



**HABEMATOLEL POMO OF UPPER LAKE**

**TITLE 2 JUDICIAL CODE**

**CHAPTER 2.3 TRIAL COURT RULES OF  
PROCEDURE**

## TABLE OF CONTENTS

<b>ARTICLE 1. TITLE .....</b>	<b>4</b>
<b>ARTICLE 2. PURPOSE .....</b>	<b>4</b>
<b>ARTICLE 3. JURISDICTION .....</b>	<b>4</b>
<b>ARTICLE 4. DEFINITIONS.....</b>	<b>4</b>
SECTION 4.1. DEFINED TERMS.....	4
<b>ARTICLE 5. GENERAL RULES .....</b>	<b>5</b>
SECTION 5.1. CONSTRUCTION AND SCOPE .....	5
SECTION 5.2. TRIBAL LAW .....	5
SECTION 5.3. PARTIES .....	5
SECTION 5.4. CALCULATION OF TIME .....	6
SECTION 5.5. LOCATION AND HOURS .....	6
SECTION 5.6. FEES & FORMS .....	6
SECTION 5.7. GENERAL REQUIREMENTS FOR PAPERS.....	6
SECTION 5.8. SERVICE OF PAPERS.....	7
SECTION 5.9. MOTIONS .....	7
SECTION 5.10. TRIBAL COURT PROCEEDINGS.....	8
SECTION 5.11. COURTROOM CONDUCT AND DRESS.....	10
SECTION 5.12. CONTEMPT OF COURT.....	10
SECTION 5.13. RECUSAL OF JUDGES .....	10
SECTION 5.14. TRIBAL COURT RECORDS .....	10
SECTION 5.15. LICENSE TO REPRESENT OTHERS.....	11
<b>ARTICLE 6. EVIDENCE.....</b>	<b>11</b>
SECTION 6.1. EVIDENCE GENERALLY.....	11
SECTION 6.2. TYPES OF EVIDENCE .....	11
SECTION 6.3. PROCESS FOR PRESENTING EVIDENCE .....	13
SECTION 6.4. RETAINING EVIDENCE.....	14
SECTION 6.5. DISCOVERY.....	15
<b>ARTICLE 7. VIOLATIONS OF TRIBAL LAW .....</b>	<b>16</b>
SECTION 7.1. BEGINNING A VIOLATION OF TRIBAL LAW CASE.....	16
SECTION 7.2. RESPONSE.....	16

SECTION 7.3. FIRST HEARING .....	16
<b>ARTICLE 8. REVIEW OF GOVERNMENT DECISIONS .....</b>	<b>16</b>
SECTION 8.1. TRIBE AS A PARTY.....	16
SECTION 8.2. STANDARD OF REVIEW .....	16
SECTION 8.3. PROCEDURE FOR APPEALING A TRIBAL DECISION.....	17
SECTION 8.4. CASE MANAGEMENT HEARING .....	18
SECTION 8.5. CONDUCT OF ARGUMENT.....	18
SECTION 8.6. FINAL DECISION.....	18
<b>ARTICLE 9. CIVIL CLAIMS - PRIVATE .....</b>	<b>18</b>
SECTION 9.1. PETITION.....	18
SECTION 9.2. SUMMONS TO RESPOND .....	18
SECTION 9.3. RESPONSE.....	19
SECTION 9.4. CASE MANAGEMENT HEARING .....	19
SECTION 9.5. FINAL DECISION.....	19
<b>ARTICLE 10. CHILD WELFARE MATTERS .....</b>	<b>19</b>
SECTION 10.1. PETITIONS.....	19
SECTION 10.2. SUMMONS AND NOTICE .....	19
<b>ARTICLE 11. JUDGMENTS .....</b>	<b>20</b>
SECTION 11.1. GENERALLY .....	20
SECTION 11.2. EXECUTION OF TRIBAL COURT JUDGMENTS .....	20
SECTION 11.3. FOREIGN JUDGMENTS.....	20
<b>ARTICLE 12. OTHER PROVISIONS .....</b>	<b>21</b>
SECTION 12.1. SOVEREIGN IMMUNITY .....	21
SECTION 12.2. AMENDMENTS.....	21
SECTION 12.3. SEVERABILITY.....	21
SECTION 12.4. EFFECTIVE DATE.....	21

## ARTICLE 1. TITLE

This chapter shall be titled the Habematolel Pomo of Upper Lake Trial Court Rules of Procedure and may be cited as the HPUL Trial Court Rules of Procedure. This chapter shall be codified as Chapter 3 of Title 2 of the Habematolel Pomo of Upper Lake Book of Codes.

## ARTICLE 2. PURPOSE

The purpose of this Chapter is to provide guidance on the procedure for practicing in the Habematolel Pomo of Upper Lake Tribal Court System. They are not intended as rules of law that apply conduct outside the court.

## ARTICLE 3. JURISDICTION

Pursuant to the Constitution and the Judicial Code, the Habematolel Pomo of Upper Lake Tribal Court of Appeals shall have authority to establish court rules of procedure. (Constitution Article XII, Section 12; Judicial Code Section 3.3.) If no Tribal Court is in operation, the Executive Council, or its express designee, shall act as the Tribal Court for all references within this Chapter. These Rules shall not be construed to extend or limit the jurisdiction of the Tribal Court.

## ARTICLE 4. DEFINITIONS

### SECTION 4.1. DEFINED TERMS

For purposes of this Chapter, the following terms shall have the meanings ascribed below:

- (A) **“Chapter”** shall mean this Chapter 2.3. Trial Court Rules of Procedure.
- (B) **“Executive Council”** shall mean the governing body of the Habematolel Pomo of Upper Lake;
- (C) **“Citation”** shall mean an order issued by the Tribe, or an agency of the Tribe to respond to an alleged violation of tribal law.
- (D) **“Petition”** shall mean any formal written request presented to the Tribal Court.
- (E) **“Petitioner”** shall mean the person filing the first paper in a case.
- (F) **“Proof of Service”** means a written affidavit or declaration identifying the case name and number, the party served, the names of the documents served, the date and time of service, and the location where service took place.

- (G) **“Reservation”** shall mean all lands within the exterior boundaries of the Habematolel Pomo of Upper Lake Reservation located in Lake County, California and all lands owned by the Tribe both fee and non-fee land and lands held in trust for individuals and all lands considered “Indian lands” under federal, state or tribal law;
- (H) **“Respondent”** shall mean the party responding to a case or matter filed against them in Tribal Court.
- (I) **“Tribal Court”** shall mean the Habematolel Tribal Court established pursuant to Tribal ordinance. If a Tribal Court is not in operation, the Executive Council or their designee shall operate as the Tribal Court;
- (J) **“Tribal Member”** shall mean an enrolled member of the Habematolel Pomo of Upper Lake;
- (K) **“Tribe”** shall mean the Habematolel Pomo of Upper Lake, a federally- recognized Indian tribe, or an authorized official or agency thereof.

## **ARTICLE 5. GENERAL RULES**

### **SECTION 5.1. CONSTRUCTION AND SCOPE**

These Habematolel Pomo of Upper Lake Trial Court Rules of Procedure (“Rules”) shall be liberally construed in order that justice might be served, and cases resolved as promptly and reasonably as possible. These Rules govern all actions in the Tribal Court unless otherwise specified by Habematolel Pomo of Upper Lake tribal law, code, ordinance, resolution or policy. In interpreting and applying these Rules, the Tribal Court may look to the Federal Rules of Civil Procedure and the Federal Rules of Evidence for guidance; however, the Tribal Court is not required to apply the federal rules in any specific case.

### **SECTION 5.2. TRIBAL LAW**

All persons appearing before the court, representing themselves or someone else, must familiarize themselves with these Rules, and all relevant laws, codes, ordinances and policies of the Habematolel Pomo of Upper Lake in order to competently present their case to the Tribal Court.

### **SECTION 5.3. PARTIES**

The person filing the first paper in a case is called the “Petitioner.” The person served with the first paper is called the “Respondent.”

## **SECTION 5.4. CALCULATION OF TIME**

All references to “days” in these Rules shall be calendar days. When calculating a deadline, the first day counted shall be the day after filing. If the last day of a deadline falls on a holiday or weekend the deadline shall move to the next day.

## **SECTION 5.5. LOCATION AND HOURS**

The Tribal Court’s location shall be at the tribal offices, unless another location is specified by the Tribal Court. The Tribal Court shall be open for business from 8:00 am to 5:00 pm Monday – Friday unless otherwise posted. All papers and documents filed with the Tribal Court must be received by the Clerk of the Tribal Court by 4:00 pm. Papers and documents received after 4:00 pm will be considered received the following business day.

## **SECTION 5.6. FEES & FORMS**

The Tribal Court shall establish fees for court services including but not limited to filing fees and copying fees. The Tribal Court may from time to time approve forms that are required to be used, so that users of the Tribal Court do not have to create their own papers. Forms may be obtained from the Tribal Court offices.

## **SECTION 5.7. GENERAL REQUIREMENTS FOR PAPERS**

(A) Generally, all papers filed with the Tribal Court must:

- (1) Be typed, printed, or neatly and legibly handwritten. Where handwritten, permanent ink, black or blue, and not pencil, must be used.
- (2) Use no smaller than 12 point font.
- (3) Use no less than 1.15 inch line spacing.
- (4) Be on 8-1/2” x 11” paper.
- (5) Include the name of the Tribal Court “Habematolel Pomo of Upper Lake Tribal Court”.
- (6) Include, immediately below the name of the Tribal Court the name or style of the case, for example, Party One v. Party Two or The Guardianship of Minor One.
- (7) Be signed and dated by the party with the party’s name legibly written or printed below the signature.

(B) Except with permission of the judge, no papers shall exceed twenty (20) pages in length, exclusive of pages containing a table of authorities or a table of contents. Any papers exceeding twelve (12) pages shall contain:

- (1) A table of contents with page references and
- (2) A table of cases (arranged alphabetically), statutes and other authorities cited, with references to the pages where they are cited. Cases cited shall be attached in full to the

citing paper.

- (C) All papers presented in person for filing must be in triplicate (original plus two copies). This does not apply to papers filed by email.
- (D) The Tribal Court in its discretion may reject any papers that do not comply with these requirements.

### **SECTION 5.8. SERVICE OF PAPERS**

- (A) If the Tribe, Tribal Entities, or Tribal Employees are the Respondent, service of all papers in an action must follow the Tribe's Service of Process Policy. For all other Respondent's the following rules apply for serving papers in an action.
- (B) The petition or citation, being the first paper in an action, must be served on the other party or parties to the action by personal service. This means that the papers must be served by an individual who is over the age of 18 and who is not a party to the case by:
  - (1) Hand delivering to the person being served; or
  - (2) Leaving a copy at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
  - (3) Delivering a copy to an agent authorized by appointment or by law to receive service of process.
- (C) After the first paper is served on all parties, other papers may be served by first class mail, or email as agreed to in writing or on the record by the parties.
- (D) Where personal service cannot be made after two (2) attempts, the party bringing the action may apply to the Tribal Court in writing or on the record requesting an order for substituted service by some other means, such as by mail, posting or publication in a newspaper. The application should describe the attempts of the party to make personal service. If the Tribal Court orders substituted service, it shall specifically state the process and timelines for such substituted service consistent with due process.
- (E) The person serving any papers in an action must then sign a sworn statement, known as a proof of service, as to the specific time and place of the service, the name of the person served, the method of service (personal or mail) and the title of all papers served on the form provided by the Tribal Court. This proof of service must then be filed with the Tribal Court.

### **SECTION 5.9. MOTIONS**

(A) Motions are requests to the Tribal Court to enter a specific order. Some examples of reasons Motions may be filed are (but not limited to) the following: to add or eliminate parties, to amend proceedings, to request a continuance (more time), to transfer or dismiss a case, to request reconsideration of a court decision, to request a stay of court proceedings (to stop or slow proceedings), to request an injunction (to stop or delay an action), motion for a contempt order, or to prepare or simplify a case for trial.

(B) Motions should be made in writing. Like other papers, Motions must be filed with the Tribal Court and served on all of the parties in the case, with written proof of service attached. Oral, or spoken, motions may be made during a Tribal Court hearing or trial, where the circumstances would not allow for the motion to have been made in writing.

(C) Time for Motions:

(1) Written motions should, whenever possible, be filed and served with the blank response form at least ten (10) days before the next hearing in the case. Where no hearing has been scheduled, the Tribal Court shall set a hearing no sooner than ten (10) days and no more than twenty (20) days from the date the motion was served.

(2) Written responses to written motions should, whenever possible, be filed and served within seven (7) days of receipt of the motion, and not later than twenty-four (24) hours before any scheduled hearing.

(3) The Tribal Court will enforce the above time limits on motions unless there is good cause for an exception to be made.

## **SECTION 5.10. TRIBAL COURT PROCEEDINGS**

(A) Motion Hearings: A motion hearing takes place when a party has asked the Tribal Court to order that something be done in connection with a pending case and the court needs to hear from the parties about the motion before making a decision to grant or deny the motion.

(B) Case Management Hearings: Case management hearings may be scheduled on a written request of one or more parties, or on the Tribal Court's own initiative. The purpose of the hearing is to simplify the resolution of the case, to discourage wasteful pretrial activities, and to improve the quality of the trial through preparation by discussing such things as settlement prospects, facts and issues not in dispute, evidence to be presented, appropriate witnesses, and filing and hearing timelines. To encourage honest discussion, nothing said at a conference hearing shall be admitted into evidence. Case management hearings may, in the exercise of the Tribal Court's discretion, on request of a party or on the Tribal Court's own



motion, be held off the record.

- (C) Trial: A trial is the hearing of the case on its merits, and is held after the parties have had a reasonable time to prepare their cases. Generally, trials will be set on a written request from one or more parties, or at a case management hearing. Trials shall be set for hearing as soon as reasonably possible after receipt of a request for trial, consistent with the rights of all parties to have time to prepare their cases.
- (D) Proceedings in Open Court and Exceptions: Generally, proceedings shall be open to the public. Proceedings involving minors and the welfare of minors shall be closed to all persons, except the parties, their representatives, including spokespersons and advocates, if any, and such witnesses as may be allowed by the Tribal Court. For good cause shown, the Tribal Court may direct that other proceedings also be closed to persons other than parties, representatives, and witnesses.
- (E) Witnesses: All witnesses, and potential witnesses, prior to their testimony may be administered an oath by the Tribal Court Clerk, the Judge or the Bailiff as follows: “Do you swear that the testimony you will give will be the truth and that if the Tribal Court determines you have not told the truth you may be held in contempt of court?”
- (F) Continuances of Hearings and Trials: Continuances of hearings and trials are disfavored and will be granted only on a showing of good cause, and on a request, preferably in writing, made as far in advance of the hearing as reasonably possible. Copies of any such requests shall be served on all other parties. In determining whether or not there is good cause to grant a request for a continuance, the Tribal Court may consider, among other things, the reason claimed, the timing of the request, the relative importance of having the hearing or trial at the scheduled time, and whether or not the requesting party has requested previous continuances. This list is not exclusive.
- (G) Failure to Appear at Hearing or Trial; Sanctions: If a party or parties fail(s) to appear at a properly scheduled and noticed hearing or trial, the Tribal Court may impose sanctions. The sanctions may, depending on the circumstances, include entering a ruling in favor of the appearing party or parties, or a continuance of the hearing or trial with sanctions, such as a fine, being imposed.
- (H) Objections: An objection is a statement opposing something happening in court. If a party in a case verbally objects to something happening in court the judge will rule on the objection immediately. The judge will uphold the objection and stop what is happening in court or overrule the objection and let what is happening in court continue.

## **SECTION 5.11. COURTROOM CONDUCT AND DRESS**

- (A) All persons appearing in the Tribal Court shall treat the court, and each other, respectfully. The Tribal Court will treat all persons appearing with respect. Respect is appropriate because the Tribal Court is an expression of the sovereignty of the Tribe. Respect is also necessary, so that the business of the Tribal Court can be conducted in an orderly fashion. In hearings, Parties should address the judge, rather than talking to each other.
- (B) All persons appearing before the Tribal Court shall dress appropriately. Suits and ties are not required, but very informal clothing, such as beach attire, is inappropriate. Hats and dark glasses (unless medically required) should be removed on entering the courtroom.
- (C) Parties shall conduct themselves in a manner consistent with doing the business of the Tribal Court. Use of a cellular phone, chewing gum, profanity, arguing with the judge or court staff after a ruling, insults or threats, are all examples of inappropriate behavior and are prohibited.
- (D) Any person violating these standards of respect shall be found in contempt of court and punished pursuant to these Rules governing contempt of court.

## **SECTION 5.12. CONTEMPT OF COURT**

Contempt is defined in the HPUL Judicial Code, Article 8. Anyone engaging in conduct that defies the authority or dignity of the Tribal Court or interferes with the administration of justice pursuant to the Judicial Code, whether in the presence of the judge or outside of court, may be found to be in contempt of court. Anyone found to have committed contempt of court will be issued a fine in accordance with the contempt penalty schedule posted at the tribal court.

## **SECTION 5.13. RECUSAL OF JUDGES**

A judge shall recuse himself or herself upon their own motion or upon any party in the proceeding filing a written motion setting forth facts establishing a conflict of interest under the HPUL Judicial Code Section 5.9, or other law of the Tribe. Such motion shall be filed as soon as grounds for recusal are discovered but no later than one (1) day after the first day of trial.

## **SECTION 5.14. TRIBAL COURT RECORDS**

- (A) Records of all proceedings before the Tribal Court shall be kept at the Tribal Court offices under the supervision and control of the Clerk of the Tribal Court. Unless sealed by court order, all files and records of the Tribal Court shall be considered public records and open to inspection by Tribal members and parties.

(B) All hearings or other proceedings before a judge shall be recorded. If directed by the judge or if requested by a party or the attorney for a party, the Clerk of the Tribal Court shall provide an audio copy of the recording of the proceeding. A fee may apply for copies of recordings.

(C) Records for cases involving juveniles and participants with a court ordered wellness plan shall be considered confidential, maintained in a locked file cabinet and open to inspection only by court order.

### **SECTION 5.15. LICENSE TO REPRESENT OTHERS**

Pursuant to the HPUL Judicial Code Article 7, any person who is a party in a case may represent themselves, be represented by a professional, licensed attorney or be represented by a tribal member lay advocate who is not a licensed attorney. Anyone who is representing a party other than themselves must be licensed by the Tribal Court according to the rules in Title 2, Chapter 1 Judicial Code of the HPUL Book of Codes. The licensing process is managed by the Tribal Court Clerk and begins with completing an application to be licensed. The Tribal Court Clerk shall maintain a list of attorneys and lay advocates licensed to appear in Tribal Court.

## **ARTICLE 6. EVIDENCE**

### **SECTION 6.1. EVIDENCE GENERALLY**

(A) Evidence is something that proves or disproves the existence of an alleged fact. Evidence cannot be relied on by the Tribal Court unless it is admissible. “Admissible evidence” is relevant, authentic, and not unfairly prejudicial. The admissibility of evidence depends on more than authenticity and materiality. The ability of evidence to prove or disprove facts must not be outweighed by the sheer shock value, or prejudicial value, of the evidence.

(B) If any evidence contains confidential information, such as a bank account number or social security number, parties shall block this information before sharing with the parties or the Tribal Court.

### **SECTION 6.2. TYPES OF EVIDENCE**

(A) Testimonial evidence is typically that of any statement made by a witness or other person during the court proceeding. Some common witnesses are the parties to the case, people who have records relevant to the case, experts who may provide an opinion about the case and lay individuals who possess some type of relevant information.

- (1) In most cases, the witness must be physically present at the court proceeding unless the court has excused their appearance in advance. If the judge allows it, supporting and opposing written affidavits or declarations shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated.
- (2) Parties may ask the court to issue a subpoena to compel the appearance of a witness. A subpoena can also require the witness to bring certain documents or evidence with them.
- (3) The testimony of persons having personal knowledge, such as firsthand observation and direct knowledge of or participation in a described event, shall be preferred and be afforded greater weight than the testimony of persons with secondhand knowledge of the event.

(B) Demonstrative evidence, usually charts and diagrams, demonstrate or illustrate the testimony of a witness. It's admissible when it fairly and accurately reflects the witness's testimony and is more probative than prejudicial. Maps, diagrams of a scene, charts and graphs that illustrate physical or financial injury to a plaintiff are examples of demonstrative evidence.

(C) Documentary evidence is any evidence supplied by a writing or other document for the examination of the contents of the document. Documentary evidence is any evidence that is, or can be, introduced at a trial in the form of documents, as distinguished from oral testimony.

- (1) Documentary evidence commonly refers to writings on paper (such as an invoice, a contract or a will), but the term can also apply to any media by which information can be preserved, such as photographs; a medium that needs a mechanical device to be viewed, such as a tape recording or film; and a printed form of digital evidence, such as emails or spreadsheets.
- (2) Exhibits of audio or video must be submitted on a USB drive or other digital storage device. To ensure the recording can be played in court, the software program needed to play the audio or video exhibit must be verified with the Tribal Court Clerk at least five days before the court proceeding date.

(D) Physical evidence is evidence that plays a direct role in the incident in question and can be presented in court. Physical evidence includes material items involved in a case, objects, and things the parties and the judge can physically hold and inspect.

- (1) Hazardous evidence means physical evidence that unreasonably threatens the health and safety of persons handling the evidence, including exhibits having potentially toxic, explosive, or disease-carrying characteristics. Examples of hazardous evidence include

but are not limited to firearms, knives and other weapons, live ammunition, controlled substances, bodily fluid samples, and clothing or other material containing or alleged to contain blood or other bodily fluid.

(2) Hazardous evidence shall be introduced to the court in the form of a photographic record.

### **SECTION 6.3. PROCESS FOR PRESENTING EVIDENCE**

(A) Before a Court Proceeding:

- (1) Everything that is filed with the Tribal Court before a court proceeding must be served on the other party. Parties are encouraged to file all potential evidence that is easily copied and served in advance of the court proceeding. Evidence, such as documents and photographs, must be filed with a pleading or with a declaration explaining the evidence.
- (2) To submit evidence before a court proceeding, parties must gather the evidence they intend to present and take it to the Tribal Court Clerk.
- (3) Once a party presents their evidence to the Tribal Court Clerk, the clerk will assign exhibit numbers to each item of evidence.
- (4) The Tribal Court Clerk will bring all marked exhibits to the court proceeding. At the court proceeding, parties will need to explain each item of evidence, and present each item to the judge and the opposing party using the process below.

(B) During a Court Proceeding:

- (1) Evidence that is provided during a court proceeding is referred to as an “exhibit.”
- (2) To present evidence as an exhibit during a court proceeding, parties must have a copy for the other party and a copy to present to the Tribal Court Clerk.
- (3) The Tribal Court Clerk will mark the evidence as exhibits during the proceeding and hold them until they are admitted into the court record as evidence.
- (4) After the party presents an exhibit and states why it is relevant and how it is authentic the party asks the judge to admit the evidence into the record.

(C) Relevance:

- (1) Evidence presented in Tribal Court must be related to the issues before the court (relevant).
- (2) When questioned by the court or another party, the party who wishes to present certain evidence shall explain why they think the evidence is relevant.
- (3) Parties must demonstrate the relevance of the evidence by having testimony from the presenting party or a witness inform the court how the evidence relates to the case.

(D) Authentication:

- (1) Parties must show that the evidence is authentic and that it is what it is supposed to be (lay the foundation). For example, in a car accident case, a picture of a car accident scene must be proved to be a true representation of the scene.
- (2) Copies of written records, photographs, and other documentary evidence may be presented as long as they are reliably identified by the party offering them or if they are verified as true and accurate copies by a reliable source.

(E) Objections

- (1) The other party may object to the evidence that is being presented.
- (2) The judge may ask the presenting party to comment on the objection.
- (3) The presenting party directs their argument to the point raised by the other side and waits for a ruling on the objection from the judge.
- (4) The judge determines whether to allow the exhibit or not.

#### **SECTION 6.4. RETAINING EVIDENCE**

(A) Generally, the Tribal Court will keep all exhibits provided in a case. After the conclusion of the trial and the time for appeal has run, the parties may request their exhibits be returned. If the parties do not request the return of their exhibits the exhibits will be kept for the same amount of time that the file is retained according to court policy and then the exhibits will be destroyed.

(B) Upon request of the court clerk or a party to the case, or upon the presiding judge's own motion, a hazardous exhibit, money, an item of monetary or cultural value, or an item deemed to be excessively bulky may be admitted into the record as evidence and then replaced with photograph(s), videotape(s), samples or other facsimile representations, provided the presiding judge has ordered the replacement.

- (1) The photograph(s), videotape(s), samples or other facsimile representations may be used to demonstrate the existence, quantity, and physical characteristic of the evidence. The presiding judge's order must direct the replacement of the original evidence and state whether the evidence must be further documented by a certificate issued by an authorized person or agency.
- (2) When a photograph, videotape, or other facsimile representation is substituted, the original exhibit must be retained by the presenting party or agency until at least sixty (60) days following case completion and must produce the original exhibit upon the court's direction. Case completion is defined as the date of filing of the final judgment, or

dismissal, or the date the judgment becomes final after appeal.

- (3) Exhibits handled under these rules shall have the same standing for purposes of appeal as would the original exhibits.

## **SECTION 6.5. DISCOVERY**

- (A) Discovery means the obtaining of information by a party to a legal action from another party, other person, or organization. All parties have the right to have information produced by other parties, and witnesses, unless the information is privileged by law. All parties have the duty to reasonably cooperate with other parties in providing discovery.
- (B) Any information not privileged by law may be subject to discovery including the production of papers, documents, audio, visual, or computer-generated information, and the identity of witnesses.
- (C) Orders requiring the attendance of a witness or production of documents or things, often referred to as “subpoenas,” shall be completed by the party requesting the discovery and shall clearly state the information sought. Orders compelling discovery may be signed by the Clerk of the Tribal Court or an attorney who is representing a party in the case.
- (D) When an order to produce documents is served upon the custodian of records or other qualified witness from a business, hospital or other health care facility in an action in which the business, hospital or facility is not a party, the custodian or other officer of the business, hospital or facility must deliver, by registered mail or by hand, a true and correct copy of all records described in the subpoena to the Tribal Court. The records must be accompanied by the sworn declaration of the custodian or other qualified witness, stating in substance each of the following:
  - (1) That the person signing is the duly authorized custodian of the records and has authority to certify the records.
  - (2) That the copy is a true copy of all records described in the subpoena.
  - (3) That the records were prepared by the personnel of the business, hospital or facility, staff physicians, or persons acting under the control of either in the ordinary course of the business, hospital or facility at or near the time of the act, condition, or event.
  - (4) If the business, hospital or facility has none of the records described, or only part thereof, the custodian shall so state in the declaration.

Disobedience of orders compelling discovery is punishable as contempt by the Tribal Court.

## **ARTICLE 7. VIOLATIONS OF TRIBAL LAW**

### **SECTION 7.1. BEGINNING A VIOLATION OF TRIBAL LAW CASE**

The Executive Council may begin cases by filing a Petition or a Citation for alleged violations of tribal law. The Petition and Proof of Service must be filed with Tribal Court and served on the Respondent with a response form. Petition must include a report or accounting of the facts of the violation, the specific citation to the relevant tribal law and the relief or penalty requested.

### **SECTION 7.2. RESPONSE**

The Respondent has twenty (20) days from the date of service of the Petition (or Citation) to comply with the relief or penalty requested on the petition or respond to the Tribal Court and request a hearing in the Tribal Court. If the Respondent does not respond, the Judge shall enter a judgment against the Respondent.

### **SECTION 7.3. FIRST HEARING**

At the first hearing on the Petition (or Citation), the Respondent will have the opportunity to admit to or deny some or all of the charges against him or her. The Respondent may also admit to the charges in the petition but object to the proposed relief or penalty and request alternative sentencing. If more information is required to determine the merits of the petition or appropriate judgment, the court may continue the case to allow time for the parties to gather and present more information. If the Respondent does not appear in court, the judge shall enter a judgment against the Respondent.

## **ARTICLE 8. REVIEW OF GOVERNMENT DECISIONS**

### **SECTION 8.1. TRIBE AS A PARTY**

The Tribe may only be named as a party in a case when the Tribe has specifically waived its sovereign immunity to suit. This Article is meant to apply to review of government decisions where the tribal law expressly states appeal or review is allowed. Any other types of claims must demonstrate that the Tribe specifically waived sovereign immunity to suit.

### **SECTION 8.2. STANDARD OF REVIEW**

In all appeals of a decision or action by the Tribe or any authorized committees or agencies, the judge looks only at the administrative record of the Tribe and, therefore, takes no evidence. The judge does not have to resolve disputes between experts. If the record supports the decision, the



judge must affirm the decision of the Tribe. An Appeal can only be heard after the final decision is issued by the Tribe.

### **SECTION 8.3. PROCEDURE FOR APPEALING A TRIBAL DECISION**

- (A) The first paper filed in an appeal case is called the “Notice of Appeal”. An appeal case begins in the Tribal Court by filing the Notice of Appeal, paying the filing fee, if applicable, and serving the Notice of Appeal on the respondent by personal service.
- (B) The petitioner’s Notice of Appeal of a tribal decision or action must specifically explain what decision is being appealed, the date the final decision was made, the tribal committee or entity or government body that made the final decision being challenged, why the Petitioner believes the Tribe’s decision or action is incorrect, in accordance with the relevant law.
- (C) Summons to Appear and Produce Administrative Record:
  - (1) Within seven (7) days after filing the Notice of Appeal and proof of service on the Respondent, the Clerk of the Tribal Court shall issue a Summons notifying the Respondent that the Petitioner has filed a Notice of Appeal of a decision made by the Respondent.
  - (2) The summons shall request that Respondent file the complete “Administrative Record” with a Response.
  - (3) The Summons must be served by mail by the Clerk of the Tribal Court.
- (D) The “Administrative Record” consists of all documents and materials directly or indirectly considered by the Tribe’s decision maker in making the final decision. It includes all documents relevant to the merits and decision-making process of the Tribe’s decision.
- (E) The Respondent must file and serve a Response along with the Administrative Record within thirty (30) days of the date of service of the Notice of Appeal. A Response should briefly address/answer the claims in the Notice of Appeal.
- (F) A petitioner may, without permission from the Tribal Court, amend its petition once at any time before being served with a Response. Otherwise, a Petitioner may amend his/her papers only by permission from the Tribal Court or by consent of the adverse party. Filing an amended Petition will extend the time the party has to respond by an additional thirty (30) days.

#### **SECTION 8.4. CASE MANAGEMENT HEARING**

The Tribal Court shall conduct a hearing to determine the schedule for the case including filing deadlines for briefs and responses and oral argument dates as needed.

#### **SECTION 8.5. CONDUCT OF ARGUMENT**

The Petitioner has the right to open and close with an argument supporting their claims. If there are two or more such parties, the court must set the sequence of argument. Each side is allowed 30 minutes for argument. If multiple parties are represented by separate counsel, the court may apportion or expand the time. Only one representative or advocate may argue for each separately represented party.

#### **SECTION 8.6. FINAL DECISION**

The court will consider the matter and issue a decision within sixty (60) days of the conclusion of oral argument. Unless expressly stated in Tribal Law, all decisions of the Tribal Court are appealable to the Tribal Court of Appeals.

### **ARTICLE 9. CIVIL CLAIMS – PRIVATE**

#### **SECTION 9.1. PETITION**

- (A) The first paper filed in a civil case is called a Petition.
- (B) The Petition must include a brief, but complete statement of the Petitioner's claims. The following questions must be answered in order for the Tribal Court to consider the Petition:
  - (1) How was (or will) tribal law be violated?
  - (2) What facts or evidence support how tribal law was or will be violated?
  - (3) What does the Petitioner want the Tribal Court to do or order?
- (C) Failing to clearly and completely state a claim for the opposing party and the court to consider is grounds for denying the Petition.
- (D) Amending the Petition: A petitioner may, without permission from the Tribal Court, amend its petition once at any time before being served by a Response. Otherwise, a Petitioner may amend his/her papers only by permission from the Tribal Court or by consent of the adverse party. Filing an amended Petition will extend the time the party has to respond by an additional twenty (20) days.

#### **SECTION 9.2. SUMMONS TO RESPOND**

- (A) After the filing of the first paper and proof of personal service, the Tribal Court shall issue a

Summons notifying the Respondent that the Petitioner has filed a lawsuit against the Respondent and the process for responding to the Petition.

(B) A private civil case begins in the Tribal Court by filing the Petition, paying the filing fee and serving the Petition and Summons to Respond on the respondent by personal service.

### **SECTION 9.3. RESPONSE**

The Respondent may, but is not required to, file a Response. A Response should address/answer the claims in the first paper, either admitting or denying each claim. The Response must be filed and served within twenty (20) days of the date of service of the Petition. If a Response is not filed within twenty (20) days, the Tribal Court may rule on the Petition without a hearing or trial.

### **SECTION 9.4. CASE MANAGEMENT HEARING**

After the Response is received by the Clerk of the Tribal Court, the Tribal Court shall set a case management hearing to determine a schedule for trial including, but not limited to, time for discovery, filing briefs and legal pleadings and a trial date.

### **SECTION 9.5. FINAL DECISION**

After the conclusion of the trial, the Tribal Court will consider the matter and issue a decision within sixty (60) days of the conclusion of oral argument. Unless expressly stated in Tribal Law, all decisions of the Tribal Court are appealable to the Tribal Court of Appeals.

## **ARTICLE 10. CHILD WELFARE MATTERS**

[Reserved for Final Law Edits]

### **SECTION 10.1. PETITIONS**

All Child Welfare Cases begin with a Petition. All Petitions must follow the requirements in the HPUL [Children and Families Code]. The following types of Petitions are allowed under Tribal Law:

- Petitions Requesting an Order to Transfer a State Case to Tribal Court
- Child Welfare Petition (for the protection of children alleged to be abused, neglected or abandoned.)
- Petition for Guardianship
- Petition for Adoption

### **SECTION 10.2. SUMMONS AND NOTICE**

After a Petition is filed, the court shall issue a summons and notice summoning the parties to respond and appear at the initial hearing on the matter. The Petition and the summons and notice must be served on the parents and or legal guardians plus any other parties required under Tribal

Law. The Court or the Petitioner shall be responsible for serving all parties depending on the Tribal Law that applies to the type of Petition.

## **ARTICLE 11. JUDGMENTS**

### **SECTION 11.1. GENERALLY**

- (A) In all cases, judgment shall consist of an order of the Tribal Court awarding money damages to be paid to the injured party or directing the surrender of certain property to the injured person or prescribing a penalty in the form of money or loss of a privilege, or the performance or prohibition of some other act, including community service.
- (B) The judgment shall fairly compensate the injured party for the loss suffered or shall follow any rules of compensation set out in any ordinance or law pursuant to which the action is brought.
- (C) A judgment of the Tribal Court shall be valid until satisfied in full, including any interest upon the judgment. The Tribal Court shall issue a satisfaction of judgment once the judgment has been paid in full.

### **SECTION 11.2. EXECUTION OF TRIBAL COURT JUDGMENTS**

If, after thirty (30) days, or the otherwise specified time to pay the judgment, has run, the party ordered to pay the judgment has not paid the judgment amount in full or is not making payments in a manner agreed to by the parties or required by the Tribal Court, the party to whom the judgment is owed may Petition the Tribal Court to issue an Order to Appear.

Upon receipt of the application, the judge shall order the party owing the judgment to appear before the Tribal Court. Failure of the party owing the judgment to appear may be deemed a contempt of court and the judge may proceed without the party's appearance.

### **SECTION 11.3. FOREIGN JUDGMENTS**

- (A) Pursuant to the Judicial Code Article 9, the Tribal Court shall grant full faith and credit to any final judgment, decree or order, including a child support order, from any other court of the United States or any other court entitled to full faith and credit.
- (B) A person seeking recognition of a foreign judgement must file a Petition for Recognition of a Foreign Judgement and pay the applicable filing fee.
- (C) The Tribal Court shall review the judgment and enter it as if it were an order originating in the Tribal Court.
- (D) Generally, a hearing will not be required, however the Tribal Court may request a hearing if the judge has questions about the validity, authenticity or origins of the foreign judgement.

**ARTICLE 12. OTHER PROVISIONS**

**SECTION 12.1. SOVEREIGN IMMUNITY**

Nothing in the provisions of this Chapter constitutes consent by the Habematolel Pomo of Upper Lake or its sub-organizations to be sued in any court. Neither this Title nor any action (or inaction) taken by the Habematolel Pomo of Upper Lake or its sub-organizations pursuant to this Title represents a waiver of the Tribe’s sovereign immunity for any purpose.

**SECTION 12.2. AMENDMENTS**

This Chapter, or any section herein, may be amended by the Chief Justice of the Court of Appeals or by a majority vote of the Executive Council.

**SECTION 12.3. SEVERABILITY**

If any part of this Chapter is found void and without legal effect, the remainder of the Chapter shall continue to remain in full force and effect, as though such part had not been contained therein.

**SECTION 12.4. EFFECTIVE DATE**

This Chapter shall take effect on the date it is adopted by the Chief Justice of the Court of Appeals.

**CERTIFICATION**

As the duly appointed Chief Justice of the Court of Appeals of the Habematolel Pomo of Upper Lake, I do hereby certify that I approve of these Trial Court Rules of Procedure which I hereby adopt.



\_\_\_\_\_  
Chief Justice Christine Williams  
Tribal Court of Appeals  
Habematolel Pomo of Upper Lake

August 17, 2022  
\_\_\_\_\_  
Date