more than one hundred (100) miles away from the petitioner shall not be counted in determining the amount of time since the respondent committed an act which would constitute grounds for issuing an order for protection under this Chapter.

2. If the Court issues an order for protection ex parte without a hearing, the Court shall:

a. Issue a summons to the respondent in accordance with this Chapter;

b. Issue an order to the respondent to show cause why the emergency order for protection should not remain in effect which states in bold-faced type or capital letters that the emergency order for protection shall automatically become a final order for protection without a hearing unless the respondent requests a hearing within five (5) business days after service of the order to show cause and emergency order for protection; and

c. Cause the petition, the emergency order for protection, the order to show cause, and summons to be served on the respondent in a manner other than by publication.

3. If the respondent requests a hearing within five (5) business days after service of the order to show cause and emergency order for protection on the respondent, the Court shall set a date for a hearing on the petition:

a. If the emergency order for protection excludes the respondent from his or her residence shared with the petitioner, within fifteen (15) days after the request for a hearing; or

b. In all other cases, within thirty (30) days after the request for a hearing.

4. If the respondent does not request a hearing within five (5) business days after service of the order to show cause and emergency order for protection on the respondent, the Court shall:

a. Enter a default against the respondent in accordance with the Tribal Rules of Civil Procedure; and

b. Enter a final protection order in accordance with this Chapter, provided that the terms of the final protection order shall be identical to the terms of the emergency order for protection except with respect to duration.

5. If the petitioner or the Court desires to include any matters in a final order for protection that were not included in an emergency order for protection issued ex parte without a hearing, the Court shall schedule and conduct a hearing on the petition in accordance with this Chapter.

6. An emergency order for protection issued ex parte without a hearing may not be vacated or dismissed without a hearing.

Section 6-4-19. Hearing on Petition.

1. Except in the case of an emergency order for protection which has been converted to a final order for protection in accordance with this Chapter, upon the filing of a petition under this Chapter, the Court shall schedule and conduct a hearing on the petition as expeditiously as possible, but no later than thirty (30) days from the date the petition was filed.

2. The primary purpose of a hearing on the petition is to determine whether an order for protection should be issued.

3. The Court shall consider any and all relevant testimony or evidence presented at hearing.

4. The Court may issue an order for protection if it finds by a preponderance of the evidence that grounds exist for issuing an order for protection under this Chapter.

5. The Court may find that grounds exist for issuing an order for protection under this Chapter regardless of whether the person alleged to have committed acts which constitute grounds for issuing an order for protection under this Chapter has been arrested, charged, or convicted.

6. The following shall not be considered a defense or otherwise prevent the issuance or enforcement of an order for protection:

- a. Intoxication;
- b. Substance abuse;
- c. Spousal immunity; or
- d. Provocation.

Section 6-4-20. Order for Protection.

1. In addition to any other matters necessary for an order of the Court, an order for protection, including an emergency order, shall:

- a. State the appearances of all parties and failures to appear;
- b. Describe any prior orders of the Court relating to the parties which are superseded or altered by the order for protection, including custody decrees and visitation orders;
- c. Include the following statements in bold-faced type or capital letters:

"Violation of this order could result in confinement in jail and/or a fine of up to five hundred dollars (\$500) for each violation or up to five thousand dollars (\$5,000) for each subsequent violation.

If this order requires the respondent to leave the petitioner's residence or prohibits the respondent from entering or staying at the petitioner's residence, the respondent shall leave and not enter or stay at petitioner's residence even if invited to do so by the petitioner or any other person. Such invitation does not void this order for protection."

2. An order for protection, including an emergency order, may include any of the following relief:

a. Enjoining the respondent from threatening to commit or committing acts which constitute grounds for issuing an order for protection against the petitioner and any other appropriate persons, including children and immediate and extended family and household members of the petitioner;

b. Prohibiting the respondent from harassing, annoying, telephoning, contacting, or otherwise communicating with the petitioner, directly or indirectly;

c. Removal and exclusion of the respondent from the residence of the petitioner, regardless of ownership of the residence;

d. Ordering the respondent to stay away from the residence of, school of, place of employment of, or any specified place frequented by the petitioner and any other appropriate persons, including children and immediate and extended family and household members of the petitioner;

e. Prohibiting the respondent from using or possessing a firearm or other weapon specified by the Court;

f. Ordering the respondent to surrender any dangerous weapon in his or her possession to law enforcement;

g. Granting temporary custody of a minor child in common between the petitioner and respondent to the petitioner;

h. In connection with a pet, service animal, emotional support animal, horse, livestock, or other animal owned, possessed, leased, kept, or held by the petitioner, or residing in the residence or household of the petitioner:

i. Grant the petitioner exclusive care, possession, or control of the animal; and

ii. Order the respondent to stay away from the animal and refrain from taking, transferring, encumbering, concealing, molesting, attacking, striking, threatening, harming, or otherwise disposing of the animal;

i. If the order is issued after notice and a hearing:

i. Specifying arrangements for visitation by the respondent of any minor child in common between the petitioner and respondent and requiring supervision of that visitation by a third party or denying visitation if necessary to protect the safety of the petitioner or child;

ii. Ordering the removal of a guardian or conservator who is the respondent;

iii. When there is a reasonable suspicion of drug and/or alcohol use, ordering the respondent to submit to alcohol and drug testing and attend and successfully complete alcohol and drug evaluation, education, and/or treatment;

iv. Ordering the respondent to attend and successfully complete appropriate counseling services;

v. Ordering the respondent to pay the petitioner's legal counsel's fees;

vi. Ordering the respondent to pay rent or make payment on a mortgage on the petitioner's residence shared with the respondent and pay for the support of the petitioner and minor child if the respondent is found to have a duty to support the petitioner or minor child;

vii. Ordering the respondent to reimburse the petitioner or other person for any expenses associated with the conduct which constitutes grounds for issuing the order for protection, including but not limited to medical expenses, counseling, shelter, and repair or replacement of damaged property;

viii. Requiring the respondent to pay restitution as compensatory damages to the petitioner for any injuries or damages resulting from the respondent's acts;

ix. Ordering the respondent to pay the costs and fees incurred by the petitioner in bringing the action;

j. Ordering such other relief as the court deems necessary to protect and provide for the safety of the petitioner and any other appropriate persons, including children and immediate and extended family and household members of the petitioner as well as the petitioner's pet, service animal, emotional support animal, horse, or livestock; and

k. Ordering any other matters the Court deems necessary or appropriate.

3. On a showing of good cause, an order for protection, including an emergency order, issued under this Chapter may include other named immediate or extended family members, household members, or friends.

4. An order for protection issued against a respondent that is an entity or organization shall apply to all of the owners, members, partners, shareholders, officers, directors, employees, and agents of the entity or organization.

5. No order issued under this Chapter shall in any manner affect title to any real property.

6. The Court shall not grant a mutual order for protection to opposing parties.

7. Unless the order provides a lesser time, an order for protection issued upon notice and hearing is effective for one (1) year from the date of entry and no longer, provided that the petitioner may file a motion to renew a protection order on or after thirty (30) days before the expiration of the previous protection order.

8. The issuance of an order of protection under this Chapter or any relief authorized under this Chapter shall not preclude any other relief provided by the laws of the Tribe.

9. Unless the respondent has received actual notice of the existence and substance of the order through personal appearance in Court to hear the terms of the order from the Court, if a respondent is not served with an order for protection issued by the Court within sixty (60) days after the order for protection is issued, the Court, after notice to the petitioner, shall vacate the order and dismiss the action without prejudice against the respondent or order that service be made within a specified time. But, if the petitioner shows good cause for the failure, the Court shall extend the time for service for an appropriate period.

10. Unless otherwise provided in an order vacating, terminating, dismissing, or modifying an order for protection, an order vacating, terminating, dismissing, or modifying an order for protection shall have only prospective effect and shall not affect or implicate the validity of the order for protection prior to the entry or other effective date of the order vacating, terminating, dismissing, or modifying the order for protection.

11. An order for protection is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-4-21. Restitution.

1. When the Court orders restitution in an order for protection, such order shall direct the respondent to pay the victim the full amount of the victim's losses, including:

a. Medical services relating to physical, psychiatric, or psychological care;

b. Veterinary services relating to physical care for the victim's pet, service animal, emotional support animal, horse, or livestock;

c. Physical and occupational therapy or rehabilitation;

d. Necessary transportation, temporary housing, and child care expenses;

e. Lost income;

f. Legal counsel's fees plus any costs incurred in obtaining an order for protection;

g. Any funds, assets, or property lost as a result of exploitation of the victim; and

h. Any other losses suffered by the victim as a result of the conduct which constituted grounds for issuing the order for protection.

2. In the event the Tribe has provided any services to a victim subject to restitution under this Section, the order of restitution shall provide that the respondent pay such amount to the Tribe regardless of whether the Tribe is or becomes a party to the proceeding. The Department shall be permitted to submit any documentation of costs to the Tribe on behalf of the victim resulting from the respondent's acts for purposes of restitution and the Court shall accept such documentation in calculating the amount of restitution due the Tribe without requiring the Tribe to become a party to the proceedings. The Tribe shall have the right to intervene in any proceeding under this Chapter for the purposes of seeking such restitution.

3. An order for restitution shall be enforceable in the same manner as a judgment in a civil action and may be enforced by the victim named in the order even if the victim is not the petitioner.

Section 6-4-22. Delivery of Order.

1. Upon issuance of an order for protection, including an emergency order, the Court shall transmit, by the end of the next business day after the order is issued, a copy of the order for protection to any and all appropriate law enforcement agencies or agencies designated by the petitioner.

2. The Court or any party in a proceeding under this Chapter may deliver an order for protection granted pursuant to this Chapter to any appropriate law enforcement agency at any time while the order is effective.

3. Each law enforcement agency which receives an order for protection issued by the Court under this Chapter shall have the authority to make such order and its contents available to other law enforcement officers for enforcement of such order.

4. If the Court vacates, dismisses, or modifies an order for protection, including an emergency order, the Court shall transmit the order vacating, dismissing, or modifying the order

for protection to the same agencies and registries to which it transmitted the original order for protection.

Section 6-4-23. Effect of Action by Parties. If a respondent is excluded from the residence of a petitioner or ordered to stay away from the petitioner, an invitation by the petitioner to act contrary to the exclusion or order does not waive or nullify an order for protection.

Section 6-4-24. Court-Ordered Mediation Prohibited. The Court shall not order parties to a proceeding under this Chapter into mediation or traditional dispute resolution or refer them to mediation or traditional dispute resolution for resolution of the issues in a petition for an order for protection.

Section 6-4-25. Rights of Victims. A person's right to seek an order for protection under this Chapter shall not be affected by:

1. The departure of that person from the residence or household to avoid conduct which constitutes grounds for an order for protection under this Chapter;

2. The person's use of reasonable force in self-defense against the perpetrator of conduct which constitutes grounds for an order for protection under this Chapter;

3. Evidence that the person previously filed a petition under this Chapter or any similar law and subsequently reconciled with the perpetrator of conduct constituting grounds for an order for protection under this Chapter;

4. Solely a lapse of time between an act constituting grounds for an order for protection and the filing of a petition under this Chapter;

5. Evidence that a married victim did not file an action for divorce, legal separation, and/or invalidity of marriage; or

6. Evidence that the victim left the territory of the Tribe.

Section 6-4-26. Effect of Other Proceedings.

1. At any hearing in a proceeding under this Chapter, each party has a continuing duty to inform the Court of any civil or criminal action involving both parties filed within the previous five (5) years that was not listed in the petition.

2. An order for protection is in addition to and not in lieu of any other available civil or criminal proceedings.

3. A petitioner is not barred from seeking an order pursuant to this Chapter because of other pending proceedings.

4. Except as expressly provided in the laws of the Tribe, the Court shall not dismiss a proceeding under this Chapter or delay granting relief in such proceeding because of the existence of a pending action between the parties unless agreed to by all parties to the proceeding, including the victim.

Section 6-4-27. Modification of Order.

1. Any party to an order for protection issued under this Chapter or, if different, the person filing the petition in the proceeding in which such order was issued may, by motion in the same action in which the order for protection was issued, request the Court to modify, terminate, or vacate the order in accordance with this Section, including extending such order.

2. A motion made under this Section shall identify the person making the motion and shall set forth in clear and concise terms the reasons for modifying, terminating, or vacating the order for protection.

3. The Court shall hold a hearing on all motions filed under this Section upon notice given to the parties to the original proceeding.

4. The Court may modify, terminate, or vacate an order for protection pursuant to a motion made under this Section if the movant proves by a preponderance of the evidence that there are grounds for such modification, termination, or vacating.

5. If there has been no violation of the existing order for protection prior to the motion to modify or vacate, the Court shall take this fact as evidence of the effectiveness of the order for protection in assuring the safety of the petitioner. The Court shall not use the fact that there has been no violation of the order for protection to determine that no further need for the order for protection exists.

Section 6-4-28. Violation of Order.

1. Any person who knowingly, willfully, or purposely violates, or attempts or intends to knowingly, willfully, or

purposely violate, an order for protection issued under this Chapter shall be subject to a civil fine not to exceed five hundred dollars (\$500) for each such violation, provided that any subsequent violation of an order for protection by the same person within one (1) year shall result in a civil fine not to exceed five thousand dollars (\$5,000) for each such violation.

2. In addition to the civil fines provided herein, the Court may enforce an order for protection issued under this Chapter using any and all other enforcement remedies available to enforce an order of the Court.

Section 6-4-29. Foreign Protection Orders.

1. An order for protection made by the court of another federally recognized Indian tribe or state may be recognized and enforced in accordance with the provisions governing foreign protection orders in Chapter 8 of Title IV of this Code.

2. Any order for protection issued by a court of another jurisdiction that is not a federally recognized Indian tribe or state may be recognized and enforced in accordance with the laws of the Tribe governing the recognition and enforcement of foreign orders generally.

**CHAPTER 5
DECLARATORY RELIEF**

Section 6-5-1. Power of Court.

1. The Court, in a civil cause of action and controversy within its jurisdiction, shall have the power to declare rights, status, and other legal relations whether or not further relief is or could be claimed.

2. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for.

3. The declaration in a declaratory judgment or decree may be either affirmative or negative in form and effect and such declarations shall have the force and effect of a final judgment or decree.

4. Nothing in this Chapter shall be construed as creating a cause of action.

Section 6-5-2. Limitations. The Court shall not issue or grant a declaratory judgment:

1. When such judgment would be solely advisory or answer moot or abstract questions;

2. When there is no proper civil cause of action or actual controversy between the parties;

3. When the party seeking relief does not have a legally protectable interest; or

4. When the facts upon which such judgment would be based are hypothetical or contingent facts which may or may not arise in the future.

Section 6-5-3. Granting of Relief.

1. The Court may refuse to issue or enter a declaratory judgment or decree where such judgment or decree, if issued or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

2. The Court may grant further relief based on a declaratory judgment or decree whenever necessary or proper. The request for such further relief shall be by complaint or appropriate pleading. If the request is sufficient, the Court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree to show cause why further relief should not be granted.

3. Subject to the granting of further relief as provided in this Section, a declaratory judgment or decree may only be granted as a final judgment or decree in a civil cause of action conducted under and in accordance with the laws of the Tribe governing civil causes of action.

4. All orders, judgments, and decrees issued pursuant to this Chapter may be reviewed as other orders, judgments, and decrees including, where available, by appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-5-4. Parties. When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding.

CHAPTER 6
WRIT OF MANDAMUS

Section 6-6-1. Power of Court.

1. The Court, in a civil cause of action and controversy within its jurisdiction, may issue writs of mandamus, which may be alternative, peremptory, or continuing, in accordance with this Chapter.

2. Nothing in this Chapter shall be construed as creating a cause of action or conferring jurisdiction upon the Court.

Section 6-6-2. Limitations. A writ of mandamus may not be issued or granted:

1. Where there is or was an adequate remedy at law;
2. To provide monetary damages or retroactive relief;
3. When there is no proper civil cause of action or actual controversy between the parties;
4. Where it would control or dictate discretion committed by law to an officer or employee, inferior tribunal or court, business entity, or board or commission;
5. To review a decision or ruling of an inferior court or tribunal which can or could have been reviewed by appeal;
6. Directly against the Tribe or any of its branches, departments, agencies, boards, commissions, instrumentalities, or economic enterprises; or
7. Without a hearing.

Section 6-6-3. Grounds for Mandamus.

1. A writ of mandamus may be issued to any officer or employee of the Tribe, any inferior court or tribunal of the Tribe, any business entity, or board or commission to compel performance of an act if:

- a. Applicable law specially imposes a duty to perform the act requested on the officer, employee, inferior court or tribunal, business entity, or board or commission which is

clear, plainly defined, imperative, nondiscretionary, and ministerial;

b. The party requesting the writ has a clear and undisputable legal right under the applicable law not possessed by members or the public generally to the performance of the duty imposed on the officer, employee, inferior court or tribunal, business entity, or board or commission;

c. The party requesting the writ only requests prospective relief and does not seek or request monetary damages or retroactive relief;

d. There is, and was in the past, no other remedy available; and

e. The Court finds that issuing the writ is otherwise appropriate under the circumstances.

2. The Court may issue a writ of mandamus to any inferior court or tribunal to review a decision or ruling of the inferior court or tribunal before a final order or judgment is issued if:

a. There is no other remedy available or the matter cannot be reviewed meaningfully on appeal from a final order or judgment;

b. The inferior court or tribunal is about to exceed its jurisdiction resulting in irreparable harm;

c. Action of the inferior court or tribunal may effectively decide the case; or

d. Review of the decision of the inferior court or tribunal will settle or establish a new rule of practice affecting other litigants.

Section 6-6-4. Form of Writ.

1. A writ of mandamus may be alternative, peremptory, or continuing.

2. In addition to any other matters necessary for an order of the Court, all writs of mandamus shall state the facts and law showing the obligation of the defendant to perform the act and his or her omission to perform it.

3. An alternative writ shall command the defendant to do the act required to be performed immediately upon receipt of the writ or at some other specified time or else show cause before the Court at a specified time and place why he or she has not done so.

4. A peremptory writ shall command the defendant to do the act required to be performed immediately upon receipt of the writ or at some other specified time and shall not require the defendant to show cause why he or she has not done as commanded. A peremptory writ may only be issued when the right to require the performance of the act is clear and it is apparent that no valid excuse for nonperformance can be given. The peremptory writ should not be issued if there is any doubt that a valid excuse may exist.

5. A continuing writ shall command the defendant to do the act required to be performed from the receipt of the writ or from some other specified time and continuing for an unspecified period of time or until performance is fully satisfied.

Section 6-6-5. Granting of Relief.

1. Upon the filing of a complaint requesting a writ of mandamus, the Court shall review the complaint and if it finds the complaint insufficient to justify relief under this Chapter, may deny it without an answer.

2. If the Court determines that the complaint is sufficient to justify relief under this Chapter, a summons shall be issued to and served on the defendant in accordance with the general rules governing the issuance of summons by the Court.

3. Subject to the Court permitting an expedited proceeding in accordance with this Chapter, the defendant shall be permitted to file an answer to the complaint in accordance with the rules of procedure of the Court.

4. If the defendant fails to respond or file an answer, the Court may issue a writ of mandamus against the defendant, provided that no writ of mandamus shall be granted by default and the action shall be heard by the Court even if the defendant does not appear.

5. Except as otherwise provided in this Chapter, proceedings for a writ of mandamus shall be heard by the Court in the same manner as other civil actions.

6. A writ of mandamus may only be granted as a final judgment or decree in a civil cause of action conducted under and in accordance with the laws of the Tribe governing civil causes of action.

7. A writ of mandamus, unless issued by the Court of Appeals, shall be a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-6-6. Expedited Proceedings.

1. On motion of any party, on written agreement of the parties, or on its own initiative, the Court may order that any proceeding for a writ of mandamus be expedited with respect to some or all procedural steps if the Court finds there is good cause to expedite and a failure to expedite is likely to result in irreparable harm to a party.

2. Any party filing a motion under this Section shall:

a. Describe the circumstances justifying expediting the proceedings;

b. Describe the irreparable harm that would result if the motion is not granted; and

c. Submit affidavits to support any representations of fact with the motion.

Section 6-6-7. Review of Continuing Mandamus.

1. If the Court grants the privilege of the writ of continuing mandamus, the Court may require the defendant to submit periodic reports detailing the progress and execution of the judgment, and the Court may evaluate and monitor compliance through review hearings conducted after issuance of the writ. The plaintiff may submit its comments or observations on the execution of the judgment and appear at any hearing to evaluate and monitor compliance.

2. On motion of any party, on written agreement of the parties, or on its own initiative, the Court may order the entry of satisfaction of judgment in accordance with the rules of procedure of the Court if the performance required by the continuing writ of mandamus has been satisfied.

3. The Court shall not require periodic reports under this Section for a writ of continuing mandamus which requires performance for an unspecified period of time.

CHAPTER 7 WRIT OF PROHIBITION

Section 6-7-1. Power of Court.

1. The Court, in a civil cause of action and controversy within its jurisdiction, may issue writs of prohibition, which may be alternative or peremptory, in accordance with this Chapter.

2. Nothing in this Chapter shall be construed as creating a cause of action or conferring jurisdiction upon the Court.

Section 6-7-2. Limitations. A writ of prohibition may not be issued or granted:

1. Where there is or was an adequate remedy at law;
2. To provide monetary damages or retroactive relief;
3. When there is no proper civil cause of action or actual controversy between the parties;
4. Where it would control or dictate discretion committed by law to an officer or employee, inferior tribunal or court, business entity, or board or commission;
5. To review or challenge a decision or ruling of an inferior court or tribunal which can or could have been reviewed by appeal;
6. Directly against the Tribe or any of its branches, departments, agencies, boards, commissions, instrumentalities, or economic enterprises; or
7. Without a hearing.

Section 6-7-3. Grounds for Prohibition. A writ of prohibition may be issued to any officer or employee of the Tribe, any inferior court or tribunal of the Tribe, or any business entity, or board or commission exercising judicial or quasi-judicial functions to halt proceedings before such officer, employee, inferior court or tribunal, business entity, or board or commission if:

1. The officer, employee, inferior court or tribunal, business entity, or board or commission is about to exceed its jurisdiction or legitimate power and authority under the law;

2. The party requesting the writ only requests prospective relief and does not seek or request monetary damages or retroactive relief;

3. There is, and was in the past, no other remedy available;
and

4. The Court finds that issuing the writ is otherwise appropriate under the circumstances.

Section 6-7-4. Form of Writ.

1. A writ of prohibition may be alternative or peremptory.

2. In addition to any other matters necessary for an order of the Court, all writs of prohibition shall state the facts and law showing the lack of jurisdiction or authority of the defendant.

3. An alternative writ shall command the defendant to desist or refrain from further proceedings in the action or matter specified in the writ immediately upon receipt of the writ or at some other specified time or else show cause before the Court at a specified time and place why he or she has not done so.

4. A peremptory writ shall command the defendant to desist or refrain from further proceedings in the action or matter specified in the writ immediately upon receipt of the writ or at some other specified time and shall not require the defendant to show cause why he or she has not done as commanded. A peremptory writ may only be issued when the lack of jurisdiction or power and authority is clear and it is apparent that no valid excuse for continuing the proceedings can be given. The peremptory writ should not be issued if there is any doubt that a valid excuse may exist.

Section 6-7-5. Granting of Relief.

1. Upon the filing of a complaint requesting a writ of prohibition, the Court shall review the complaint and if it finds the complaint insufficient to justify relief under this Chapter, may deny it without an answer.

2. If the Court determines that the complaint is sufficient to justify relief under this Chapter, a summons shall be issued and served in accordance with the general rules governing the issuance of summons by the Court to the defendant.

3. Subject to the Court permitting an expedited proceeding in accordance with this Chapter, the defendant shall be permitted to file an answer to the complaint in accordance with the rules of procedure of the Court.

4. If the defendant fails to respond or file an answer, the Court may issue a writ of prohibition against the defendant, provided that no writ of prohibition shall be granted by default and the action shall be heard by the Court even if the defendant does not appear.

5. Except as otherwise provided in this Chapter, proceedings for a writ of prohibition shall be heard by the Court in the same manner as other civil actions.

6. A writ of prohibition may only be granted as a final judgment or decree in a civil cause of action conducted under and in accordance with the laws of the Tribe governing civil causes of action.

7. A writ of prohibition, unless issued by the Court of Appeals, shall be a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-7-6. Expedited Proceedings.

1. On motion of any party, on written agreement of the parties, or on its own initiative, the Court may order that any proceeding for a writ of prohibition be expedited with respect to some or all procedural steps if the Court finds there is good cause to expedite and a failure to expedite is likely to result in irreparable harm to a party.

2. Any party filing a motion under this Section shall:

a. Describe the circumstances justifying expediting the proceedings;

b. Describe the irreparable harm that would result if the motion is not granted; and

c. Submit affidavits to support any representations of fact with the motion.

CHAPTER 8
CERTIFICATIONS OF QUESTIONS OF LAW

Section 6-8-1. Power of Court.

1. The Trial Court or Court of Appeals, on the motion of a party to pending litigation or on its own motion, may certify a question of law to the highest court of another jurisdiction if:

a. The pending litigation involves a question to be decided under the law of the other jurisdiction;

b. The answer to the question may be determinative of an issue in the pending litigation; and

c. The question is one for which an answer is not provided by a controlling law of the other jurisdiction.

2. The Court of Appeals may answer a question of law certified to it by a court of another jurisdiction if the answer may be determinative of an issue in pending litigation in the certifying court and there is no controlling law of the Tribe.

3. The Court of Appeals may reformulate a question of law certified to it.

Section 6-8-2. Certification Order.

1. The court certifying a question of law to the Court of Appeals shall issue a certification order and forward it to the Tribal Court Administrator. Before responding to a certified question, the Court of Appeals may require the certifying court to deliver all or part of its record to the Tribal Court Administrator.

2. A certification order must contain:

a. The question of law to be answered;

b. The facts relevant to the question, showing fully the nature of the controversy out of which the question arose;

c. A statement acknowledging that the Court of Appeals, acting as the receiving court, may reformulate the question; and

d. The names and addresses of legal counsel of record and parties appearing without legal counsel.

3. If the parties cannot agree upon a statement of facts, the certifying court shall determine the relevant facts and state them as a part of its certification order.

Section 6-8-3. Response. The Court of Appeals, acting as a receiving court, shall notify the certifying court of acceptance or rejection of the question and, in accordance with notions of comity and fairness, respond to an accepted certified question as soon as practicable.

Section 6-8-4. Procedures.

1. After the Court of Appeals has accepted a certified question, proceedings shall be governed by the rules and statutes governing briefs, arguments, and other appellate procedures which are not in conflict with this Title.

2. The Court of Appeals or the Tribe may request that the Tribe appear as an amicus curiae and file a brief to assist the Court of Appeals in answering the certified question.

3. Procedures for certification from the Tribe to a receiving court are those provided in the rules and statutes of the receiving forum.

Section 6-8-5. Opinion. The Court of Appeals shall state in a written opinion the law answering the certified question and send a copy of the opinion to the certifying court, legal counsel of record, and parties appearing without legal counsel.

Section 6-8-6. Costs. Fees and costs shall be the same as in civil cases before the Court and must be equally divided between the parties unless otherwise ordered by the certifying court.

**CHAPTER 9
CHALLENGE TO TRIBAL LAW**

Section 6-9-1. Service on Tribe. In any proceeding in the Court in which a law of the Tribe or an action of the Tribal Council or

the Tribe is alleged to be unconstitutional or invalid under the Indian Civil Rights Act or other law, the Tribe and the Tribal Attorney shall each be served with a copy of the pleading, motion, or document containing the allegation at the same time the other parties in the action are served and shall be entitled to be heard.

Section 6-9-2. Notice With Service. If a pleading, motion, or document containing an allegation of unconstitutionality or invalidity is served on the Tribe and the Tribal Attorney pursuant to this Chapter, a notice of claim of unconstitutionality shall be attached to the pleading, motion, or document as the cover page and shall include the following:

1. The name, address, and telephone number of the party and his or her legal counsel alleging the unconstitutionality or invalidity;

2. The case name, court name, caption, and case number of the proceeding;

3. A brief statement of the basis for the claim of unconstitutionality or invalidity;

4. A brief description of the proceeding;

5. Attached copies of any orders in the proceeding if the claim of unconstitutionality or invalidity is asserted in a pleading, motion, or document other than the pleading, motion, or document that initiated the proceeding;

6. The date, time, location, judge, and subject of the next hearing in the proceeding, if any.

Section 6-9-3. Failure to Serve. If the Tribe and the Tribal Attorney are not served in a timely manner with notice pursuant to this Chapter, on motion by the Tribe, the Court shall vacate any finding of unconstitutionality or invalidity and shall give the Tribe a reasonable opportunity to prepare and be heard.

Section 6-9-4. Tribe as Party. This Chapter shall not be construed to compel the Tribe to intervene as a party in any proceeding or to permit the Tribe to be named as a party in a proceeding. The Tribe may intervene as a party, may file briefs in the matter, or may choose not to participate in a proceeding that is subject to the notice requirements of this Chapter.

CHAPTER 10
CIVIL FINE ENFORCEMENT

Section 6-10-1. Power of Court. The Court shall have the authority to impose civil fines in accordance with this Chapter whenever such fines are provided for in the laws of the Tribe.

Section 6-10-2. Initiation of Proceedings.

1. Proceedings in the Court to impose, enforce, or collect a civil fine upon any person shall be initiated by the filing of a complaint and shall proceed as a civil cause of action in accordance with the Tribal Rules of Civil Procedure.

2. Unless the law establishing or governing the civil fine provides otherwise, a complaint to impose, enforce, or collect a civil fine may only be filed by the Tribal Attorney on behalf of the Tribe.

3. If the law establishing or governing the civil fine provides that a private party may bring an action to enforce or collect the civil fine, such private party may file a complaint to impose, enforce, or collect such civil fine in the name of the Tribe and shall caption the cause of action as "Ponca Tribe of Nebraska ex rel. (name(s) of private party(s)) vs. (name(s) of violator(s)), Defendant(s)".

4. Notwithstanding anything to the contrary in this Section, on its own initiative, the Court may impose a civil fine in accordance with the law establishing or governing the civil fine against any party to a proceeding before the Court.

Section 6-10-3. Judgment of Civil Fine.

1. The Court shall impose a civil fine on a violator in accordance with the law establishing or governing the civil fine if a preponderance of the evidence demonstrates that the violator has violated the law establishing or governing the civil fine.

2. Subject to the maximum fine set forth in the law establishing or governing the civil fine, the Court shall consider the following factors in determining the amount of the civil fine:

- a. The gravity of the violation;
- b. Any actions taken by the violator to correct the violation; and

c. Any previous violations committed by the violator.

3. Any violation of a law establishing or governing a civil fine and any civil fine imposed by the Court shall be set forth in a formal judgment of the Court and shall be enforceable the same as any other judgment of the Court.

Section 6-10-4. Effect of Civil Fine. For purposes of appointment to any Tribal office, agency, board, commission, or committee, a finding of a violation of a law establishing or governing a civil fine shall constitute the commission of:

1. A violation of the laws of the Tribe; and

2. A crime constituting the conduct proscribed by the law governing or establishing the civil fine.

Section 6-10-5. Disposition of Civil Fines. Any civil fine collected, in whole or in part, shall be remitted to the Tribe and expended only as directed by the Tribal Council in accordance with the laws and practices of the Tribe governing appropriation of Tribal funds.

Section 6-10-6. Savings.

1. If any provision of the law establishing or governing a particular civil fine is contrary to any provision of this Chapter, the provision of the law establishing or governing the civil fine shall govern.

2. This Chapter shall not apply to civil fines imposed by departments, agencies, boards, and commissions of the Tribe where the laws of the Tribe permit such department, agency, board, or commission to impose a civil fine, provided that this Chapter shall be available to any such department, agency, board, or commission to enforce or collect a civil fine imposed by such department, agency, board, or commission.

3. The provisions of this Chapter shall not be construed to limit the power of the Tribe to proceed in any other civil or criminal proceeding or in any other forum or manner to obtain enforcement of the laws of the Tribe, including laws of the Tribe providing for the imposition of civil fines.

CHAPTER 11
CLAIMS INVOLVING INSURANCE

Section 6-11-1. Power of Court. The Court shall have authority to review an insurer's denial of a claim in accordance with this Chapter.

Section 6-11-2. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Claimant" means a person who has a claim for injury or damages and includes a claimant's heirs, devisees, successors, and assigns.

2. "Insurance policy" means a contract whereby a person or entity, for consideration, undertakes to indemnify the Tribe or to pay a specified or ascertainable amount or benefit on behalf of the Tribe upon determinable risk contingencies and includes a self-insurance plan, but does not include:

a. Workers' compensation insurance;

b. Health insurance; or

c. An agreement or provision in an agreement providing for indemnification of the Tribe by another party which is not otherwise a contract for insurance.

3. "Insurer" means a person or entity whom the Tribe has engaged by contract in the form of an insurance policy.

Section 6-11-3. Applicability and Exclusivity.

1. This Chapter does not apply to:

a. Claims or reviews of claims involving a health care plan or program; or

b. Claims or reviews of claims where applicable law provides another remedy or procedure for the particular claim.

2. Except for claims set forth in subsection 1 of this Section:

a. The remedy and procedures provided in this Chapter are exclusive of any other civil action or proceeding for money damages against the Tribe where the Tribe is covered by an insurance policy; and

b. Any other civil action or proceeding for money damages against the Tribe where the Tribe is covered by an insurance policy is precluded without regard to when or where the act or omission occurred.

Section 6-11-4. Invalidity of Contract Provisions.

1. No term, clause, provision, or endorsement of any contract, insurance policy, or self-insurance program shall prevent or hinder the Court's authority and jurisdiction under this Chapter.

2. Any term, clause, provision, or endorsement of a contract, insurance policy, or self-insurance program which conflicts with or purports to alter any of the provisions of this Chapter shall be void and unenforceable and severed from the contract, insurance policy, or self-insurance program.

Section 6-11-5. Payment of Claim as Bar. The payment of any claim by an insurer and acceptance thereof by the claimant shall constitute a complete bar to any action by the claimant, by reason of the same occurrence or subject matter, against the insurer or the Tribe and shall require dismissal of any action commenced prior to or subsequent to such payment and acceptance.

Section 6-11-6. Subject Matter Jurisdiction.

1. The Court shall have original and exclusive subject matter jurisdiction over all matters arising under this Chapter.

2. In any matter arising under this Chapter, if a prior action on the same matter has been or was commenced in the court of another jurisdiction involving the same claim, cause of action, or occurrence:

a. The Court shall assert original subject matter jurisdiction under this Chapter, but shall require the prior action to be dismissed prior to proceeding with the claim under this Chapter;

b. The filing of the prior action shall not toll any limitations period or other time limit applicable to the claim or cause of action; and

c. The cause of action shall not be deemed commenced under this Chapter unless and until the prior proceeding is dismissed, including for purposes of any time limit or limitations period.

Section 6-11-7. Personal Jurisdiction. The Court shall have personal jurisdiction over any insurer for a claim brought in accordance with this Chapter. Notwithstanding any provision of law or the applicable insurance policy to the contrary, an insurer shall be deemed to have consented to the personal jurisdiction of the Court for matters related to such insurance policy by accepting payments from the Tribe for the insurance policy.

Section 6-11-8. Initiation of Proceedings.

1. Except as otherwise provided in this Chapter, a claimant may seek review of an insurer's denial of a claim in the Court by filing a complaint in the manner provided for civil causes of action in the Rules of Civil Procedure.

2. In addition to any other requirements of the laws of the Tribe, a complaint seeking review of an insurer's denial of a claim shall:

a. Name the appropriate insurer as the party against whom relief is sought;

b. Be captioned: "(name(s) of claimant(s)), Plaintiff(s) vs. (name of insurer(s), Defendant(s))";

c. State that it is a review of an insurer's denial of a claim;

d. State the date of filing or initiating the claim with the insurer or that such filing has not occurred and the reasons therefor;

e. Include a short, plain statement of information regarding the insurer's denial of the claim or the fact the insurer has not denied the claim or otherwise remains pending with the insurer;

f. Make only claims and request only relief covered and permitted in the applicable insurance policy; and

g. Request no more monetary compensation than is permitted in the amounts or limits of the insurance policy, provided that the complaint need not specify a precise amount of damages or money compensation sought.

Section 6-11-9. Proper Parties.

1. Relief may be sought only against the insurer in any action under this Chapter. The Tribe shall not be named or considered a necessary or indispensable party to any claim or cause of action under this Chapter.

2. In the event a claimant names or otherwise purports to join the Tribe to a claim or cause of action under this Chapter without the Tribe's express and unequivocal consent, the Court shall, upon the Court's own motion or the motion of the Tribe, prior to any other proceedings in the matter, including discovery:

a. Dismiss the Tribe from the action and complaint; and

b. If necessary, substitute the insurer for the Tribe as the proper party.

3. A cause of action shall not be deemed filed under this Chapter for any purpose, including the periods of time in which an answer, reply, or other pleading or response of any kind is required or discovery may be sought, until the insurer has been properly named as a party and served in accordance with the Rules of Civil Procedure.

Section 6-11-10. Summons and Service of Process. The summons shall be issued by the Court to and served, with a copy of the complaint, upon the insurer in accordance with the Rules of Civil Procedure governing the issuance of summons and service of process.

Section 6-11-11. Stay Pending Insurer Review.

1. If a claim subject to a complaint filed under this Chapter has not been presented to the insurer for review or action:

a. The proceedings shall be stayed for fifteen (15) days to permit the claimant to present his or her claim to the insurer;

b. Upon presentation of the claim to the insurer, the claimant shall file notice with the Court and the Court shall extend the stay for at least thirty (30) days to permit the insurer to make a determination of the claim; and

c. If the claimant fails to present his or her claim to the insurer by the expiration of the stay, the Court shall dismiss the complaint with prejudice unless the claimant shows good cause for the failure.

2. If a claim subject to a complaint filed under this Chapter has been presented to the insurer for review or action, but the insurer has not denied or otherwise responded to or determined the claim:

a. The proceedings shall be stayed for at least thirty (30) days to permit the insurer to make a determination of the claim; and

b. Upon determination of the claim, the insurer shall file its determination with the Court and the Court shall lift the stay.

3. If an insurer fails to make a determination on a claim by the expiration of any stay made under this Section for such purpose, the Court shall treat the failure as a denial of the claim and lift the stay, unless the insurer shows good cause for the failure or the parties agree to extend the stay.

4. During a stay under this Section, nothing limits or prevents:

a. The parties from agreeing to a separate stay or extension of the stay in order to negotiate a settlement or otherwise resolve the claim or other issues raised in the complaint;

b. The claimant from voluntarily dismissing the complaint in accordance with the Rules of Civil Procedure;

c. The insurer paying the claim and the claimant accepting such payment; or

d. The parties from entering into a settlement agreement or otherwise resolving the claim and agreeing to dismissal of the complaint.

Section 6-11-12. Proceedings on Complaint.

1. Except as modified by this Chapter, the Court shall hear a review of an insurer's denial of a claim as it hears other civil matters.

2. Except where provided otherwise in this Chapter, the laws of the Tribe, including the Rules of Civil Procedure, governing the conduct of Court proceedings shall apply to any review of an insurer's denial of a claim under this Chapter, provided that the provisions of the Rules of Civil Procedure applicable to the Tribe in any civil cause of action governing the awarding of costs, stays, and periods of time shall apply and be available to the insurer in an action brought under this Chapter.

3. Any matter or information relevant and material to the subject matter of the proceeding is admissible and may be received in evidence. Hearsay evidence will not be excluded as long as it is reasonably reliable.

Section 6-11-13. Obtaining Evidence. In any proceeding under this Chapter, by order upon motion and showing of sufficient relevancy and admissibility, and subject to applicable laws related to privilege and confidentiality, the Court may:

1. Require the appearance and testimony of any official, officer, agent, or employee of the Tribe with personal and first-hand knowledge necessary to the proper resolution of the claim; and

2. Require any official, officer, agent, or employee of the Tribe to deliver to the Court documentary or physical evidence necessary to the proper resolution of the claim, provided that any such documentary or physical evidence shall be kept under seal and not made available to the public and shall be returned to the Tribe upon termination of the proceedings before the Court.

Section 6-11-14. Defenses of Insurance Carrier.

1. In any action or proceeding under this Chapter, an insurer may assert any defense that would be available to the Tribe if the Tribe were the defendant in the action or proceeding, except that an insurer shall not be permitted to assert:

a. The Tribe's sovereign immunity with respect to any claim, judgment, damages, or other relief within the terms, coverage, or limits of the applicable insurance policy;

b. Any lack of personal jurisdiction of the Court over the Tribe; or

c. Any lack of subject matter jurisdiction of the Court over an action or proceeding involving the Tribe.

2. Notwithstanding anything to the contrary in this Title, an insurer shall have the right and authority to waive any and all defenses available to it under this Chapter or other law of the Tribe, provided any such waiver shall not extend to the Tribe directly.

Section 6-11-15. Decision of Court.

1. After hearing a review of an insurer's denial of a claim, the Court may determine all issues properly before it, including fault, and enter judgment as it enters judgment in other civil proceedings, subject to the following:

a. The Court may award damages, enter judgment, or grant other relief only against or in favor of the insurer and/or the claimant;

b. The Court shall not have jurisdiction over the Tribe or any cause of action brought against the Tribe or to award damages, enter judgment, or grant any other relief against the Tribe, regardless of any fault or conduct of the Tribe;

c. The Court shall not have jurisdiction to award damages, enter judgment, or grant other relief for events, occurrences, acts, or omissions not covered by the applicable insurance policy;

d. The Court shall not have jurisdiction to award any damages or other monies in an amount in excess of the amounts of coverage in the applicable insurance policy; and

e. Any award of damages, judgment, or other relief granted a claimant shall be enforceable only against the insurer and only for events, occurrences, acts, and omissions, and in such amounts, established by the applicable insurance policy.

2. Nothing in this Section shall limit or prohibit the Court from construing the insurance policy as necessary to properly resolve the proceedings.

Section 6-11-16. Limitations of Actions.

1. An action brought under this Chapter must be commenced within the limitations period applicable to the underlying cause of action as if the Tribe were a party.

2. For purposes of determining whether a cause of action under this Chapter has been timely filed:

a. The cause of action shall not be deemed to have been commenced unless and until any prior proceeding not brought under this Chapter in any jurisdiction, including the Court, is dismissed or, for an action in the Court, the complaint amended to comply with this Chapter;

b. The cause of action shall not be deemed to have been commenced unless and until the insurer has been joined as a party and, if named, the Tribe dismissed as a party; and

c. The failure to properly name the insurer or bring the cause of action under, pursuant to, and in accordance with this Chapter shall not toll any period of limitations.

3. If no complaint is filed under this Chapter within the time allowed, any decision or determination of the insurer is final and not subject to any challenge or appeal in any court, provided that the insurer may, in its sole discretion, pay a claim notwithstanding the expiration of any limitations period applicable to the claim.

**CHAPTER 12
DISPUTE RESOLUTION AGREEMENTS**

Section 6-12-1. Definitions. Unless the context requires otherwise or another definition is provided for a particular section, in this Chapter:

1. "Adhesion contract" means any contract or any provision therein or amendment thereto, including a dispute resolution agreement contained in a contract or standing alone, drafted with non-negotiable terms and conditions or otherwise whereby any party

must adhere to the original terms without negotiation, renegotiation, or amendment.

2. "Arbitration" means a process in which parties submit a dispute between or among them to an arbitrator for the purpose of the arbitrator deciding the same.

3. "Arbitration agreement" means any written agreement to settle a dispute by arbitration or otherwise submit such dispute to an arbitrator, whether set out as a standalone agreement or contained in a contract.

4. "Arbitrator" means a neutral individual, other than a judge of a court of a jurisdiction serving in such capacity, who serves impartially to decide a dispute between or amongst parties and invested with power to decide the same, whether such arbitrator is chosen by the parties, a court, or dispute resolution provider organization, and includes a panel of arbitrators.

5. "Award" means:

a. A written agreement resolving a dispute reached in negotiation or mediation and signed by all parties to the negotiation or mediation to be bound thereby; and

b. A written decision and award rendered and made by an arbitrator in an arbitration.

6. "Consumer" means an individual who seeks, uses, or acquires, by purchase or lease, any goods or services for personal, family, or household purposes.

7. "Contract" means a contract, agreement, or other instrument and includes a contract that has been extended or renewed by an oral or implied agreement.

8. "Dispute" means a claim, dispute, or controversy and includes any question arising between parties to a contract whether the question is one of law or fact or both.

9. "Dispute resolution" means negotiation, mediation, or arbitration.

10. "Dispute resolution agreement" means a negotiation agreement, mediation agreement, or arbitration agreement, but does include an agreement to submit a dispute to a court or other tribunal of a governmental jurisdiction.

11. "Dispute resolution provider organization" means an association, agency, board, commission, or other entity that is neutral and initiates, sponsors, or administers mediation, arbitration, or other dispute resolution proceedings or is involved in the appointment of arbitrators, mediators, or other dispute resolution neutrals.

12. "Drafting party" means the person that included a dispute resolution agreement in a contract and includes any third party relying upon or otherwise subject to the dispute resolution agreement.

13. "Mediation" means a process in which a mediator facilitates communication and negotiation between parties to assist them in reaching a voluntary agreement regarding their dispute.

14. "Mediation agreement" means any written agreement to settle a dispute by mediation or otherwise submit such dispute to a mediator, whether set out as a standalone agreement or contained in a contract.

15. "Mediator" means a neutral individual who serves impartially and assists parties to reach a mutually acceptable resolution of their dispute, whether such mediator is chosen by the parties, a court, or dispute resolution provider organization and includes a panel of mediators.

16. "Negotiation agreement" means any written agreement to settle a dispute by negotiation between the parties themselves without a mediator, arbitrator, or other neutral third party, whether set out as a standalone agreement or contained in a contract.

Section 6-12-2. Applicability.

1. Notwithstanding any provision of a dispute resolution agreement, contract, or law of another jurisdiction to the contrary, this Chapter applies to:

- a. Any dispute resolution agreement:
 - i. Which is made in the territory of the Tribe;
 - ii. To which the Tribe is a party;

iii. To which any member of the Tribe residing or domiciled in the territory of the Tribe is a party; or

iv. Which provides that it is subject to, governed by, or will be enforced in accordance with or pursuant to the laws of the Tribe generally or this Chapter in particular; and

b. Any dispute resolution:

i. Which is held in the territory of the Tribe;

ii. To which the Tribe is a party; or

iii. Which provides that it is subject to, governed by, or will be conducted in accordance with or pursuant to the laws of the Tribe generally or this Chapter in particular.

2. Notwithstanding any provision of a dispute resolution agreement, contract, or law of another jurisdiction to the contrary, a person shall be deemed to have consented to be bound by the terms of this Chapter and the exercise of jurisdiction of the Court over them in an action arising under or subject to this Chapter if such person:

a. Resides in the territory of the Tribe;

b. Transacts, conducts, or performs any business or activity, either in person or by an agent or representative, within the territory of the Tribe or with the Tribe, with respect to any matter arising from such business or activity;

c. Owns, uses, leases, or possesses any property within the territory of the Tribe, with respect to any matter arising from such ownership, use, lease, or possession;

d. Is a licensee or permittee of the Tribe, with respect to any matter arising from such person's activities as a licensee or permittee of the Tribe;

e. Enters into a contract, agreement, or other consensual relationship with the Tribe, with respect to any matter arising from such contract, agreement, or other consensual relationship;

f. Enters into a contract, agreement, or other consensual relationship with a member of the Tribe residing or domiciled in the territory of the Tribe, with respect to any matter arising from such contract, agreement, or other consensual relationship; or

g. Acts under Tribal authority.

3. Notwithstanding any provision of a dispute resolution agreement, contract, or law of another jurisdiction to the contrary, any dispute resolution agreement which is made in the territory of the Tribe, to which the Tribe is a party, or to which any member of the Tribe residing or domiciled in the territory of the Tribe is a party shall be deemed made, entered into, and performed in the territory of the Tribe.

Section 6-12-3. Invalidity of Contract Provisions.

1. The provisions of this Chapter shall supersede any contrary provision of any dispute resolution agreement or any contract and no provision of a dispute resolution agreement or a contract which purports to exempt or avoid the provisions of this Chapter shall be valid, including a provision providing for:

a. A particular law to govern or be utilized with respect to the dispute resolution agreement or the contract;

b. A particular law to be utilized for the construction or interpretation of the dispute resolution agreement or the contract;

c. The holding of or location of a dispute resolution proceeding in a particular jurisdiction or outside the territory of the Tribe; or

d. The resolution of disputes or enforcement of an award in a particular court or jurisdiction.

2. No term, clause, or provision of any dispute resolution agreement or any contract shall prevent or hinder the Court's authority and jurisdiction under this Chapter.

3. Any term, clause, or provision of a dispute resolution agreement or a contract which conflicts with or purports to alter any of the provisions of this Chapter shall render the dispute resolution agreement void and unenforceable in its entirety and severed from any contract containing such dispute resolution

agreement. No such term, clause, or provision may be reduced and/or narrowed in scope or the like to be made enforceable, unless expressly authorized in this Chapter.

Section 6-12-4. No Waiver of Immunity.

1. Nothing in this Chapter limits, waives, or abrogates, and shall not be deemed or construed to limit, waive, or abrogate, the sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees.

2. Notwithstanding anything to the contrary in this Chapter or any law of any jurisdiction, no dispute resolution agreement shall limit, waive, or abrogate, or be deemed or construed to limit, waive, or abrogate, the sovereignty or sovereign immunity of the Tribe or any of its agencies, departments, enterprises, agents, officers, officials, or employees.

3. Any waiver of the sovereign immunity of the Tribe with respect to any dispute resolution agreement, including the enforcement of the same, must comply with all of the following to be valid and enforceable:

a. The waiver must be explicitly expressed in the language of the dispute resolution agreement or the contract subject to or containing such agreement with language specifically referring to a waiver of sovereign immunity;

b. The waiver must expressly state what dispute resolution actions are subject to the waiver, including compelling dispute resolution and enforcement of any award;

c. The Tribal Council or, in the case of an enterprise or instrumentality of the Tribe, the board of directors of the enterprise or instrumentality to the extent authorized, must adopt a resolution for the specific purpose of approving and granting the waiver;

d. The resolution must identify the specific contract subject to or containing such dispute resolution agreement and expressly affirm and agree to the waiver by explicit language referring to such;

e. The resolution must be approved by the affirmative vote of a majority of the full Tribal Council or, in the case of an enterprise or instrumentality of the Tribe authorized

to agree to waive the immunity of the enterprise or instrumentality, the full board of directors of the enterprise or instrumentality, excluding any vacant positions; and

f. The waiver must comply with all other requirements under applicable law.

Section 6-12-5. Subject Matter Jurisdiction. Subject to any limitations on the Court's general subject matter jurisdiction in the laws of the Tribe, the Court shall have original subject matter jurisdiction over all matters arising under this Chapter.

Section 6-12-6. Personal Jurisdiction. In addition to any other personal jurisdiction the Court may exercise pursuant to the laws of the Tribe, the Court shall have jurisdiction over any person:

1. Who has or is deemed to have consented to the application of this Chapter;

2. Who is deemed to have consented to be bound by the terms of this Chapter and the exercise of jurisdiction of the Court over him or her as provided in this Chapter;

3. Who is a party to a dispute resolution agreement entered into:

a. Within the territory of the Tribe;

b. With a person residing or domiciled in the territory of the Tribe; or

c. With the Tribe; and

4. Who seeks to enforce a dispute resolution agreement under this Chapter, against the Tribe, or against any member of the Tribe residing or domiciled in the territory of the Tribe.

Section 6-12-7. Right to Representation.

1. A party to a dispute resolution has the right to be represented by legal counsel at any proceeding in dispute resolution.

2. Any provision of a dispute resolution agreement which purports to waive the right or ability of a party to be represented by legal counsel in dispute resolution or in any matter related to

a dispute resolution or dispute resolution agreement prior to the dispute arising shall be void and unenforceable.

3. A waiver of the right to be represented by legal counsel at any proceeding in a dispute resolution or in any matter related thereto or to a dispute resolution agreement may be revoked at any time prior to the conclusion of the dispute resolution or expiration or termination of the dispute resolution agreement.

Section 6-12-8. General Validity of Dispute Resolution Agreements. A dispute resolution agreement is valid, enforceable, and irrevocable except:

1. Upon such grounds as exist for the revocation of any contract; or

2. As otherwise provided in this Chapter or expressly in the laws of the Tribe.

Section 6-12-9. Validity of Certain Dispute Resolution Agreements. Notwithstanding the terms of any dispute resolution agreement, the terms of any contract subject to or containing a dispute resolution agreement, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction:

1. An oral dispute resolution agreement shall not be enforceable;

2. An arbitration agreement which is not in writing shall be void and unenforceable;

3. At the election of any person who did not sign, an arbitration agreement not signed by all parties to be bound thereby shall be void and unenforceable;

4. There shall be no implied consent to arbitrate and any claim or assertion of implied consent shall be unenforceable;

5. A dispute resolution agreement made with respect to any dispute or matter which is a regulatory or other law enforcement action shall not be valid or enforceable, provided that nothing in this Chapter shall limit or prevent a regulatory or law enforcement agency or authority from negotiating the settlement of any dispute;

6. A dispute resolution agreement with respect to a dispute or review of a dispute where applicable law provides another

exclusive or specific remedy or procedure for the dispute shall not be valid or enforceable;

7. At the election of the person alleging conduct constituting a sexual harassment or assault dispute, a dispute resolution agreement made prior to the dispute arising shall not be valid or enforceable with respect to the sexual assault or harassment dispute; and

8. In the case of a dispute resolution agreement which is an adhesion contract or contained in an adhesion contract:

a. The dispute resolution agreement shall be revocable at law by the party who is not the drafting party; or

b. If the dispute resolution agreement cannot be revoked, notwithstanding anything to the contrary in its terms, it shall be construed:

i. As an agreement to submit disputes to dispute resolution at the option, request, or future agreement or consent of the party who is not the drafting party and not compulsory, mandatory, or exclusive on the part of the party who is not the drafting party; and

ii. Strictly against the drafting party and solely in favor of the other party with all doubts and ambiguities resolved in favor of the party who is not the drafting party.

9. Any provision of a dispute resolution agreement which is an adhesion contract or contained in an adhesion contract which purports to waive the right or ability of a party who is not the drafting party to bring, join, or participate in any joint, class, or collective action or to a jury trial shall be void and unenforceable.

10. The drafting party of a dispute resolution agreement subject to this Chapter which is an adhesion contract or contained in an adhesion contract shall be required to pay all costs and fees of the dispute resolution, including the compensation of the mediator or arbitrator.

11. A consumer who is a party to a dispute resolution agreement subject to this Chapter shall not be required to pay any costs or fees of a dispute resolution, the compensation of the

mediator or arbitrator, or any costs or fees of any kind of another party.

12. Before a dispute arises that is subject to a dispute resolution agreement, a party to the agreement may not waive any provision of this Section.

Section 6-12-10. Requirements of Dispute Resolution Agreement with Tribe. Notwithstanding the terms of any dispute resolution agreement, the terms of any contract subject to or containing a dispute resolution agreement, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction:

1. An arbitration agreement shall not be valid or enforceable against the Tribe unless it complies with all of the following:

a. The Tribe is a full party to the arbitration agreement;

b. The arbitration agreement shall explicitly state the specific disputes or classes of disputes subject to arbitration or be strictly limited to matters directly related to the contract subject to or containing the arbitration agreement;

c. The arbitration agreement shall explicitly limit the amount that can be awarded in arbitration to a specific dollar amount not to exceed the dollar amount of the contract subject to or containing the arbitration agreement or to other specific, limited non-monetary relief;

d. The arbitration agreement shall not permit any third parties or others not full parties to the arbitration agreement or contract subject to or containing such agreement to bring disputes in arbitration against the Tribe;

e. The Tribal Council or, in the case of an enterprise or instrumentality of the Tribe, the board of directors of the enterprise or instrumentality to the extent authorized, must adopt a resolution for the specific purpose of approving and granting the arbitration agreement;

f. The resolution must identify the specific contract subject to or containing such arbitration agreement and

expressly affirm and agree to the arbitration agreement by explicit language referring to such; and

g. The resolution must be approved by the affirmative vote of a majority of the full Tribal Council or, in the case of an enterprise or instrumentality of the Tribe authorized to agree to arbitration, a majority of the full board of directors of the enterprise or instrumentality, excluding any vacant positions;

2. A dispute resolution agreement to which the Tribe is a party or which is sought to be enforced against the Tribe shall be narrowly construed and strictly limited to its terms, including with respect to the issues and disputes subject to dispute resolution, the extent to which dispute resolution is permitted or required, and the courts which may hear any matter related to the dispute resolution agreement;

3. Any reference to courts generally or courts of competent jurisdiction in a dispute resolution agreement to which the Tribe is a party or contract subject to or containing a dispute resolution agreement shall mean the Court and not include any court which could not exercise jurisdiction over the Tribe or the matter in the absence of the dispute resolution agreement or the contract subject to or containing the dispute resolution agreement;

4. No dispute resolution agreement to which the Tribe is a party or which is sought to be enforced against the Tribe shall be construed to extend to:

a. Any dispute or matter which is a regulatory or other law enforcement action or matter, including the imposition of a civil fine under this Code; or

b. Any dispute or review of a dispute where applicable law provides another exclusive or specific remedy or procedure for the dispute;

5. No arbitration agreement to which the Tribe is a party or which is sought to be enforced against the Tribe shall permit any claim or recovery for indirect, incidental, special, exemplary, punitive, consequential, or other non-direct damages, including loss of profit, loss of business, and loss of goodwill through arbitration;

6. If an arbitration agreement to which the Tribe is a party or which is sought to be enforced against the Tribe or a contract

subject to or containing an arbitration agreement limits the amount of recovery the Tribe may seek or obtain against the other party, such limit shall also apply to the amount of recovery the other party may seek or obtain against the Tribe and any claim for amounts over such limit against the Tribe shall not be subject to arbitration or actionable or enforceable against the Tribe in any manner;

7. No dispute resolution agreement to which the Tribe is a party or which is sought to be enforced against the Tribe shall permit any dispute to be brought against the Tribe in dispute resolution by third parties or others not full parties to the dispute resolution agreement;

8. No person may join or interplead the Tribe or otherwise force it to participate in any dispute resolution between other parties without the express written agreement of the Tribe;

9. No third party may join, intervene, or otherwise become a party to dispute resolution against or involving the Tribe without the express written agreement of the Tribe, even if the Tribe is already a party to the dispute resolution;

10. The authority to enter into an arbitration agreement shall not and can not be delegated by the Tribal Council or, in the case of an enterprise or instrumentality of the Tribe, the board of directors of the enterprise or instrumentality, to any department, agency, commission, board, subdivision, official, officer, agent, or employee;

11. No department, agency, commission, board, subdivision, official, officer, agent, or employee of the Tribe or any enterprise or instrumentality of the Tribe has the authority to enter into any arbitration agreement on behalf of the Tribe, enterprise, or instrumentality;

12. No term, provision, or language in a dispute resolution agreement asserting, declaring, or agreeing that the dispute resolution agreement or any provision therein is irrevocable, valid, or enforceable shall supersede the provisions of this Chapter;

13. A dispute resolution agreement made in violation of this Section shall be illegal, made without legal capacity or authority, and void, provided that if a dispute resolution agreement made in violation of this Section cannot be deemed void or unenforceable for any reason:

a. Notwithstanding anything to the contrary in its terms, the dispute resolution agreement shall be revocable at law by the Tribe; or

b. If the dispute resolution agreement cannot be revoked, notwithstanding anything to the contrary in its terms, it shall be construed in accordance with the following:

i. The dispute resolution agreement shall be deemed an agreement to submit disputes to dispute resolution at the option, request, or future agreement or consent of the Tribe and not compulsory, mandatory, or exclusive on the part of the Tribe;

ii. The dispute resolution agreement and all doubts and ambiguities therein shall be strictly construed against the other party and solely in favor of and to the benefit of the Tribe and against submission to or compelling of dispute resolution;

iii. Any waiver of sovereign immunity with respect to the dispute resolution agreement, including compelling dispute resolution and confirmation or other enforcement of any award, shall be void and unenforceable and severed from the dispute resolution agreement or contract subject to or containing such agreement, or construed as revocable at law by the Tribe; and

iv. The dispute resolution agreement may only be enforced in the Court and any provision in the dispute resolution agreement purporting to permit enforcement in, or be a consent to jurisdiction to, any court shall be unenforceable and severed or construed as revocable by the Tribe or, if not revocable, solely an agreement to permit enforcement in and/or consent to jurisdiction to the Court.

14. Any provision of a dispute resolution agreement to which the Tribe is a party or a contract with the Tribe subject to or containing a dispute resolution agreement which purports to waive the right or ability of the Tribe to bring, join, or participate in any joint, class, or collective action or to a jury trial shall be void and unenforceable.

Section 6-12-11. Law Applicable.

1. The parties to a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement may agree upon all or any of the following:

a. The jurisdiction whose substantive law will be utilized for the construction and interpretation of the dispute resolution agreement, contract subject to or containing such agreement, or any dispute; and

b. The jurisdiction whose substantive law will be utilized for the enforcement of the dispute resolution agreement, contract subject to or containing such agreement, any dispute, or any award.

2. A choice of substantive law in a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement is valid and enforceable, provided:

a. If the dispute resolution agreement is an adhesion contract or contained in an adhesion contract or is with a consumer, the jurisdiction agreed upon is that where the party who is not the drafting party or consumer is located, resides, or is domiciled;

b. At least one of the parties to the dispute resolution agreement, contract, or dispute is closely connected to the jurisdiction agreed upon, except that if the Tribe is a party, only the jurisdiction of the Tribe shall be deemed closely connected under this provision;

c. The dispute resolution agreement or the contract is made, entered into, to be performed, or actually performed in the jurisdiction agreed upon;

d. The dispute arose in the jurisdiction agreed upon;
or

e. The subject matter of the dispute resolution agreement, contract, or dispute is otherwise closely connected to the jurisdiction agreed upon.

3. A choice of law in a dispute resolution agreement subject to this Chapter or a contract subject to or containing a dispute resolution agreement which is otherwise valid and enforceable is subject to the following:

a. If such law is not the laws of the Tribe exclusive of choice of law principles, language such as "governed by," "subject to," or similar import shall mean solely for construction and interpretation of the dispute resolution agreement or the contract and shall not include enforcement, jurisdiction, or authority;

b. If such law is not the laws of the Tribe exclusive of choice of law principles, such law will be limited to the use of the substantive law of the jurisdiction specified solely as a reference for the purpose of construction and interpretation and shall not in any manner constitute or be construed as:

i. A consent or agreement to the jurisdiction, authority, or applicability of such law to any party;

ii. Authorization for the enforcement of any such law against any party or the exercise of any regulatory authority over any party;

iii. An agreement to enforcement of the dispute resolution agreement, including compelling dispute resolution and enforcement of any award, pursuant to such law or in the jurisdiction whose law is specified, unless expressly and unequivocally stated otherwise; or

iv. An agreement to submit any dispute or other matter to the courts or other tribunals of the jurisdiction whose law is specified;

c. Any such law which conflicts with this Chapter shall not be applied or used and the provisions of this Chapter shall govern, apply, and be used;

d. If the use or application of any principle, portion, or provision of such law would result in a party being in violation of or acting contrary to the laws of the Tribe otherwise applicable to the party, such principle, portion, or provision of such law shall not be applied or used; and

e. Any other limitations or requirements in the laws of the Tribe regarding choice of law in a contract.

4. If a choice of law in a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement is not valid and enforceable, the dispute resolution agreement or the contract shall be deemed to not specify any law to be utilized for its construction and interpretation or enforcement.

5. If a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement does not specify the law to be utilized for the construction and interpretation of the dispute resolution agreement, the dispute resolution agreement shall be construed and interpreted in accordance with the following:

a. If the contract specifies the substantive law governing it or its interpretation and construction, such specified law shall be utilized for the construction and interpretation of the dispute resolution agreement, subject to the limitations in this Section or elsewhere in the laws of the Tribe;

b. If the contract does not specify any substantive law governing it or its interpretation and construction, the dispute resolution agreement shall be governed by and interpreted and construed exclusively in accordance with the laws of the Tribe, including this Chapter and exclusive of any choice of law principles, regardless of:

i. The location where the dispute resolution is or may be held; or

ii. Any designation of a court or tribunal for disputes or the enforcement of the dispute resolution agreement or the contract.

6. If a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement does not specify the law governing or to be utilized for enforcement of the dispute resolution agreement, including compelling dispute resolution and confirming or enforcing any award, this Chapter shall exclusively govern enforcement of the dispute resolution agreement, including compelling dispute resolution and confirming and enforcing any award, regardless of:

a. Whether the dispute resolution agreement or the contract specifies the law governing or to be utilized for the dispute resolution agreement or the contract, including

the law governing or to be utilized for either of their interpretation or construction;

b. The location where the dispute resolution is or may be held; or

c. Any designation of a court or tribunal for disputes or the enforcement of the dispute resolution agreement, contract, or an award.

7. In any proceeding where a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement is subject to interpretation and construction or enforcement in accordance with the law of another jurisdiction as provided in this Section, the Court shall apply the substantive law of the other jurisdiction in accordance with this Section, but the proceedings will otherwise be governed by the rules of procedure for the Court.

Section 6-12-12. Choice of Tribunal.

1. The parties to a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement may agree upon the jurisdiction, court, or other tribunal which will hear any dispute or enforcement action relating to the dispute resolution agreement.

2. If a dispute resolution agreement or a contract subject to or containing a dispute resolution agreement does not specify the jurisdiction, court, or other tribunal which will hear any dispute or enforcement action relating to the dispute resolution agreement, the Court shall have exclusive jurisdiction to hear any dispute or any enforcement action, including compelling dispute resolution and confirming or enforcing any award, regardless of:

a. Whether the dispute resolution agreement or the contract specifies the law governing or to be utilized for the dispute resolution agreement or the contract, including the law governing or to be utilized for either of their interpretation or construction or for enforcement; or

b. The location where the dispute resolution is or may be held.

Section 6-12-13. Breach of Dispute Resolution Agreement.

1. If a party is in material breach of a dispute resolution agreement or otherwise in default of the dispute resolution, the party waives the party's right to compel dispute resolution under the dispute resolution agreement.

2. If a dispute resolution agreement requires, either expressly or through application of any law of any jurisdiction or any rule of the dispute resolution provider organization, a particular party to pay certain fees and costs before the dispute resolution can proceed, if the fees or costs to initiate dispute resolution are not paid within thirty (30) days after the due date, the party is in material breach of the dispute resolution agreement and in default of the dispute resolution.

3. If a party materially breaches the dispute resolution agreement or is in default under the dispute resolution, the other party may do any of the following:

a. Properly refuse to negotiate, mediate, or arbitrate the dispute, or withdraw the dispute from an existing dispute resolution, and proceed in a court of appropriate jurisdiction with the statute of limitations governing any dispute brought in dispute resolution tolled as of the date of the first filing of the dispute in dispute resolution; or

b. Compel dispute resolution with the breaching or defaulting party required to pay all reasonable attorney's fees and costs related to the dispute resolution and compelling thereof.

Section 6-12-14. Appointment of Mediator or Arbitrator.

1. If a dispute resolution agreement provides a method of appointing a mediator or arbitrator, that method shall be followed.

2. If a dispute resolution agreement does not provide a method for appointing a mediator or arbitrator, the parties to the dispute resolution agreement who are to participate in the dispute resolution may agree on a method of appointing a mediator or arbitrator and that method shall be followed.

3. In the absence of an agreed method for appointing a mediator or arbitrator, if the agreed method fails or for any reason cannot be followed, or if a mediator or arbitrator appointed fails to act and a successor has not been appointed, any party to

the dispute resolution agreement who is to participate in the dispute resolution may file a complaint for appointment of a mediator or arbitrator and the Court shall appoint a mediator or arbitrator as provided in this Section.

4. When the Court will appoint a mediator or arbitrator under this Chapter, the Court shall nominate five (5) persons from lists of persons supplied jointly by the parties to the dispute resolution or obtained from a governmental department, agency, or branch or from a disinterested dispute resolution provider organization. The parties who will participate in the dispute resolution may within five (5) days of receipt of notice of the nominees from the Court jointly select the mediator or arbitrator whether or not the mediator or arbitrator is among the nominees. If the parties fail to select a mediator or arbitrator within the five (5) day period, the Court shall appoint the mediator or arbitrator from the nominees.

5. A party shall have the right to disqualify one court-appointed mediator or arbitrator without cause in any single mediation or arbitration, and may petition the Court to disqualify a subsequent appointee only upon a showing of cause.

Section 6-12-15. Conduct of Mediators and Arbitrators.

1. A person serving as a mediator or arbitrator pursuant to a dispute resolution agreement shall conform their conduct to such rules or code of conduct adopted by or designated by the Law and Justice Committee of the Tribe. In the absence of such rules or code of conduct, a person serving as a mediator or arbitrator pursuant to a dispute resolution agreement shall conform their conduct to the same rules or code of conduct governing judges of the Court.

2. In any dispute resolution pursuant to a dispute resolution agreement subject to this Chapter, within ten (10) calendar days of service of notice of a proposed nomination or appointment, a proposed mediator or arbitrator shall disclose, by written declaration under penalty of perjury, all matters that could cause a person aware of the facts to reasonably entertain a doubt that the proposed mediator or arbitrator would be able to be impartial, including all of the following:

a. The existence of any ground specified in the laws of the Tribe for disqualification of a judge;

b. Any financial or personal interest in the outcome of the dispute resolution;

c. Whether or not the proposed mediator or arbitrator has a current arrangement concerning prospective employment or other compensated service as a dispute resolution neutral or is participating in, or, within the last two (2) years, has participated in, discussions regarding such prospective employment or service with a party to the proceeding;

d. The names of the parties to all prior or pending cases in which the proposed mediator or arbitrator served or is serving as a mediator or arbitrator for any party to the dispute resolution or for legal counsel for a party and the results of each case mediated or arbitrated to conclusion, including the date of the award, identification of the prevailing party, the names of the parties' attorneys and the amount of monetary damages awarded, if any; and

e. Any existing or past relationship the proposed mediator or arbitrator or his or her immediate family has or has had with any party to the dispute resolution agreement or dispute resolution, their legal counsel or representatives, or any witness.

3. A mediator or arbitrator has a continuing obligation to disclose the information required in this Section and any facts which a reasonable person would consider likely to affect the impartiality of the arbitrator to all parties to the dispute resolution agreement and dispute resolution that the mediator or arbitrator learns after accepting appointment.

4. An appointed mediator or arbitrator who does not disclose information required by this Section, any other known, direct, and material interest in the outcome of the dispute resolution, or a known, existing, and substantial relationship with a party is presumed to act with evident partiality and bias.

5. A proposed mediator or arbitrator shall be disqualified if he or she fails to comply with the disclosure requirements of this Section and any party entitled to receive the disclosure serves a notice of disqualification within fifteen (15) calendar days after the proposed mediator or arbitrator fails to comply.

6. A proposed mediator or arbitrator shall be disqualified on the basis of the disclosure statement required under this Section after any party entitled to receive the disclosure serves

a notice of disqualification within fifteen (15) calendar days after service of the disclosure statement.

7. If any ground specified for disqualification of a judge under the laws of the Tribe exists, a mediator or arbitrator shall disqualify himself or herself upon the demand of any party made before the conclusion of the dispute resolution.

8. Before a dispute arises that is subject to a dispute resolution agreement, a party to the agreement may not waive any provision of this Section.

Section 6-12-16. Negotiation and Mediation Privilege.

1. Except as otherwise provided in this Section, a statement, whether oral, in writing, verbal, or nonverbal, made during a negotiation or mediation or for purposes of negotiation or mediation is confidential, privileged, and not subject to discovery or admissible in evidence in any proceeding unless waived.

2. The privilege under this Section may be claimed, and a statement prevented from disclosure, as follows:

a. A party to the negotiation or mediation may refuse to disclose, and may prevent any other person from disclosing, a privileged statement of anyone;

b. A mediator may refuse to disclose a privileged statement by anyone and may prevent any other person from disclosing a privileged statement of the mediator;

c. Another participant in the negotiation or mediation may refuse to disclose, and may prevent any other person from disclosing, a privileged statement of the participant.

3. A privilege under this Section may be waived in writing or orally during a proceeding if it is expressly waived by all parties to the negotiation or mediation and:

a. In the case of the privilege of a mediator, expressly waived by the mediator; and

b. In the case of the privilege of a participant in the negotiation or mediation who is not a party, expressly waived by the participant.

4. The privilege in this Section does not apply to a statement that is:

a. In a written agreement signed by all parties to the agreement, including a dispute resolution agreement;

b. In a written award signed by all the parties to be bound thereby;

c. Made during a session of a negotiation or mediation which is open, or is required by law to be open, to the public;

d. A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

e. Intentionally used to plan, commit, attempt to commit, or conceal a crime, criminal activity, or violation of law punishable by civil fine;

f. Offered or used in a court proceeding related to or involving the negotiation or mediation, provided that the court takes all necessary actions to protect the privileged statement from disclosure to third parties not entitled to the statement;

g. Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator, negotiation or mediation party, other participant in the negotiation or mediation, or representative of a party based on conduct occurring during a negotiation or mediation;

h. Sought or offered to prove or disprove a claim or complaint of validity or invalidity of a mediation award based on the partiality, bias, corruption, or misconduct of the mediator; or

i. Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation.

5. If a statement is not privileged under this Section, only the portion of the communication necessary for the application of the exception from nondisclosure may be admitted.

6. The privilege provided in this Section does not relieve a person from any duty imposed pursuant to applicable law requiring reporting of abuse, neglect, abandonment, or exploitation.

7. Before a dispute arises that is subject to a dispute resolution agreement, a party to the agreement may not waive any provision of this Section.

Section 6-12-17. Authority of Arbitrator.

1. Except as otherwise provided in this Chapter, an arbitrator shall have only the power and authority granted by the parties in the arbitration agreement.

2. Notwithstanding the terms of any dispute resolution agreement, the terms of any contract subject to or containing a dispute resolution agreement, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction, an arbitrator may certify a question of law to the Court as provided in this Title the same as any court of another jurisdiction, including questions regarding the applicability, interpretation, and construction of this Chapter.

3. Subject to any limitations in this Chapter or the arbitration agreement, an arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the dispute, to the same extent and under the same conditions as if the dispute were the subject of a civil action, provided that a party to an arbitration proceeding may move the Court for a provisional remedy if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

4. Notwithstanding the terms of any dispute resolution agreement, the terms of any contract subject to or containing a dispute resolution agreement, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction, no arbitrator has the power or authority to:

a. Declare any law of the Tribe unconstitutional or unenforceable;

b. Determine whether an arbitration agreement is subject to this Chapter;

c. Determine the validity or enforceability of an arbitration agreement subject to this Chapter; or

d. Hear, determine, make or issue an award upon, or in any manner conduct an arbitration related to any dispute not subject to arbitration or other dispute resolution under this Chapter or the terms of the arbitration agreement.

Section 6-12-18. Conduct of Arbitration.

1. Unless the arbitration agreement provides otherwise or the parties to the arbitration otherwise provide by separate written agreement:

a. An arbitration shall be by a single neutral arbitrator;

b. If there is more than one arbitrator:

i. The powers and duties of the arbitrators may be exercised by a majority of the arbitrators; or

ii. By unanimous agreement of the arbitrators, the powers and duties of the arbitrators may be delegated to one of them, provided the power to make or correct the arbitration award may not be so delegated;

c. An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration and other affected persons and the desirability of making the proceeding fair, expeditious, and cost effective;

d. If an arbitrator permits discovery as provided in this subsection, the arbitrator may order a party to the arbitration to comply with the arbitrator's discovery-related orders and take action against a noncomplying party to the extent the Court could under the Tribal Rules of Civil Procedure;

e. The arbitrator shall appoint a time and place for the hearing on the merits and cause notice thereof to be served in the same manner as service of a summons under the Tribal Rules of Civil Procedure on the parties to the arbitration not less than sixty (60) days before the hearing,

provided that appearance at an arbitration hearing waives any right to notice;

f. Each party shall within fifteen (15) days of receipt of notice of a hearing on the merits have the right to demand in writing that the other party provide a list of witnesses it intends to call, designating which witnesses will be called as expert witnesses, and a list of documents it intends to introduce at the hearing, with a copy of such demand and all such lists served on the arbitrator and all listed documents made available for inspection and copying at reasonable times prior to the hearing;

g. An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding;

h. An arbitrator may hold conferences with the parties to the arbitration before the hearing;

i. The arbitrator may adjourn a hearing from time to time as necessary;

j. On request of a party to the arbitration for good cause, or upon the arbitrator's own determination, the arbitrator may postpone the hearing to a time not later than the date fixed for making the arbitration award or to a later date if the parties to the arbitration consent;

k. The arbitrator shall preside at the hearing, rule on the admission and exclusion of evidence and on questions of hearing procedure, and exercise all powers relating to the conduct of the hearing;

l. Rules of evidence and rules of judicial procedure need not be observed;

m. On request of any party to the arbitration, the testimony of witnesses shall be given under oath;

n. Upon request of a party to or a witness in an arbitration, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be summoned for or is unable to attend a hearing, provided the arbitrator shall determine the conditions under which the deposition is taken;

o. An arbitrator may decide a request for summary disposition of a dispute or particular issue:

i. If all interested parties agree; or

ii. Upon request of one party to the arbitration if that party gives notice to all other parties to the arbitration and the other parties have a reasonable opportunity to respond; and

p. If an arbitrator intends to base an arbitration award upon information not obtained at the hearing, the arbitrator shall disclose the information to all parties to the arbitration and give the parties an opportunity to respond to it and present evidence on the information.

2. The parties to an arbitration are entitled to be heard, present evidence, and cross-examine witnesses appearing at the hearing.

3. An arbitrator may not determine the dispute or issue an award based solely on the default of a party. However, if a court has ordered a person to arbitrate a dispute, the arbitrator may hear and determine the dispute upon the evidence produced notwithstanding the failure of a party ordered to arbitrate, who has been duly notified, to appear.

4. An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets, and other information protected from disclosure to the extent the Court could if the controversy were the subject of a civil action in the Court. A party may petition the Court to confirm such protective order and enter the same as an order of the Court. If an arbitrator fails or refuses to enter a protective order, a party may seek such protective order from the Court.

5. An arbitrator may issue a summons in writing for the attendance of a witness and for the production of records and other evidence at any hearing or discovery proceeding authorized by the arbitration and may administer oaths. A summons from an arbitrator shall:

a. Be issued in the name of and signed by the arbitrator;

b. Be directed to the person required to attend and testify or provide documentary or physical evidence;

c. Describe with particularity any documentary or physical evidence to be provided; and

d. Be served in the same manner as subpoenas issued by the Court.

6. If a person summoned as provided in this Section refuses to appear or testify or to provide the evidence set forth in the summons, the arbitrator may request the Court to issue a subpoena requiring attendance and testimony of such person or the production of evidence, as the case may be. Upon a showing of sufficient relevancy and admissibility and subject to applicable laws related to privilege and confidentiality, the Court shall issue such subpoena which shall be served and have the same effect as a subpoena issued for a proceeding pending before the Court.

7. A party to an arbitration has the right to have a certified reporter transcribe any deposition, proceeding, or hearing. The transcript shall be the official record of the deposition, proceeding, or hearing. In the case of an arbitration agreement which is an adhesion contract or contained in an adhesion contract or with a consumer, notwithstanding any provision of the arbitration agreement or contract to the contrary, the drafting party shall incur the expense and pay for the certified reporter and transcript. In all other cases, if the arbitration agreement does not provide for a certified reporter, the party requesting the transcript shall incur the expense of the certified reporter. If an arbitrator refuses to allow a party to have a certified reporter transcribe any deposition, proceeding, or hearing pursuant to this subsection, the party may petition the Court for an order to compel the arbitrator to grant the party's request.

8. An arbitration award shall include a determination of all the questions submitted to the arbitrator the decision of which is necessary in order to determine the dispute.

9. The arbitrator shall serve a signed copy of the arbitration award on each party to the arbitration personally or by registered or certified mail or as provided in the agreement.

10. The arbitrator shall make an arbitration award within the time fixed therefor by the arbitration agreement or other agreement of the parties or, if not so fixed, within such time as the Court orders on petition of a party to the arbitration. The

parties to the arbitration may extend the time either before or after the expiration thereof. A party to the arbitration waives the objection that an arbitration award was not made within the time required unless the party gives the arbitrator written notice of the party's objection prior to the service of a signed copy of the arbitration award on the party. The making of an arbitration award after such objection does not render the arbitration award timely.

11. If an arbitrator ceases or is unable to act during the arbitration, a replacement arbitrator must be appointed in accordance with this Chapter to continue the arbitration and resolve the dispute.

12. Notwithstanding any dispute resolution agreement, any contract, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction, no costs, expenses, or fees of another party may be awarded against Tribe and any provision of an arbitration agreement, contract, or arbitration award providing otherwise shall be void and unenforceable.

13. Except where this Section expressly permits an arbitration agreement to provide otherwise, before a dispute arises that is subject to an arbitration agreement, a party to the agreement may not waive any provision of this Section. Notwithstanding the foregoing, any rule of a dispute resolution provider organization, or any other provision of any law of any jurisdiction, a party to an arbitration agreement may not agree to waive or unreasonably restrict any right under this Section to notice of the initiation of an arbitration, conference, or hearing.

Section 6-12-19. Requirements of Award.

1. An award in negotiation shall be in writing and signed by all parties to the negotiation who agree to the award or are to be bound thereby.

2. An award in mediation shall be in writing and signed by the mediator and all parties to the mediation who agree to the award or are to be bound thereby. If there is more than one mediator, the award must be signed by all mediators.

3. An award in arbitration shall be in writing and signed by the arbitrator. If there is more than one arbitrator, the award must be signed by all arbitrators concurring therein, which must be a majority of the arbitrators or such higher number required by

the arbitration agreement or other written agreement of the parties.

4. Unless and until confirmed or vacated as provided in this Chapter, an award has the same force and effect as a contract in writing between the parties to the dispute resolution or signing the award.

5. The provisions of this Section may not be waived.

Section 6-12-20. Stay of Proceedings.

1. If any cause of action or proceeding is brought in the Court upon any issue referable to dispute resolution under a dispute resolution agreement, upon being satisfied that the issue involved in such cause of action or proceeding is required to be referred to dispute resolution under such agreement and the provisions of this Chapter, the Court shall, on motion of one of the parties, stay the action or proceeding until such dispute resolution has been had in accordance with the terms of the dispute resolution agreement and the provisions of this Chapter, provided that the applicant for the stay is not in breach of the dispute resolution agreement or in default of such dispute resolution.

2. If a court in another jurisdiction has ordered dispute resolution of an issue which is an issue in an action or proceeding pending before the Court, the Court shall, upon motion of a party to such action or proceeding, stay the action or proceeding until the dispute resolution is had in accordance with the order to submit to dispute resolution or until such earlier time as the Court specifies, provided the order of the other court is otherwise enforceable by the Court pursuant to the laws of the Tribe and does not violate the provisions of this Chapter.

3. If an issue which is subject to dispute resolution under a dispute resolution agreement is severable from the remainder of the cause of action or proceeding, a stay issued under this Section may be with respect to that issue only.

Section 6-12-21. Compelling Dispute Resolution.

1. A party to a dispute resolution agreement who seeks dispute resolution as specified in the dispute resolution agreement may seek an order compelling another party to the dispute resolution agreement to submit a dispute between them to dispute resolution as designated in the dispute resolution agreement by

filing a complaint with the Court in the manner provided in the Rules of Civil Procedure.

2. In addition to any other information required by the laws of the Tribe, a complaint under this Section shall contain the following information:

a. A description of the dispute between the parties alleged to be subject to the dispute resolution agreement;

b. A valid copy of the alleged dispute resolution agreement which requires the parties to submit the dispute to the form of dispute resolution requested, attached as an exhibit;

c. If the dispute resolution agreement is an arbitration agreement with the Tribe, the resolution of the Tribal Council or, in the case of an enterprise or instrumentality of the Tribe authorized to agree to arbitration, the board of directors of the enterprise or instrumentality, approving and granting the arbitration agreement in accordance with this Chapter;

d. Information demonstrating that the plaintiff has demanded or requested dispute resolution in accordance with the dispute resolution agreement;

e. Information demonstrating that the defendant has refused to participate in dispute resolution with respect to the dispute in accordance with the dispute resolution agreement; and

f. A request that the Court order the defendant to participate in dispute resolution with respect to the dispute in accordance with the dispute resolution agreement.

3. Upon the filing of a complaint under this Section, a summons shall be issued to and served upon each defendant in accordance with the general rules governing the issuance of summons by the Court and service of complaints.

4. Each defendant may file and serve a responsive pleading within the time period provided in the rules of procedure for the Court for answering or responding to a complaint, provided that failure to file a responsive pleading shall not constitute an admission of any allegation contained in the complaint and the plaintiff shall be required to prove all matters alleged in the

complaint to obtain an order to compel dispute resolution even in the event of a default on the part of any defendant.

5. The Court shall hear a complaint filed under this Section as it hears other civil matters.

6. The Court shall dismiss the proceeding under this Section as to any person named as a defendant if the Court determines that such person was not bound by or a party to the dispute resolution agreement.

7. Except as otherwise provided in this Section, the Court shall issue an order that the plaintiff and defendant participate in dispute resolution as provided in the dispute resolution agreement with respect to the dispute set forth in the complaint if the Court determines that:

a. A valid and enforceable dispute resolution agreement exists between the parties;

b. The dispute resolution agreement requires or mandates the parties to submit a dispute between them to the particular dispute resolution requested and is not optional or discretionary on the part of the defendant; and

c. The dispute set forth in the complaint is a dispute subject to dispute resolution under the dispute resolution agreement, including the particular form of dispute resolution requested; and

d. The plaintiff is otherwise entitled to compel the defendant to submit the dispute to the dispute resolution requested.

8. The Court shall not enter an order to submit to dispute resolution if the Court determines that:

a. The right to compel dispute resolution has been waived by the plaintiff;

b. The dispute resolution agreement, by its terms or as a matter of law, only provides for the defendant to submit a dispute to dispute resolution at the discretion, option, request, or consent of the defendant and the defendant has not exercised such discretion or option, made such request, or given such consent;

c. The dispute resolution agreement, by its terms or as a matter of law, otherwise does not mandate or require dispute resolution of the dispute;

d. The dispute is not subject to dispute resolution by the terms of the dispute resolution agreement or pursuant to this Chapter or other applicable law;

e. The terms of the dispute resolution agreement do not provide for the particular form of dispute resolution requested, provided the Court may order the proper form of dispute resolution if otherwise authorized under this Section;

f. The dispute resolution agreement is void, invalid, or otherwise unenforceable against the defendant; or

g. Grounds exist for rescission of the dispute resolution agreement and the defendant has not waived or declined to exercise such rescission; or

h. The plaintiff is otherwise not entitled to compel the defendant to submit the dispute to the dispute resolution requested

9. If the dispute resolution agreement is an arbitration agreement and the Court determines that a party to the arbitration agreement is also a party to a pending action or proceeding with a third party, arising out of the same transaction or series of related transactions, and there is a possibility of conflicting rulings on a common issue of law or fact, including a pending action or proceeding initiated by the party refusing to arbitrate after the complaint was filed, but prior to a final hearing on the complaint, the Court shall not enter an order to arbitrate, but may:

a. Refuse to enforce the arbitration agreement and order intervention or joinder of all parties in a single action or proceeding;

b. Order intervention or joinder as to all or only certain issues;

c. Order arbitration among the parties who have agreed to arbitration and stay the pending action or proceeding pending the outcome of the arbitration proceeding; or

d. Stay arbitration pending the outcome of the action or proceeding.

10. If the Court determines that a valid and enforceable dispute resolution agreement between the parties exists and governs the dispute, an order to submit that dispute to dispute resolution may not be refused on the ground that the plaintiff's contentions lack substantive merit.

11. If the Court determines that there are other issues between the plaintiff and defendant, or involving either of them, which are not subject to dispute resolution as provided in the dispute resolution agreement and which are the subject of a pending action or proceeding between the plaintiff and defendant and that a determination of such issues may make the dispute resolution unnecessary, the Court may delay its order to submit to dispute resolution until the determination of such other issues or such earlier time as the Court specifies.

12. An order issued in a proceeding under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-12-22. Consolidating Arbitrations.

1. A party to an arbitration agreement may petition the Court to consolidate separate arbitration proceedings, and the Court may order consolidation of separate arbitration proceedings when separate arbitration agreements or proceedings exist between the same parties and either:

a. The disputes arise from the same transaction or occurrence or series of related transactions or occurrences; or

b. There is one or more common issues of law or fact creating the possibility of conflicting rulings by more than one arbitrator.

2. If all of the applicable arbitration agreements name the same arbitrator or dispute resolution provider organization, the Court shall order the consolidated arbitration to be heard before the arbitrator or dispute resolution provider organization agreed to by the parties. If the applicable arbitration agreements name separate arbitrators or dispute resolution provider organizations, the Court shall, in the absence of an agreed method of selection by all parties to the consolidated arbitration, appoint an

arbitrator for the consolidated arbitration in accordance with this Chapter.

3. In the event that the arbitration agreements governing consolidated arbitrations contain inconsistent provisions, the Court shall resolve such conflicts and determine the rights and duties of the various parties to achieve substantial justice under all the circumstances, subject to the provisions of this Chapter.

4. The Court may exercise its discretion under this Section to deny consolidation of separate arbitration proceedings or to consolidate separate arbitration proceedings only as to certain issues, leaving other issues to be resolved in separate proceedings.

Section 6-12-23. Confirmation of Award.

1. Any party to dispute resolution in which an award has been made may seek an order confirming the award by filing a complaint with the Court in the manner provided in the Rules of Civil Procedure.

2. A complaint to confirm an award shall name as defendants all parties to the dispute resolution. The complaint may also name as defendants any other persons bound by the award.

3. In addition to any other information required by the laws of the Tribe, a complaint under this Section shall contain the following information:

a. A valid copy of the dispute resolution agreement attached as an exhibit;

b. If the dispute resolution agreement is an arbitration agreement with the Tribe, the resolution of the Tribal Council or, in the case of an enterprise or instrumentality of the Tribe authorized to agree to arbitration, the board of directors of the enterprise or instrumentality, approving and granting the arbitration agreement in accordance with this Chapter;

c. If the award is from mediation or arbitration:

i. The names of all mediators or arbitrators, as the case may be, who made the award; and

ii. Information on the selection or appointment of the mediator or arbitration;

d. Each extension of time, if any, agreed to or granted to make the award;

e. A valid copy of the award, signed as required by this Chapter, attached as an exhibit;

f. If the award is an arbitration award:

i. Any written opinion of the arbitrator, attached as an exhibit; and

ii. Evidence that the award was served on each party to the dispute resolution as required by this Chapter; and

g. A request that the Court confirm the award and issue a judgement thereon.

4. Upon the filing of a complaint under this Section, a summons shall be issued to and served upon each defendant in accordance with the general rules governing the issuance of summons by the Court and service of complaints.

5. Each defendant may file and serve a responsive pleading within the time period provided in the rules of procedure for the Court for answering or responding to a complaint, provided that failure to file a responsive pleading shall not constitute an admission of any allegation contained in the complaint and the plaintiff shall be required to prove all matters alleged in the complaint to obtain an order confirming an award even in the event of a default on the part of any defendant. A responsive pleading may include a request for the Court to vacate, modify, or correct the award in accordance with this Chapter.

6. The Court shall hear a complaint filed under this Section as it hears other civil matters.

7. The Court shall dismiss the proceeding under this Section as to any person named as a defendant if the Court determines that such person was not bound by the award and was not a party to the dispute resolution.

8. Except for vacating, modifying, or correcting an award as provided in this Chapter, an award shall not be subject to

review by or appeal to the Court unless the dispute resolution agreement expressly provides otherwise, but shall be confirmed as rendered by the parties, mediator, or arbitrator.

9. The Court shall confirm an award under this Section as made, whether rendered in the territory of the Tribe or another jurisdiction, and enter a judgment accordingly, unless:

a. The award was made with respect to a dispute or including an issue which is not permitted to be resolved by dispute resolution pursuant to this Chapter or other applicable law;

b. The award does not meet the requirements of this Chapter, including signing requirements;

c. The award is required to be vacated, modified, or corrected in accordance with this Chapter and is so vacated, modified, or corrected; or

d. The proceedings are dismissed.

10. A judgment entered on an award under this Section has the same force and effect as, and is subject to all the provisions of law relating to, a judgment in a civil action of the Court and may be enforced like any other judgment of the Court.

11. An order or judgment issued in a proceeding under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-12-24. Vacating and Modifying Arbitration Award.

1. An arbitrator, upon written application of a party to the arbitration, may modify or correct an arbitration award upon any of the grounds set forth in this Section, because the arbitrator has not made a final and definite award upon a dispute submitted by the parties to the arbitration, or to clarify the award. Such an application must be submitted not later than thirty (30) days after service of a signed copy of the arbitration award on the applicant. Upon or before making such application, the applicant shall deliver or mail a copy of the application to all of the other parties to the arbitration. Any party to the arbitration may make written objection to such application not later than ten (10) days after the application is delivered or mailed to the objector. The arbitrator shall either deny the application or correct the arbitration award in writing and signed

by the arbitrator or, if there is more than one, all arbitrators concurring therein. The arbitrator shall serve a signed copy of such denial or correction on each party to the arbitration personally or by registered or certified mail or as provided in the arbitration agreement. If no decision on the application is served within thirty (30) days of filing, the application for correction shall be deemed denied on the last day thereof. An application to correct an arbitration award and the decision of an arbitrator thereon shall not effect a party's right to seek vacation, modification, or correction by the Court as provided in this Section.

2. Any party to an arbitration in which an arbitration award has been made may seek an order vacating, modifying, or correcting the arbitration award by filing a complaint with the Court in the manner provided in the Rules of Civil Procedure.

3. A complaint to vacate, modify, or correct an arbitration award shall name as defendants all parties to the arbitration. The complaint may also name as defendants any other persons bound by the arbitration award.

4. In addition to any other information required by the laws of the Tribe, a complaint under this Section shall contain the following information:

a. A valid copy of the arbitration agreement attached as an exhibit;

b. If the arbitration agreement is with the Tribe, the resolution of the Tribal Council or, in the case of an enterprise or instrumentality of the Tribe authorized to agree to arbitration, the board of directors of the enterprise or instrumentality, approving and granting the arbitration agreement in accordance with this Chapter;

c. The names of all arbitrators who made the arbitration award;

d. Information on the selection or appointment of the arbitrator;

e. A valid copy of the arbitration award and written opinion of the arbitrator, if any, attached as an exhibit;

f. The basis for vacating, modifying, or correcting the arbitration award, as the case may be;

g. Unless the plaintiff requests the arbitration award be vacated, the manner in which the plaintiff seeks the arbitration award be modified or corrected, as appropriate; and

h. A request that the Court vacate, modify, or correct the arbitration award, as the case may be.

5. Upon the filing of a complaint under this Section, a summons shall be issued to and served upon each defendant in accordance with the general rules governing the issuance of summons by the Court and service of complaints.

6. Each defendant may file and serve a responsive pleading within the time period provided in the rules of procedure for the Court for answering or responding to a complaint, provided that failure to file a responsive pleading shall not constitute an admission of any allegation contained in the complaint and the plaintiff shall be required to prove all matters alleged in the complaint to obtain an order vacating, modifying, or correcting an arbitration award even in the event of a default on the part of any defendant. A responsive pleading may include a request for the Court to confirm the arbitration award in accordance with this Chapter.

7. The Court shall hear a complaint filed under this Section as it hears other civil matters.

8. The Court shall dismiss the proceeding under this Section as to any person named as a defendant if the Court determines that such person was not bound by the arbitration award and was not a party to the arbitration.

9. The Court shall vacate an arbitration award if the Court determines any of the following:

a. The arbitration award was procured by corruption, fraud, or other undue means;

b. There was:

i. Evident partiality or bias by an arbitrator;

ii. Corruption by an arbitrator; or

iii. Misconduct by an arbitrator prejudicing the rights of a party;

c. The arbitration award does not meet the requirements of this Chapter, including being made or signed by the required number of arbitrators;

d. The arbitrator exceeded the arbitrator's powers or authority and the arbitration award cannot be corrected without affecting the merits of the decision upon the dispute submitted;

e. The rights of the party were substantially prejudiced by the refusal of the arbitrator to postpone the hearing upon sufficient cause being shown therefor;

f. The rights of the party were substantially prejudiced by the refusal of the arbitrator to hear evidence material to the dispute;

g. The arbitration was conducted without proper notice of the initiation of an arbitration or the hearing so as to substantially prejudice the rights of the party;

h. The rights of the party were substantially prejudiced by other conduct of the arbitrator;

i. An arbitrator making the arbitration award either:

i. Failed to disclose a ground for disqualification of which the arbitrator was then aware; or

ii. Was subject to disqualification but failed upon receipt of timely demand to disqualify himself or herself;

j. There was no arbitration agreement, unless the defendant participated in the arbitration without raising an objection within a reasonable time of knowing there was no valid arbitration agreement; or

k. The arbitration agreement was void, invalid, or unenforceable, unless the basis for the agreement being void, invalid, or unenforceable was waivable and the defendant participated in the arbitration without raising an objection

within a reasonable time of knowing it was voidable, invalid, or unenforceable.

10. If the Court vacates an arbitration award, the arbitration award shall be void, unenforceable, and not subject to confirmation or enforcement in any jurisdiction, provided that the Court may order a rehearing before a new arbitrator if not contrary to the arbitration agreement.

11. Unless it vacates the arbitration award pursuant to this Section, the Court shall modify or correct an arbitration award and confirm it as modified or corrected if the Court determines that:

a. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the arbitration award;

b. The arbitrator made an award on a dispute or issue not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the dispute or issue submitted;

c. The arbitrator exceeded the arbitrator's power or authority but the arbitration award may be corrected without affecting the merits of the decision upon the dispute submitted;

d. The arbitration award is imperfect in a matter of form, not affecting the merits of the dispute; or

e. Modification or correction is necessary so as to make the arbitration award comply with this Chapter or other applicable law or to affect the intent of the arbitration award and promote justice between the parties.

12. An order or judgment issued in a proceeding under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-12-25. Vacating and Modifying Mediation Award.

1. A mediator, upon written application of all parties bound by the award or provision to be corrected, may correct a mediation award upon any of the grounds set forth in this Section or to clarify the award not later than thirty (30) days after the award is signed by all parties to the mediation. Upon or before

making such application, the applicant shall deliver or mail a copy of the application to all of the other parties to the mediation not joining in the application. Any party to the mediation not joining in the application may make written objection to such application not later than ten (10) days after the application is delivered or mailed to the objector. The mediator shall either deny the application or correct the award in writing and signed by the mediator. The mediator shall serve a signed copy of such denial or correction on each party to the mediation personally or by registered or certified mail or as provided in the mediation agreement. If no decision on the application is served within thirty (30) days of filing, the application for correction shall be deemed denied on the last day thereof. An application to correct a mediation award and the decision of the mediator thereon shall not effect a party's right to seek vacation, modification, or correction by the Court as provided in this Section.

2. Any party to a mediation in which a mediation award has been made may seek an order vacating, modifying, or correcting the mediation award by filing a complaint with the Court in the manner provided in the Rules of Civil Procedure.

3. A complaint to vacate, modify, or correct a mediation award shall name as defendants all parties to the mediation. The complaint may also name as defendants any other persons bound by the mediation award.

4. In addition to any other information required by the laws of the Tribe, a complaint under this Section shall contain the following information:

- a. A valid copy of the mediation agreement attached as an exhibit;
- b. The name of the mediator who made the mediation award;
- c. Information on the selection or appointment of the mediator;
- d. A valid copy of the mediation award, attached as an exhibit;
- e. The basis for vacating, modifying, or correcting the mediation award, as the case may be;

f. Unless the plaintiff requests the mediation award be vacated, the manner in which the plaintiff seeks the mediation award be modified or corrected, as appropriate; and

g. A request that the Court vacate, modify, or correct the mediation award, as the case may be.

5. Upon the filing of a complaint under this Section, a summons shall be issued to and served upon each defendant in accordance with the general rules governing the issuance of summons by the Court and service of complaints.

6. Each defendant may file and serve a responsive pleading within the time period provided in the rules of procedure for the Court for answering or responding to a complaint, provided that failure to file a responsive pleading shall not constitute an admission of any allegation contained in the complaint and the plaintiff shall be required to prove all matters alleged in the complaint to obtain an order vacating, modifying, or correcting a mediation award even in the event of a default on the part of any defendant. A responsive pleading may include a request for the Court to confirm the mediation award in accordance with this Chapter.

7. The Court shall hear a complaint filed under this Section as it hears other civil matters.

8. The Court shall dismiss the proceeding under this Section as to any person named as a defendant if the Court determines that such person was not bound by the mediation award and was not a party to the mediation.

9. The Court shall vacate a mediation award if the Court determines any of the following:

a. The mediation award was procured by corruption, fraud, or other undue means;

b. The mediation award does not meet the requirements of this Chapter, including being signed by the mediator and all parties to be bound thereby; or

c. The party did not freely assent to the award as a result of:

i. Evident partiality, bias, or corruption in the mediator;

ii. Misconduct of the mediator substantially prejudicing the rights of the party;

iii. The mediator failing to disclose a ground for disqualification of which the mediator was then aware;
or

iv. The mediator being subject to disqualification and failing upon receipt of timely demand to disqualify himself or herself.

10. If the Court vacates a mediation award, the mediation award shall be void, unenforceable, and not subject to confirmation in any jurisdiction, provided that the Court may order a new mediation before a new mediator if not contrary to the mediation agreement.

11. Unless it vacates the mediation award pursuant to this Section, the Court shall modify or correct a mediation award and confirm it as modified or corrected if the Court determines that:

a. There was an evident miscalculation of figures or an evident mistake in the description of any person, thing, or property referred to in the mediation award;

b. The mediation award is imperfect in a matter of form, not affecting the substance of the award as agreed between the parties; or

c. Modification or correction is necessary so as to:

i. Make the mediation award comply with this Chapter or other applicable law;

ii. Affect the actual agreement of the parties resulting from the mediation; or

iii. Affect the intent of the mediation award and promote justice between the parties.

12. An order or judgment issued in a proceeding under this Section is a final order and subject to appeal in accordance with the laws of the Tribe governing civil appeals.

Section 6-12-26. Limitations of Actions.

1. Notwithstanding the terms of any dispute resolution agreement, the terms of any contract, any rule of a dispute resolution provider organization, or any law of any jurisdiction to the contrary, unless the dispute resolution agreement, contract, rule, law, or this Chapter provides a shorter time, dispute resolution or an action to compel dispute resolution or otherwise enforce a dispute resolution agreement must be commenced within six (6) months of the date the dispute accrues.

2. In the event the period of limitations under this Section for commencing dispute resolution or an action to compel dispute resolution or otherwise enforce a dispute resolution agreement has expired or run, the dispute may be brought as a cause of action in a court otherwise having jurisdiction within the period of limitations applicable to the dispute as though the dispute resolution agreement did not exist or had been lawfully revoked.

3. Notwithstanding the terms of any dispute resolution agreement, the terms of any contract, any rule of a dispute resolution provider organization, or any law of any jurisdiction to the contrary, unless the dispute resolution agreement, contract, rule, or law provides a shorter time, an action to confirm, vacate, modify, or correct an award must be commenced within one (1) year after the award is made or, in the case of an arbitration award, served on the party seeking confirmation, vacation, modification, or correction, provided that the limitations period in this paragraph shall not bar or otherwise prevent a party from seeking vacation, modification, or correction of an award as a defense or response to an action seeking confirmation or other enforcement of the award or judgment confirming the award.

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