



THE SENECA NATION OF INDIAN  
PEACEMAKERS' COURT  
AND  
SURROGATE'S COURT  
CIVIL PROCEDURE RULES

NOTE: The following Articles were amended and approved by the Seneca Nation of Indians Tribal Council on September 26, 1988.

Article 1, Section 105 - The following definitions should be inserted:

Affirmative Defense - A claim by the defendant opposing the plaintiff's case which serves as a basis for proving some new fact. A defendant does not simply deny a charge but offers new evidence to avoid judgment against him. An affirmative defense must be included in the answer to the complaint so as not to take the opposing party by surprise.

Counterclaim - A counter demand made by the defendant in his favor against the plaintiff. A counterclaim asserts a new cause of action, the purpose of which is to oppose or deduct from the plaintiff's claim and is not a mere answer or denial of plaintiff's allegations.

Cross-claim - A claim litigated by co-defendants or co-plaintiffs against each other.

Article 5, Section 103 - Alternate Service (1) affixing the summons and complaint to the door of either the actual place of business, dwelling place, or usual place of abode of the person to be served in conjunction with a mailing of a certified letter return receipt of the summons and complaint to such person at his last known residence, within 24 hours of such affixing. Proof of such service shall be filed within twenty (20) days thereafter with the Clerk of the Peacemaker's Court. Service shall be complete ten (10) days after such filing.

Article 7, Section 101(b) - an application to the Peacemaker's Court for any order shall be by motion which may be made by telephone first then confirmed in writing within twenty-four (24) hours notice to the opposite party or in writing unless made during a hearing or trial.

NOTE: Articles 23-25 were adopted and approved by the Seneca Nation of Indians Tribal Council on October 17, 1988.

SENECA NATION OF INDIANS PEACEMAKERS AND SURROGATE COURTS CIVIL  
PROCEDURE RULES - As Proposed November, 1984

Article 1. Scope of Rules

These rules, being adopted this 8th day of August, 1985 by a unanimous vote of the Seneca Nation Tribal Council, Peacemakers and Surrogates alike, shall govern the procedure in the Peacemakers' Courts of the Cattaraugus, Allegany, and Oil Springs Reservations, in all suits of a civil nature, whether in law or in equity. These rules are promulgated pursuant to authority granted by the Seneca Nation Constitution of 1848, as amended 1966 and 1978, Section 11 and shall be effective this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, and shall include the traditional custom and practice as established by the Seneca Nation of Indians. Where doubt exists as to traditional custom and practice, the Peacemakers Court shall request the advice of tribal councillors familiar with tribal custom and usage.

1-101 Short Title, Applicability and Definitions

This Chapter shall be known as the Seneca Nation Civil Procedure Rules and may be cited as "CPR." These Civil Procedure Rules shall succeed the Rules of Civil Procedure as adopted in 1957, which now govern the procedures in the Seneca Nation Peacemakers Courts, and shall be deemed substituted throughout the Court Procedures of the Peacemakers Courts of the Seneca Nation of Indians (Hereinafter referred to as Nation).

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### 1-102 Amendment, Recision or Adoption of Rules

The civil practice rules are herein designated "rule". Any rule in this Chapter may be modified or terminated, or additional civil practice rules may be adopted, not inconsistent with the Seneca Nation Constitution of 1848 as amended 1966 and 1978. No rule so modified, terminated or adopted shall divest or enlarge the substantive rights of any party.

### 1-103 Form of Civil Proceedings

a. One Form of Action: There is one form of civil action. The distinctions between actions at law and suits in equity have not been abolished.

b. Action or Special Proceeding: All civil judicial proceedings shall be conducted in the form of an action, except where legal action in the form of a special proceeding is allowed. Except where other regulations exist, procedures in special proceedings shall be the same as in formal proceedings and the civil procedure rules applicable to actions shall apply to special proceedings.

c. Improper Form: If a Peacemaker Court has obtained jurisdiction over the parties, a civil judicial proceeding shall not be dismissed solely because it is not brought in the proper form, but the Peacemaker Court shall make whatever order is required for its proper action.

### 1-104 Construction

The civil procedure rules shall be liberally interpreted to secure the just, speedy and inexpensive determination of every civil judicial proceeding.

### 1-105 Definitions

a. Action and Special Proceeding: The word "action" means lawsuit and includes a "special proceeding" which differs by

nature from regular Peacemaker Court proceedings; the words "plaintiff" and "defendant" include the petitioner and the respondent, respectively, in a special proceeding; and the words "summons" and "complaint" include the notice of petition and the petition, respectively, in a special proceeding.

b. Affirmative Defense: A claim by the defendant opposing the plaintiff's case which serves as a basis for proving some new fact. A defendant does not simply deny a charge but offers new evidence to avoid judgment against him. An affirmative defense must be included in the answer to the complaint so as not to take the opposing party by surprise.

c. Applicability: Unless the circumstances hold otherwise the definitions in this Chapter apply to the civil practice rules.

d. Attorney: The word "attorney" includes a party prosecuting or defending an action in person.

e. Civil Peacemaker Proceeding: A "civil Peacemaker proceeding" is a prosecution, other than a criminal action, of an independent application to the Peacemakers for relief.

f. Clerk: The word "clerk" as used in any rule with respect to an action or any proceedings in the Peacemaker Court means the clerk of the Peacemaker Court.

g. Counterclaim: A counter demand made by the defendant in his favor against the plaintiff. A counterclaim asserts a new cause of action, the purpose of which is to oppose or deduct from the plaintiff's allegations.

h. Court and Judge: The word "court" refers to the Seneca Nation Peacemakers Court and the word "judge" refers to the Peacemaker authorized to act out of court with respect to such motion, order, or special proceeding.

i. Cross-claim: A claim litigated by co-defendants or co-plaintiffs against each other.

j. Domestic and Foreign Corporation: A "domestic corporation" is a corporation created and formed under the laws of the Seneca Nation of Indians; a "foreign corporation" means a corporation for profit formed under laws other than those governing the Seneca Nation of Indians. The word "authorized" when used with respect to a foreign corporation means the granting of permission from the Seneca Nation Tribal Council to conduct business activities within the lands of the Seneca Nation of Indians.

- k. Declaratory Judgment: "Declaratory judgment" refers to a determination by the Peacemakers Courts of the rights and status of litigants where a controversy exists.
- l. Infant. Infancy: "Infant" means a person who has not reached the age of eighteen years. "Infancy" means the state of being an infant.
- m. Indigent: "Indigent" is one who is without sufficient property to furnish him a living nor anyone able to support him, to whom he is entitled to look for support.
- n. Judgment: The word "judgment" means a final or provisional determination by the Peacemakers Court.
- o. Jurisdiction: "Jurisdiction" is the authority of the Peacemakers Court to hear and decide civil disputes. Three important aspects are: Personal jurisdiction (persons subject to the authority of tribal courts); Territorial jurisdiction (land areas over which tribal courts may exercise authority); and Subject Matter jurisdiction (types of civil cases which may be brought in tribal court).
- p. Law: The word "law" means any ordinance or any civil practice rule of the Seneca Nation of Indians and its Peacemakers Courts; including custom and tradition.
- q. Matrimonial Action: The term "matrimonial action" includes actions for a separation, divorce, alimony, maintenance, distributive award.
- r. Money Judgment: A "money judgment" is a determination or a provision of a determination for a sum of money or directing the payment of a sum of money.
- s. Nation: "Nation" refers to lands within the exterior boundaries of the Seneca Nation of Indians, including the Allegany, Cattaraugus and Oil Springs Reservations.
- t. Nation Authority and Agency: This refers to those authorities and agencies created by the Seneca Nation Tribal Council.
- u. Organization: This includes a corporation, government, governmental subdivision or agency, business trust, estate trust, partnership or association, two or more persons having a joint or common interest, or any legal or commercial entity.
- v. Person: A "person" includes any individual or an organization.

w. Place Where Action Triable: The place where an action is "triable" means where the lawsuit is about to happen; or if no action has been commenced, any proper place of trial or any proper place to commence the action; or after entry of judgment, the place where the judgment was entered.

x. Presumption. Presume: Shall mean the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

y. Process: "Process" means judicial process and all orders, demands, notices, or other papers required or permitted by law to be personally served on a person for the purpose of acquiring jurisdiction of such person in any civil action or proceeding, whether judicial, administrative, arbitratative or otherwise of the Seneca Nation of Indians Reservations.

z. Remedy: Any remedial right to which an aggrieved party is entitled with or without resort to a tribunal.

aa. Representative: This includes an agent, an officer of a corporation or association, and a trustee, executor, administrator of an estate, or any other person empowered to act for another.

bb. Reservation: "Reservation" means the Cattaraugus, Allegany and Oil Springs Indian Reservations of the Seneca Nation of Indians.

cc. Sent: With respect to any writing or notice means to deposit in the mail or deliver for transmission by any other usual means of communication with postage or cost of transmission provided for and properly addressed and in the case of a document to an address specified thereon or otherwise agreed, or if there be none to any address reasonable under the circumstances. The receipt of any writing or notice within the time at which it would have arrived if properly sent has the effect of a proper sending.

dd. Service of Process: The delivering to or the leaving of writs, summonses, etc. with the party to whom or with whom they ought to be delivered or left; and when they are so delivered or left, they are then said to be served.

ee. Signed: This includes any symbol executed or adopted by a party with present intention to cause the instrument to be known and identified, in token of knowledge, acceptance, approval or obligation.

ff. Sovereignty: The power to do everything in a state without



accountability -- to make laws, to execute and apply them, to impose and collect taxes and levy contributions. The absolute power to govern.

gg. Term: "Term" means that part of an agreement which relates to a particular matter.

hh. Unauthorized: That which is without actual, implied, or apparent authority.

ii. Venue: Place where the action is triable.

jj. Verify: To confirm or substantiate by oath or affidavit.

kk. Verified Pleading: A "verified pleading" refers to the sworn formal allegations by the parties of their respective claims and defenses. A "verified pleading" may be used as an affidavit wherever the latter is required.

ll. Waiver: The intentional or voluntary giving up of a known right or the opportunity to take advantage of some defect or irregularity or wrong.

mm. Written, Writing: "Written" or "writing" includes printing, typewriting and every legible representation of letters upon a material substance except when applied to the signature of an instrument.

#### 1-106 Civil and Criminal Prosecutions Not Merged

Where the violation of a right relates to both a civil and criminal prosecution, the one is not merged in the other.

#### 1-107 Appendix of Official Forms

The Seneca Nation Judicial Council shall have the power to adopt, amend and rescind an appendix of forms. Forms adopted pursuant to this section shall be sufficient under the civil procedure rules and shall illustrate the simplicity and brevity of statement which the civil practice rules intend.

Article 2. Jurisdiction of the Peacemaker Courts

2-101

The Peacemakers Courts of the Seneca Nation of Indians shall have general jurisdiction to hear all civil actions and shall have exclusive subject matter jurisdiction in all matters arising within the Seneca Nation; over all persons including a corporation(s) and an organization(s) over all property or status of members and non-members in dispute, and causes of action arising between persons including corporations and organizations, and disputes and causes of action between non-resident and Tribal members, and shall have special jurisdiction in all areas including Family Court matters as granted under the Constitution of the Seneca Nation of 1848 as amended 1966 and 1978, except those causes of action in which the Seneca Nation Surrogates Courts have original jurisdiction.

2-102 Declaratory Judgment

The Peacemakers Court may render a declaratory judgment where a controversy exists as to the rights and legal relations of the parties. The declaratory judgment shall have the effect of a final judgment as to the rights and legal relations of the parties whether or not further relief is or could be claimed. If the court declines to render such a judgment it shall state its grounds.

2-103 Territorial Jurisdiction

a. The jurisdiction of the Seneca Nation of Indians as exercised in these rules of civil procedure shall extend to all lands now within the Seneca Nation of Indians Reservations or which may hereafter be added thereto and to such other lands without such

Nation as may be owned by the United States and held in trust for the benefit of the Seneca Nation of Indians.

b. To the extent not prohibited by federal and state law the jurisdiction of the Seneca Nation of Indians and its Peacemaker Courts shall extend beyond the territorial limitation set forth next above to effectuate the jurisdictional provisions set forth below.

#### 2-104 Personal Jurisdiction

a. As used in these jurisdictional provisions, the word "person" shall include any individual, firm, company, association, organization, political subdivision, government agency, partnership or corporation.

b. Subject to any contrary provisions, exceptions or limitations contained in either the Seneca Nation Constitution, federal law, or as expressly stated elsewhere, the Peacemaker Courts shall have civil jurisdiction over the following persons, who shall be subject to the rules of civil procedure as established herein:

(1) Any person residing, located or present within the Seneca Nation of Indians Reservations for:

(i) any civil cause of action; or

(ii) any civil offense prohibited by any ordinance of the Nation when the offense is alleged to have occurred within the Reservations.

(2) Any person who transacts, conducts or performs any business or activity within the Reservation, either in person or by an agent or representative, for any civil cause of action or charge of civil offense prohibited by any ordinance of the Seneca Nation of Indians arising from such business or activity.

(3) Any person who owns, uses or possesses any property with the Nation for any civil cause of action or charge of civil offense prohibited by any ordinance of the Seneca Nation of Indians arising from such ownership, use or possession.

(4) Any person who commits a tortious act or engages in tortious conduct within the Nation, either in person or by an agent or representative, for any civil cause of action arising from such act or conduct.

(5) Any person who commits a civil offense prohibited by any

ordinance of the Nation, by his own conduct or the conduct of another for which he is legally accountable, if:

(i) The conduct occurs either wholly or partly within the Seneca Nation Reservation(s); or

(ii) The conduct which occurs outside the Seneca Nation Reservation(s) constitutes an attempt, solicitation or conspiracy to commit an offense within the Seneca Nation Reservation(s), and an act in furtherance of the attempt, solicitation or conspiracy occurs within the Seneca Nation Reservation(s); or

(iii) The conduct which occurs within the Seneca Nation Reservation(s) constitutes an attempt, solicitation or conspiracy to commit in another jurisdiction an offense prohibited by any ordinance of the Seneca Nation of Indians and is also prohibited by such other jurisdictions.

c. None of the foregoing bases of jurisdiction is exclusive, and jurisdiction over a person may be established on any one or more of such bases.

## 2-105 Personal Jurisdiction by Acts of Non-Domiciliaries

a. Acts Which Are the Basis of Jurisdiction: As to a cause of action arising from any of the acts numbered in this section, the Peacemakers Courts shall have personal jurisdiction over any person not residing or domiciled on the Seneca Nation Reservation(s) or his executor or administrator, who in person or through an agent or representative:

(1) transacts any business within the Seneca Nation Reservation(s) or contracts anywhere to supply goods or services within the Seneca Nation Reservation(s); or

(2) commits a tortious act within the Seneca Nation Reservation(s); or

(3) commits a tortious act outside the Seneca Nation Reservation(s) which causes injury to persons or property within the Seneca Nation Reservation(s), where the person not residing or domiciled on the Seneca Nation Reservation(s):

(i) regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered within the Seneca Nation Reserva

tion(s); or

(ii) expects or should reasonably expect the act to have consequences within the Seneca Nation Reservation(s) and derives substantial revenue from intertribal and interstate commerce; or

(iii) owns, rents, uses, or possesses any real property situated within the Seneca Nation Reservation(s).

#### 2-106 Jurisdiction over Property

Subject to any contrary provisions, exceptions or limitations in the Seneca Nation Constitution of 1848 as amended 1966 and 1978, or as expressed elsewhere, the rules of civil procedure contained herein shall apply to, and the Peacemakers Courts of the Seneca Nation of Indians shall have jurisdiction over any real or personal property located within the territorial jurisdiction of the Seneca Nation of Indians as defined in 2-103 of these rules to determine the ownership thereof or the rights therein or to determine the application of such property to the satisfaction of a claim for which the owner of the property is or may be liable.

#### 2-107 General Subject Matter Jurisdiction and Limitations

a. Subject to any contrary provisions, exceptions or limitations contained in either the Seneca Nation Constitution, Federal law or these rules, the Peacemaker Courts of the Seneca Nation shall have jurisdiction over all civil actions and over all civil offenses occurring within the jurisdiction defined herein.

b. The Peacemakers Courts of the Seneca Nation of Indians shall not assume jurisdiction over any civil matter which does not involve the Seneca Nation of Indians, its officers, agents, or employees in their official capacities, its property or enterprises or a member of the Seneca Nation of Indians or of some federally recognized tribe, or the ordinances, rules, resolutions or regulations of the Seneca Nation of Indians if some other judicial forum exists for the handling of the matter

and the matter is not one in which the rights of the Nation or its member may be directly affected.

c. The Peacemakers Courts shall not have jurisdiction in any matter specifically and impliedly reserved for the Surrogates Courts of the Seneca Nation of Indians.

#### 2-108 Exclusive Original Jurisdiction

a. Except as otherwise required by Federal law, the Peacemaker Courts shall have exclusive original jurisdiction over all matters in which the Seneca Nation of Indians or its offices, agents, or employees are parties in their official capacities or as a result of performing their duties for the tribe.

b. Nothing contained in the preceding paragraph or elsewhere in these rules shall be interpreted as a waive of the sovereign immunity of the Seneca Nation of Indians or its enterprises, or its offices, agents, or employees unless specifically denominated as such.

#### 2-109 Surrogate Courts of the Seneca Nation, Jurisdiction

The jurisdiction of the Surrogates Courts of the Seneca Nation is as set forth in the general laws of New York State defining Surrogate's jurisdiction and is restricted to the estate of a duly enrolled Seneca Indian.

#### 2-110 Jurisdiction over Matrimonial Actions

a. The Peacemakers Courts shall have exclusive jurisdiction to grant divorces as between Indians residing on the Seneca Nation Reservations as defined by Section IV of the Constitution of the Seneca Nation of Indians 1898 as amended 1966 and 1978, and is as set forth in 25 N.Y.S. Indian Law section 46.

b. The Peacemakers Courts shall have personal jurisdiction over resident and non-resident Nation members in matrimonial actions involving: a demand for support; alimony; maintenance; custody; distributive award; and may exercise personal jurisdiction over the Indian respondent and Indian defendant notwithstanding the fact he or she resides on one of the Seneca Nation Reservations at the time the action is brought provided the Nation was the matrimonial domicile of the parties before their separation; or

the defendant abandoned the plaintiff within the Nation; or the obligation to pay support, alimony, maintenance, distributive award or separate relief in matrimonial actions accrued under an agreement executed within the Nation.

### Article 3. Venue

#### 3-101

As used in these venue provisions, the word "person" shall include any individual, firm, company, association, organization, political subdivision, government department or agency, partnership, municipality or corporation, trust, estate, or any other legal entity whatsoever.

#### 3-102 Contractual Provisions Fixing Venue

Where a written agreement exists between the parties fixing the place of trial and made before an action is commenced, the Peacemakers Courts, upon motion, shall order as the place of trial one proper as provided by the agreement.

#### 3-103 Conflicting Venue Provisions

Where joinder of parties or claims creates a conflict in venue provisions, the Peacemakers Court shall order as the place of trial to be one which shall be proper to at least one party or claim.

#### 3-104 Venue Based on Residence

a. A person is a resident of the Nation Reservation on which he actually resides, or shall be deemed a resident of the Nation Reservation in which its office or office for its facilities or business is located, or where a substantial amount of business is transacted or solicited, or where the cause of action arose

or where the real property or chattel is located.

### 3-105 Grounds for Change of Venue

The Court, upon motion, may change the place of trial of an action where:

a. The reservation designated for that purpose is not a proper reservation.

b. There is reason to believe that an impartial trial cannot be had in the proper reservation.

c. The convenience of material witnesses and the ends of justice will be promoted by the change.

### 3-106 Procedure for Change

a. Time to Motion for Demand: A demand for change of place of trial made under 3-104 next above shall be filed with the Peacemaker Court Clerk. The demand for a change shall be served with the answer or before the answer is served. A motion of change of place of trial on any other grounds shall be made within a reasonable time after commencement of the action.

b. The defendant shall serve a written demand that the action be tried on a Nation reservation he specifies as proper. Thereafter, the defendant may move to change the place of trial within fifteen (15) days after service of the demand, unless within five (5) days after such service plaintiff serves a written consent to change the place of trial to that specified by the defendant.

## Article 4. Court Rules

### 4-101

No papers or documents may be filed or Order of the Court entered until all fees and charges are duly paid. They can be filed with a deposit, but no papers or documents regarding the decision will be issued until all fees are paid in full.



4-102 Waiver of Fees: Indigent Status

a. Where the Court is satisfied that the right of an indigent to a forum would be prejudiced by the requirement of a fee, the Court shall have the power to waive this requirement, or upon consent of the President payment of said Court fees may be satisfied by community service in a Nation work program at the discretion of the Court.

b. Where a judgment is rendered against an indigent party, the Court may order the indigent party to make restitution to the injured party by community service or such means as the Court deems just and proper.

4-103 Proof of Indigent Status

a. Proof of indigent status shall be made by a party by filing an affidavit setting forth the amount and sources of his income and listing his property with its value; that he is unable to pay the costs, fees and expenses necessary to prosecute or defend the action or to maintain or respond to the appeal; the nature of the action; sufficient facts so that the merits of his claim can be ascertained.

b. An executor, administrator or other representative may move for permission on behalf of a deceased, infant or incompetent poor person.

4-104 Cost in Civil Actions

a. The Peacemakers Courts may assess the accruing costs against the party or parties against whom judgment is given. Such costs shall consist of the filing fees, Peacemakers fees, the Court Recorder's fee and any further incidental expenses connected with the procedure before the Court as the Peacemakers may direct.

b. Attorney's fees shall not be chargeable to costs of court.

4-105 Fee Schedules

Fee schedules shall be as follows:

| a. <u>Civil Actions</u> | <u>Fees</u>  |
|-------------------------|--------------|
| (1) <u>Divorce</u>      |              |
| (a) Marshall Fee        | 25.00        |
| (b) Court Recorder Fee  | <u>35.00</u> |

- |   |                   |
|---|-------------------|
| (c) Peacemakers Fee (3x\$30/session)                            | 90.00             |
| (d) Initial Payment   | 100.00            |
| (e) Final Payment   | 250.00            |
| (2) <u>Separation (Where provisional, only the Court Costs)</u> |                   |
| (a) Marshall Fee  | 25.00             |
| (b) Court Recorder Fee  | 35.00             |
| (c) Peacemakers Fee (3x\$30/session)                            | 90.00             |
| (d) Initial Payment   | 100.00            |
| (e) Final Payment   | <del>130.00</del> |
| (3) <u>Eviction and Show Cause Orders</u>                       |                   |
| (a) Marshall Fee  | 25.00             |
| (b) Filing Fee  | 10.00             |
| (c) Senior Peacemaker Fee (Ex parte document sig.)              | 40.00             |
| (4) <u>Land Dispute</u>   |                   |
| (a) Marshall Fee  | 25.00             |
| (b) Filing Fee  | 10.00             |
| (c) Peacemakers Fee (3x\$30/session)                            | 90.00             |
| (d) Court Recorder Fee  | 35.00             |
| (5) <u>Name Change Action</u>                                   | 10.00             |
| (6) <u>Peacemaker Additional Sitting</u>                        | 30.00             |
| (7) <u>Subsequent Pleadings or Summons</u>                      | No Fee            |
| (8) <u>Notation of Appeal</u>                                   | 10.00             |
| (9) <u>Assessor's Fee</u>                                       |                   |

(a) Assessor's fee may be paid in conjunction with court action wherein the service is performed for the Court.

(b) Where requested by plaintiff and he can reasonably afford to pay them, he is hereby responsible.

(c) Where the plaintiff is indigent, the Court may at its direction waive the assessor's fee.

(d) Where the plaintiff or defendant is indigent, all Peacemaker's Court fees shall be waived; the burden of proof shall be on the moving party claiming the indigent status to establish by a preponderance of the evidence that the indigency does exist.

All fees are payable to "The Seneca Nation of Indians".

4-106 Counsel

a. No person shall appear as counsel in any action or proceeding in the Courts of the Seneca Nation unless he is recognized by the Peacemakers, Surrogates and Tribal Council as a competent representative, in good standing, to serve before the Seneca Nation Courts; but nothing contained herein shall prohibit an individual from serving as his/her own counsel in any action before the Nation's Courts. All parties shall have the right to be represented by legal counsel in all civil actions.

b. Lay Advocates: Where parties to an action are represented by a Nation lay advocate, such advocate shall be recognized as a competent representative by demonstrating sufficient education and experience to represent the interests of their clients in a manner which guarantees to the clients a fair, impartial trial.

4-107 Limitations on Judicial Officers

No member of the Judiciary Branch as defined in section IV of the Seneca Nation Constitution shall act as legal counsel, or in any way represent a party in any case before the Seneca Nation Courts unless such party is a Judiciary Branch member suing or being sued in his official capacity. This rule does not apply to the actions of a judge in carrying out the duties of his office.

Article 5. Commencement of an Action

5-101 Filing

a. A civil action is commenced by filing a complaint with the Clerk of the Peacemaker's Court and one (1) copy of which shall remain in the office of the Clerk of the Seneca Nation, as a permanent record.

b. Where a party files in proper person, this filing may be in longhand and informal. In such instances, the office of the Clerk of the nation shall make additional copies without charge.

c. In instances where the complaining party is represented by legal counsel, the complaint shall be typewritten, accompanied with the necessary copies.

The Peacemakers Court shall have jurisdiction from such time as both the complaint is filed and properly served upon the defendant and a return of service is filed with the Court Clerk.

#### 5-102 Service of Process

a. Upon filing of the complaint with the Clerk of the Peacemakers Court, said clerk shall forthwith issue a summons to the party filing the complaint for service upon the defendant.

b. The summons and complaint shall be served together. The plaintiff shall furnish the Marshall or Law Enforcement Officer of the Seneca Nation with such copies as are necessary.

c. The summons shall be signed by the Peacemaker and be under seal of the Seneca Nation Peacemakers Court; contain the name of the Court, and the names of the parties; be directed to the defendant; state the name and address of the plaintiff or the plaintiff's attorney; the time within which the rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the Complaint.

#### 5-103 Personal Service

a. Service of the summons and complaint shall be made in person, and return of same shall be made to the office of the Clerk of the Peacemakers Court.

b. Service of all subsequent pleadings, with the exception of a counterclaim, setting forth a new cause of action, may be made on the party or the party's attorney by regular mail, registered, return receipt mail, or in person.

c. Service of a counterclaim shall be made either in person or by registered return receipt mail.

d. Where personal service is had, service shall be made by the Marshall of the Seneca Nation as to the Peacemaker's Court having jurisdiction of the cause, or by any Seneca Nation Law Enforcement Officer or any other person qualified under the laws of New York State to make personal service.

e. In all instances where service is had by mail 5-103 (b) & (c) or publication the original and one (1) copy of the pleading shall be retained in the office of the Clerk of the Peacemaker

Court for filing. In service requiring return receipt mailing, proof of the return receipt shall likewise be filed in the Court Clerk's Office.

f. Personal service shall be made upon a corporation or governmental subdivision by delivering the summons as follows:

- (1) Upon any domestic or foreign corporation, to the Secretary of the State of New York or to the Secretary of State in the United States;
- (2) Upon any city, to the mayor, comptroller, treasurer, counsel, or clerk; or if the city lacks officers, to an officer performing corresponding function under another name;
- (3) Upon a township, to the chairman or clerk of the Board of Supervisors, clerk, attorney, or treasurer;
- (4) Upon a town, to the Supervisor or Clerk;
- (5) Upon school district, to a school officer as defined by education law; and
- (6) Upon a park, sewage or other district, to the clerk, any trustee, or any member of the board.

g. A person domiciled in the Seneca Nation or subject to the jurisdiction of the Courts of the Seneca Nation under Article 2, or his executor or administrator, may be served with the summons outside the Seneca Nation, in the same manner as service is made within the Nation.

h. Alternate Service - where personal service cannot be made by another prescribed method with due diligence, the Peacemakers Court, upon motion without notice may order service of the summons and complaint by:

(1) Affixing the summons and complaint to the door of either the actual place of business, dwelling place, or usual place of abode of the person to be served in conjunction with a mailing of a certified letter return receipt of the summons and complaint to such person at his last known residence, within 24 hours of such affixing. Proof of such service shall be filed within twenty (20) days thereafter with the Clerk of the Peacemaker's Court. Service shall be complete ten (10) days after such filing.

(2) Publication

(a) Contents - an order for service by publication shall

direct that the summons be published with notice to the defendant, a brief statement of the nature of the action, the relief sought, the sum of money for which judgment may be taken in case of default and a description of the property where an action involves real property.

(b) Form - the order for service of summons shall be published in a newspapers designated in the order as most likely to give notice to the person to be served, at least once in each of four (4) successive weeks.

(c) Time - the first publication shall be made within five (5) days after the order is granted.

(d) Completion - service by publication is complete on the twenty-eighth (28) day after the first publication, but only upon hearing with notice to all parties.

#### Article 6. Time

6-101

a. The defendant shall have thirty (30) days, excluding the day of service, within which to answer or file a proper motion as to dismissal, etc. If the 30th day falls on a Sunday, traditional holiday, or legal holiday, the time shall be extended to the following day.

b. A counterclaim shall be answered within twenty (20) days, excluding the day of service.

c. All other pleadings shall be answerable within ten (10) days, or may be answerable orally on the day of hearing.

d. Upon proper motion, any one Peacemaker of the Reservation Court, having jurisdiction of the cause, may ex parte extend the time within which to answer for a period of ten (10) days, provided said ex parte motion is made within the time limits set forth in 6-101 sub-section (a), (b), and (c). An additional extension of time can be granted at the discretion of the Court, but only upon hearing with notice to all parties.

#### Article 7. Remedies and Pleadings

7-101

a. There shall be a Complaint by the Plaintiff and an Answer by

the defendant; there shall be a reply to a counterclaim denominated as such; an Answer to a crossclaim, if the Answer contains a crossclaim; a Third Party Complaint, if leave is given under section (c) of this rule to summon a person who was not an original party, and there shall be a Third Party Answer, if a Third Party Complaint is served.

b. An application to the Peacemakers Court for any order shall be by motion which may be made by telephone first then confirmed in writing within twenty-four (24) hours notice to the opposite party or in writing unless made during a hearing or trial.

c. Before the service of his Answer, a defendant may move ex parte or after the service of his Answer, on notice to the plaintiff, for leave as a Third Party plaintiff to serve a Summons and Complaint upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him. If the motion is granted, the rules of Process, Service, and Time apply to the Third Party defendant.

#### 7-102 Complaint

A civil action shall be commenced by filing a written complaint with the Court Clerk which shall:

- a. Set forth briefly the facts and circumstances giving rise to the action;
- b. State all claims the plaintiff has against the defendant;
- c. State a request for relief plaintiff deems appropriate;
- d. The complaint shall be signed by the plaintiff and his counsel, if any, and include the address and phone number of both plaintiff and attorney;
- e. The Clerk of the Peacemakers Court shall certify the complaint on the day it is filed;
- f. A file copy of the complaint shall be sent to all Peacemakers by the Court Clerk.

#### 7-103 Summons Shall Accompany the Complaint and Shall:

- a. Be signed by the Clerk of the Court who is a duly authorized Deputy Clerk of the Seneca Nation.

- b. Bear the Seal of the Seneca Nation;
- c. Contain the name and addresses of all parties;
- d. Be directed to the defendant;
- e. State the name and address of plaintiff's attorney, if any;
- f. State the time within which the defendant shall appear to defend;
- g. Give notice to defendant that failure to appear will result in a judgment of default being rendered against the defendant for the relief demanded by plaintiff in the complaint;
- h. Shall include civil action number as assigned by the Clerk.

7-104 Answer

An answer shall be filed with the Court Clerk within thirty (30) days of the date of personal service, or receipt of the complaint by certified mail, or notice by publication has been completed. An answer shall be commenced by filing a written response with the Clerk.

The Answer shall:

- a. Admit;
- b. Admit in part;
- c. Deny;
- d. Deny in part;
- e. Contain any counterclaim;
- f. Be signed by the defendant, and his attorney if any and shall include the addresses and phone numbers of the defendant and attorney.

7-105 Form of Pleading

- a. Claim for Relief: A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain:



(1) A short and plain statement of the grounds upon which the Court's jurisdiction depends, unless the Court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it;

(2) A short and plain statement of claim showing that the pleader is entitled to relief;

(3) A demand for judgment for the relief to which he deems himself entitled.

b. Relief in the alternative or of several different types may be demanded.

c. Where a party elects to verify his pleadings or accompany the same with an affidavit, the procedural rules of the State of New York shall govern as to form, etc.

#### 7-106 Defenses

a. Denials: A party shall deny those statements known or believed by him to be untrue. If he is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall specify and this has the effect of a denial. All other statements are deemed admitted except that where no responsive pleading is permitted they are deemed denied or avoided.

b. Affirmative Defenses: A party shall plead all matters which if not pleaded would be likely to take the adverse party by surprise or would raise issues of fact not appearing on the face of a prior pleading. When a party has mistakenly designated a defense as a counterclaim or vice versa the Court may treat the pleadings as if it had been properly designated if justice so requires.

#### 7-107 Construction of Pleadings

All pleadings shall be interpreted so as to do substantial justice.

#### 7-108 Motions

The plaintiff may file motions with the complaint or prior to an

answer if appropriate or any time thereafter and the defendant may file motions with his answer or any time thereafter. A copy of such motions shall be delivered or mailed to the opposing party or his counsel of record within five (5) days of filing. All motions challenging the jurisdiction of the Court, or change of venue, or challenges to the presiding Peacemaker(s) shall be filed at least seven (7) days prior to the trial date.

If the trial date is set for less than seven (7) days from the date the complaint was filed, all motions shall be presented orally or in writing no later than the commencement of the hearing.

If the Court does not rule forthwith, but sets a hearing on the motion before the trial date, attendance by the plaintiff and defendant or their counsel determined by the order which required the hearing.

#### 7-109 Continuance

Cases shall not be continued upon stipulation of counsel alone, but continuances may be granted by Order of the Court for good cause shown. A motion for continuance shall be in writing, signed by the advocate or by the moving party if not represented by counsel, and shall be filed with the Court and served upon opposing counsel not less than five (5) days prior to the scheduled trial date. A motion filed less than five days before trial will not be considered timely or granted unless it is established that unforeseeable or exigent circumstances justify a continuance and that the moving party did not

unreasonably delay in seeking the continuance.

# 7-110 Default Judgment

a. Default and Entry: When a defendant has failed to appear, plead or proceed to trial of an action reached and called for trial, or when the Court orders a dismissal for any other neglect to proceed, the plaintiff may seek a default judgment against him. The court, upon submission of the requisite proof, shall enter judgment for the amount demanded in the complaint or stated in the notice served.

b. Default Not Entered Within One Year: If the plaintiff fails to take proceedings for the entry of judgment within one year after the default, the Peacemakers Court shall not enter judgment but shall dismiss the complaint as abandoned, without costs, upon its own initiative or on motion, unless sufficient cause is shown why the complaint should not be dismissed.

c. Proof: On an application for judgment by default, the applicant shall file proof of service of the summons and the complaint.

## Article 8. The Parties

### 8-101 Parties

Every action shall be prosecuted in the name of the real party in interest, except that:

a. An action may be brought by an executor, administrator, guardian, or trustee in his/her own name, stating in the petition the party for whose benefit the action is brought.

b. A partnership or person doing business under an assumed name may sue and be sued in its partnership name.

c. A corporation may sue and be sued in its corporate name.

d. A father or mother may maintain an action for the injury or death of a child.

### 8-102 Necessary Joinder

a. Parties Who Should Be Joined: Persons who ought to be

parties if complete relief is to be accorded between the persons who are parties to the action or who might be inequitably affected by a judgment in the action shall be made plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so he may be made a defendant.

b. When Joinder Excused: When a person who should be joined under subdivision (a) has not been made a party and is subject to the jurisdiction of the Court, the Court shall order him summoned. If jurisdiction over the party can only be obtained by his consent or appearance, the court when justice requires may allow the action to proceed without his being made a party. In determining whether to proceed, the court shall consider:

- (1) Whether the plaintiff has another effective remedy should the action be dismissed because of the nonjoinder;
- (2) The prejudice which may accrue from the nonjoinder to the defendant or to the person not joined.
- (3) Whether and by whom prejudice might have been avoided or may in the future be avoided;
- (4) The feasibility of a protective provision by order of the Court or in the judgment; and
- (5) Whether an effective judgment may be rendered in the absence of the person who is not joined.

#### 8-103 Permissive Joinder of Parties

a. Plaintiffs: Persons who assert any right to relief jointly, severally, or in the alternative arising out of the same transaction, occurrence, may join in one action as plaintiffs if any common question of law or fact would arise.

b. Defendants: Persons against whom there is asserted any right to relief jointly, severally, or in the alternative, arising out of the same transaction, occurrence, or series of transactions or occurrences, may be joined in one action as defendants if any common question of law or fact would arise.

c. Separate Relief: The Court shall have the discretion to make orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom he asserts no claim and, who asserts no claim against him, and may order separate trials or make other orders to prevent prejudice.

d. It shall not be necessary that each plaintiff be interested

in obtaining or each defendant be interested in defending against all the relief demanded or as to every claim included in an action.

#### 8-104 Joinder of Parties

Nonjoinder and Misjoinder of Parties: Nonjoinder of a party who should be joined is a ground for dismissal of an action without prejudice. Misjoinder of parties is not a ground for dismissal of an action. Parties may be added or dropped by the Court, on motion of any party or on its own initiative, at any stage of the action and upon such terms as may be just. The Court may order any claim against a party severed and processed with separately.

#### -105 When Joinder Is Unnecessary

Except where otherwise prescribed by order of the Court, an executor, administrator, guardian of the property of an infant or incompetent, trustee of an express trust, insured person who has executed to his insurer either a loan or subrogation receipt, trust agreement, or other similar agreement, or person with whom or in whose name a contract has been made for the benefit of another, may sue or be sued without joining with him the person for or against whose interest the action is brought.

#### 8-106 Interpleader

a. Stakeholder; claimant, action of interpleader. A stakeholder is a person who is or may be exposed to multiple liability as the result of adverse claims; a claimant is a person who has made or may be expected to make such a claim. A stakeholder may commence an action of interpleader against two or more claimants.

b. Defensive Interpleader: A defendant stakeholder may bring in a claimant who is not a party by serving upon such claimant a summons and interpleader complaint and all prior pleadings served in the action.

c. Issue of Independent Liability: Where the issue of independent liability of the stakeholder to a claimant is raised by the pleadings or upon motion, the Court may dismiss the claim of the appropriate claimant, order severance or separate trials, or require the issue to be tried in the action.

d. Discharge of a Stakeholder: After the time for all parties to plead has expired, the stakeholder may move for an order discharging him from liability in whole or in part to any party upon the submission of proof by affidavit otherwise of the allegations in his pleading. The Court may grant the motion and require payment into the Court, delivery to a person designated by the Court or retention to the credit of the action, of the subject matter of the action to be disposed of in accordance with order or judgment.

#### 8-107 Third Party Practice

a. When Allowed: At the time of filing the answer or after the service of his answer, a defendant may proceed against a person not a party who is or may be liable to him for all or part of the plaintiff's claim against him, by serving upon such person a summons and third-party complaint and all prior pleadings served in the action. A defendant serving a third-party complaint shall be styled a third-party plaintiff and the person so served shall be styled a third-party defendant. The defendant shall also serve a copy of such third-party complaint upon plaintiff's attorney if he has one.

#### b. Answer of Third-Party Defendant: Defenses:

(1) The third-party defendant shall answer the claim asserted against him by serving copies of his answer upon the third-party plaintiff.

(2) The third-party defendant may assert against the plaintiff in his answer any defenses which the third-party plaintiff has to the plaintiff's claim. The third-party defendant shall have the rights of a party adverse to the other parties in the action, including the right to counterclaim, crossclaim and appeal.

c. Claim by Plaintiff Against Third-Party Defendant: Within twenty days after service of the third-party complaint, the

plaintiff may amend his complaint without leave of Court to assert against the third-party defendant any claim he has against the third-party defendant.

d. Dismissal or Separate Trial of Third-Party Complaint: The Court may dismiss a third-party complaint without prejudice, order a separate trial of the third-party claim or of any separate issue thereof, or make such other order as may be just. In exercising its discretion, the Court shall consider whether the controversy between the third-party plaintiff and the third party defendant will unduly delay the determination of the main action or prejudice the substantial rights of any party.

e. Intervention as of Right: Intervention as of right may be had upon timely motion, by any person when:

- (1) A law of the Seneca Nation confers a right to intervene;
- (2) When representation of the person's interest by the parties is or may be bound by the judgment; or
- (3) When the action involves the disposition or distribution of, or the title or a claim for damages for injury to, property and the person may be affected adversely by the judgment.

f. Intervention by Permission: Upon timely motion, any person may be permitted to intervene in any action when a law of the Seneca Nation confers a right to intervene at the discretion of the Court, or when the person's claim or defense and the main action have a common question of law or fact.

g. Proposed Intervention Pleading: A motion to intervene shall be accompanied by a proposed pleading setting forth the claim or defense for which intervention is sought.

h. Substitution Upon Death: The Court may appoint a personal representative upon the death of one or more of the plaintiffs or defendants; incompetency of a party; in case of receivership or dissolution of a corporation; or upon transfer of an interest, and shall cause notice to be given to the substitute person.

#### 8-108 Surety Bond

a. When a surety bond is required by Seneca Nation ordinance, code, rule, or order of the Court, said bond shall be submitted and deposited with the Clerk of the Peacemakers Court prior to commencing with the action pending before the Court. The Court

shall not accept the bond unless it has been determined from affidavits and other evidence that the surety is worth the amount stipulated in the bond over and above his/her just debts and liabilities, exclusive of property exempt from execution and that each surety is subject to the jurisdiction of the Court.

b. When a surety bond is being guaranteed by a duly licensed bonding corporation, the submission of a guarantee of the bond shall serve as evidence that such bond has been properly submitted for deposit with the Court.

c. When a bond is required of a party, he may, instead of giving a bond, deposit with the Court lawful money of the United States in the sum required in the bond.

#### 8-109 Actions and Relief Not Barred for Inconsistency

a. Action Against Several Persons: Where an action is brought against several persons; the commencement or maintenance against one, or recovery against one of a judgment which is unsatisfied, shall not be deemed an election of remedies barring action against the others.

b. Actions for Conversion and on Contract: Where causes of action exist against several persons for conversion of property upon express or implied contract, the commencement or maintenance of an action against one, or recovery against one of a judgment which is unsatisfied shall not be deemed an election of remedies barring action against the others for either conversion or upon the contract.

c. Action on Contract: A judgment denying recovery in an action upon an agreement in writing shall not be deemed to bar an action to reform such agreement and to enforce it as reformed.

d. Claim for Damages and Rescission: A claim for damages sustained as a result of fraud or misrepresentation in the inducement of a contract or other transaction, shall not be deemed inconsistent with a claim for rescission. In an action for rescission or one based upon rescission the aggrieved party shall be allowed to obtain complete relief in one action, including rescission, restitution of benefits, and damages to which he is entitled because of such fraud or misrepresentation.

e. Action for Periodic Payments Due: The commencement of an action for the recovery of payments which have become due under the terms of a written agreement shall not be deemed to bar subsequent actions for recovery of other such later payments due under the agreement.



Article 9. Disclosure

9-101 Scope of Disclosure

a. There shall be full disclosure of all evidence, and anything relevant which may lead to evidence, and necessary documents in the prosecution or defense of an action, including matrimonial actions regardless of the burden of proof by:

(1) A person who possessed a cause of action or defense asserted in the action;

(2) A person about to depart from the Seneca Nation, or without the Seneca Nation, or residing a greater distance from the place of trial than one hundred miles, or so sick or infirm as to afford reasonable grounds of belief that he will not be able to attend the trial, or a person authorized to practice medicine who has provided medical care of diagnosis to the party demanding disclosure, or who has been retained by him as an expert witness;

(3) Any person where the court on motion determines that there are adequate special circumstances.

b. Privileged Matter: Upon objection by a party, privileged matter shall not be obtainable. For purposes of this chapter privileged matter refers to all matters exempt from disclosure because of a protected relationship.

c. Attorney's Work Product: The work product of an attorney shall not be obtainable, such work product consisting of materials prepared in anticipation for trial, written statements, documents, etc.

d. Material Prepared for Litigation: The following shall not be obtainable because the material can never be duplicated because of its privileged relationship as the work product of one of the parties prepared in anticipation of trial.

(1) Any opinion of an expert prepared for litigation; and

(2) Any writing or anything created by or for a party or his agent in preparation for litigation.

e. Party's Statement: A party may obtain a copy of his own statement.

f. Contents of Insurance-Agreement: A party may obtain discovery of the existence and contents of any insurance

agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. An application for insurance shall not be treated as part of an insurance agreement.

g. Accident Reports: There shall be full disclosure of any written report of an accident prepared in the regular course of business operations or practices of any person, firm, corporation, association or other public or private entity, unless prepared by a police or peace officer for a criminal investigation or prosecution and disclosure would interfere with said criminal investigation or prosecution.

#### 9-102 Method of Obtaining Disclosure

a. After commencement of an action, any party may serve on any other party notice:

(1) to produce and permit the party seeking discovery, or someone acting on his behalf, to inspect, copy, test or photograph any specifically designated documents or any things which are in the possession, custody or control of the party served, specified with reasonable particularity in the notice; or

(2) to permit entry upon designated land or other property in the possession, custody, or control of the party served for the purpose of inspecting, measuring, surveying, sampling, testing, photographing or recording by motion pictures or otherwise the property or any specifically designated object or operation thereon.

b. Notice: Notice shall specify the time, place, and manner of making inspection, copy, test or photograph, or the entry upon the land or other property.

#### 9-104 As Against a Non-Party

A person not a party may be directed by order to do whatever a party may be directed to do under Rule 1, Subpart (a). The motion for such order shall be on 10 day notice to all adverse parties; the non-party shall be served with the notice of motion in the same manner as

a summons. The order shall contain a provision for defraying the expenses of the non-party.

#### 9-105 Protective Orders

a. Prevention of Abuse: The court may at any time on its own initiative, or on motion of any party or witness, make a protective order denying, limiting, conditioning or regulating the use of any disclosure device. Such order shall be designed to prevent unreasonable annoyance, expense, embarrassment, disadvantage, or other prejudice to any person or the court.

b. Suspension of Disclosure: Disclosure shall be suspended pending application for a protective order. Service of a notice of motion for a protective order shall suspend disclosure of the particular matter in the dispute.

c. Suppression of Information Improperly Obtained: If any disclosure under this article has been improperly or irregularly obtained so that a substantial right of a party is prejudiced, the court, on motion may make an appropriate order, including an order that the information be suppressed.

d. Notice to a Party in Default: When a party is in default for failure to appear, he shall not be entitled to notice or service of any copy required under this article.

#### 9-106 Depositions

a. Normal Priority: After an action is commenced, any party may take testimony of any person by deposition upon oral or written questions. Leave of the court, granted on motion, shall be obtained if notice of the taking of the deposition of a party is served within twenty (20) days as in service of a counter claim.

b. Witnesses: Where a person to be examined is not a party or a person to be examined who at the time of taking the deposition is an officer, director, member or employee of a party, he shall be served with a civil subpoena:

(1) unless the court orders otherwise, on motion with or without notice, such subpoena shall be served at least ten (10) days before the examination.

(2) where a motion for a protective order denying, limiting, conditioning or regulating such an examination is made, to prevent embarrassment, expense, disadvantage or other

prejudice to the party or to the court, the witness shall be notified by the moving party that the examination is stayed.

c. Notice Required For Oral Depositions: A party desiring to take the deposition of any person upon oral examination shall give to each party ten (10) days notice, unless the court orders otherwise. Notice shall:

(1) Be in writing;

(2) Stating the time and place for taking the deposition;

(3) The name and address of each person to be examined, or if unknown, a general description sufficient to identify him to the particular class or group to which he belongs;

(4) Need not include the matters upon which the person is to be examined; A party to be examined pursuant to notice served by another party may himself serve notice of at least twenty (20) days for the examination of any other party, his agent or employee, such examination to be noticed for and to follow at the same time and place.

e. Written Questions: A deposition may be taken on written questions when the examining party and the deponent, (the party examined) so stipulate or when the parties so stipulate the testimony is to be taken without the Nation.

f. Notice of Taking Written Depositions

(1) Notice of Taking; Service of Questions; and Cross-Questions: A party desiring to take the deposition of any person upon written questions shall serve such questions upon each party together with a notice stating the name and address of the person to be examined; if unknown, then a general description sufficient to identify him or the particular class or group to which he belongs, the name or descriptive title and address of the officer before whom the deposition is to be taken. Within ten (10) days thereafter a party so served may serve written cross-questions upon each party. Within five (5) days thereafter the original party may serve written redirect questions upon each party. Within three (3) days after being served with written redirect questions, a party may serve written recross-questions upon each party.

(2) Officer Asking Written Questions: A copy of the notice and copies of all written questions served shall be delivered by the party taking the deposition to the officer designated in the notice. After completion of the testimony of the

witness, the officer shall prepare the deposition.

g. Where Depositions Shall Be Taken: A deposition may be in the Peacemakers Court Clerk's Office on notice when:

(1) The person to be examined is the person to be examined an officer, director, member or employee of a party, place of examination shall be within the reservation in which he resides or has an office for the regular transaction of business in person or on the reservation where the action is pending; or

(2) When any other person to be examined is a resident of the reservation the place of examination shall be the place within the Nation in which he is served, is regularly employed or has an office for the regular transaction of business in person; or if he is not a resident within the Nation the place of examination shall be the place in which he is served, is regularly employed or has an office for the regular transaction of business in person; or

(3) The party to be examined is a public corporation, officer, agent or employee thereof, within the Nation in which the action is pending; the place of such examination shall be in the Peacemaker Court in which the action is pending unless the parties stipulate otherwise.

h. Production of Things at Deposition: The notice or subpoena to the deponent may require the production of papers, and other things in the possession, custody or control of the person to be examined. The same shall be made available for examination and used on the examination.

i. Conduct of the Examination:

(1) Persons before Whom Depositions May Be Taken: Depositions may be taken before any of the following persons: an attorney, or employee of an attorney for the prospective party, and except a person who is disqualified to act as a Peacemaker because of interest, event, consanguinity or affinity to a party:

(i) Within the Nation, a person authorized by the Nation to administer oaths;

(ii) Without the Seneca Nation but within the States or a territory or possession subject to the dominion of the United States, a person authorized to take acknowledgments of deeds outside the Nation

real property law of the non-Seneca territory, or to administer oaths by the laws of the non-Seneca territory, or of the place where the deposition is taken;

(iii) Without the Nation, any person appointed or accredited to, and residing within, the country, or an officer of any branch of the armed forces authorized to take the acknowledgment of deeds.

(2) When Oath Necessary: Recording of testimony; objections; continuous examination; written questions read by examining officer.

(3) Examination and Cross-Examination: Examination and cross-examination of deponents shall proceed as permitted in the trial of actions in open court. When the deposition of a party is taken at the instance of an adverse party, the deponent may be cross-examined by his own attorney. Cross-examination need not be limited to the subject matter of the examination in chief.

(4) Examination and Cross-Examination: Examination and cross-examination of deponents shall proceed as permitted in the trial of actions in open court. When the deposition of a party is taken at the instance of an adverse party, the deponent may be cross-examined by his own attorney. Cross-examination need not be limited to the subject matter of the examination in chief.

### J. Verification of Depositions

(1) Signing: The deposition shall be submitted to the witness for examination and shall be read to or by him, any changes in substance or form which the deponent wishes to make shall be entered at the end of the deposition with an explanatory statement by the witness. The deposition shall then be signed by the witness before any officer authorized to administer an oath. If the deponent shall refuse to sign the deposition, the officer before whom the depositions was taken shall sign it and state on the record the witnesses' refusal or failure to sign, together with any reason given. The deposition shall be used as fully as though signed.

(2) Certification and Filing by Officer: The officer before whom the deposition was taken shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. If the deposition was taken on written questions, he shall attach it to the copy of the notice and written questions received by him. He shall list all appearances by

the parties and attorneys.

(3) Exhibits: Documentary evidence exhibited before the officer or exhibits marked for identification during the examination of a witness shall be annexed to and returned with the deposition.

(4) Expenses to the Taking: The party taking the deposition shall bear the expense thereof unless waived by the court.

(5) Errors in Transcription: Errors of the officer in transcribing the deposition are waived unless a motion to suppress the deposition or some part thereof is made with reasonable promptness after the defect is found.

k. Use of Depositions

(1) Impeachment of Witness: At a trial or hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used in accordance with any of the following:

(i) for the purpose of contradicting or impeaching the testimony of the deponent as a witness;

(ii) the deposition of a party or of any one who at the time of taking the deposition was an officer, director, member, or managing or authorized agent of a party, or the deposition of an employee party produced by that party, may be used for any purpose by any adversely interested party; and

(iii) the deposition of any person may be used by any party for any purpose against any other party who was present or represented at the taking of the deposition or who had notice required under these rules, provided the court finds:

(1) the witness is dead; or

(2) that the witness is at a greater distance than one hundred miles from the place of trial or is out of the Nation, unless it appears that the absence of the witness was procured by the party offering the deposition; or

(3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or

(4) that the party offering the deposition has been unable to procure the attendance of the witness by diligent efforts;

(5) upon motion or notice, that such exceptional circumstances exist as to make its use desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court.

(iv) the deposition of a person authorized to practice medicine may be used by any party without the necessity of showing unavailability or special circumstances.

(2) Use of Part of Deposition: If only part of a deposition is read at the trial by a party, any other party may read any other part of the deposition which ought in fairness to be considered in connection with the part read.

#### 9-107 Production of Documents

##### a. As Against a Party

(1) After commencement of an action, any party may serve on any other party notice:

(a) To produce and permit the party seeking discovery, or someone acting on his behalf, to inspect, copy, test or photograph any specifically designated documents or any things which are in the possession, custody or control of the party served, specified with reasonable particularity in the notice; or

(b) To permit entry upon designated land or other property in the possession, custody or control of the party served for the purpose of inspecting, measuring, surveying, sampling, testing, photographing or recording by motion pictures or otherwise the property on any specifically designated object or operation thereon.

(2) The notice shall specify time, place and manner of inspection, copy, test, photograph, or entry upon land or other property.

b. As Against a Non-Party: A person not a party may be directed by order to do whatever a party may be directed to do under subdivision (a). The motion for such an order shall be notice to all adverse parties; the non-party shall be served with the notice of motion in the same manner as a summons. The notice



shall also contain a provision for the defraying of the expenses of the non-party.

9-108 Physical or Mental Examination

a. Notice of Examination: After commencement of an action in which the mental or physical condition or the blood relationship of a party, or of an agent, employee or person under the legal control of a party, is in controversy, any party may serve notice on another party to submit to a comprehensive physical examination by a designated physician or to produce for such examination his agent, employee or the person under his legal control. The notice may require duly executed and acknowledged written authorizations permitting all parties to obtain, and make copies of the records of specified hospitals relating to physical condition or blood relationship; a copy of the notice shall be served on the person to be examined. It shall specify:

- (1) time;
- (2) conditions; and
- (3) place.

b. Copy of Report: A copy of a detailed written report of the examining physician setting out his findings and conclusions shall be delivered by the party seeking the examination to any party requesting a copy of each report in his control of an examination made with respect to the mental or physical condition in controversy.

9-109 Objections to Discovery, Inspection, or Examination

Within ten days of service of a notice of discovery, examination and inspection under 9-107 (a) - (b) and 9-108 (a) a party may serve a notice of motion for a protective order, specifying his objections. Pending the outcome of such motion all discovery shall be suspended.

9-110 Admissions as to Matters of Fact, Papers, Documents and Photographs

a. Notice to Admit: At any time after service of the answer or as in answer to a counterclaim within twenty (20) days from service of the summons, but not later than twenty (20) days

before trial, a party may serve upon any other party a written request for admission by such party of the genuineness of any papers or documents, or the correctness or fairness of representation of any photographs, described in and served with the request, or the truth of any matters of fact set forth in the request, which the party requesting admission reasonably believes there can be no substantial dispute at the trial and which are within the knowledge of the other party or can be ascertained by him upon reasonable inquiry.

b. Copies of papers, documents, or photographs shall be served with the request unless copies have already been furnished.

c. Effect of Non-Response: Each of the matters of which an admission is requested shall be deemed admitted unless within twenty (2) days after service the party to whom request is made serves upon the requestion party a sworn statement either denying the matters of which an admission is requested, or setting forth detailed reasons why he cannot truthfully admit or deny those matters.

d. Effect of Admission: Any admission made by a party is deemed to be admitted for the purpose of this action only. Any admission shall be subject to all pertinent objections to admissibility which may be interposed at the trial.

e. Improper Denial: If a party after being served with a request to admit under subdivision (a) does not admit and the party making the request to admit thereafter proves the genuineness or fairness of representation of any documents, materials photographs described in the request or the truth of any matter of fact, he may move at or immediately following trial for any order requiring the other party to pay him the reasonable costs of making such proof, including reasonable attorney's fees. Unless the court finds that there were good reasons for the denial or the refusal otherwise to admit or that the admissions sought were of no substantial importance, the order shall be made irrespective of the result of the action.

#### 9-111 Interrogatories

After commencement of an action, a party may serve upon any other party written interrogatories.

a. Service: Service of interrogatories shall be made by a plaintiff upon any defendant within thirty (30) days after service upon him of the summons and complaint, or service is made by any defendant upon the plaintiff within ten (10) days of

the original service upon the defendant, but neither shall be accomplished without leave of the court.

b. Objections to Interrogatories:

(1) When Made: Within ten (10) days after service of interrogatories, the party upon whom they are served may move upon notice to strike out any interrogatory, stating the grounds for objection.

(2) Suspension Pending Ruling: The answer to any interrogatory to which an objection is made shall be deferred until the objections are ruled on by the court.

(3) Answers to Interrogatories:

(a) How Made: Interrogatories shall be answered in writing under oath by the party upon whom served, or if the party is a corporation, a partnership, or a sole proprietorship, by any officer, director, agent or employee having the information. Each question shall be answered separately and fully and each answer shall be preceded by the question to which it responds.

(b) Corporations: Where the person is a corporation or business entity, a diligent search of corporate knowledge shall be made in preparing a response to the interrogatories.

(c) Service: Within fifteen (15) days after service of interrogatories, the party upon whom they are served shall serve a copy of his answer upon each of the parties, except an interrogatory not objected to and not stricken shall be answered within five (5) days after service of a copy of an order determining the motion to strike the interrogatory, or within such time as the court shall direct.

9-112 Failure to Disclose

a. If a person, without having made timely objection, fails to appear at an examination or fails to answer any question upon oral or written depositions or interrogatories, or fails to produce a thing requested, or fails to permit examination or inspection of property or things, or fails to submit or produce a person for an examination, or fails to exchange reports, the discovery, inspection or examination shall be completed on other matters or adjourned, as the proponent of the discovery, inspection or examination may elect; or such proponent shall, on

reasonable notice to all persons affected, apply to the court to compel disclosure.

b. Penalties For Failure to Disclose: If any party, or a person who at the time the deposition is taken or an examination or inspection is made, is an officer, director, member, employee or agent of a party or otherwise under a party's control, refuses to obey an order for disclosure or wilfully fails to disclose or wilfully fails to disclose information the court finds ought to have been disclosed pursuant to due notice, the court can order:

(1) The resolution of the relevant issues of the discovery request in favor of the party obtaining the order;

(2) That the disobedient party be prohibited from supporting or opposing designated claims or defenses, from producing in evidence designated things or items of testimony, physical, mental, or blood condition, or the use of certain witnesses;

(3) Strike from the pleadings or parts thereof, stay further proceedings until the order is obeyed, or dismiss the action or any part thereof, or render a judgment by default against the disobedient party.

c. Amendments: Amendments to answers to interrogatories may be made only by order of the court upon motion.

#### Article 10. The Hearing

10-101

The burden of proof in all civil actions shall be by a "Preponderance of the evidence."

10-102

In all actions before the Seneca Nation Peacemakers Court, in accordance with the customs and practice of the Seneca Nation herein recognized and accepted, all persons shall be entitled to have a hearing which shall include:

a. An opportunity to be heard before an impartial hearing officer of the Peacemaker's Court;

b. An opening statement of facts shall be afforded both parties;

- c. The presentation of evidence, and witnesses;
- d. Confrontation of any witnesses to defend against allegations;
- e. Speedy trial and judgment timely rendered.

10-103

Where doubt arises as to the customs and usages of the Nation the Peacemakers shall request the advice of tribal councillors familiar with such customs.

#### Article 11. Judgment

##### 11-101 Judicial Determination

In arriving at a determination of judgment, the Court shall:

- a. Find the facts specifically;
- b. State separate conclusions of law on each cause of action before the court;
- c. Direct entry of the judgment;
- d. Prepare a written judgment, to be issued forthwith to all parties;
- e. Not contain a recital of pleadings or record of the proceedings.

##### 11-102 Time

The Court shall render judgment in all causes of action within ten (10) work days after the close of the hearing, upon receipt of all evidence.

##### 11-103 Judgments in Civil Actions

- a. In all civil actions, judgment shall consist of an order of the Peacemakers Court awarding money damages to be paid to an injured party, or directing the surrender of certain property

to the injured party, or the performance of some act for the benefit of the injured party.

b. Where the injury inflicted was the result of the carelessness of the defendant, the judgment shall fairly compensate the injured party for the loss he has suffered.

c. Where the injury was deliberately inflicted, the judgment shall impose an additional penalty upon the defendant, which additional penalty may run either in favor of the injured party or in favor of the Nation.

d. Where the injury was the result of an accident, or where both plaintiff and defendant were at fault, the judgment shall compensate the injured party for a reasonable part of the loss he has suffered.

#### 11-104 Judgment by Default

a. When Default Is Available: If the defendant does not answer the complaint; fails to plead; or appear in court on the scheduled time and date, without first having requested leave of the Court, or permission to not so appear, or not made a motion for a continuance, the plaintiff, upon proof that proper service was made, may upon motion have judgment rendered against the defendant by default.

b. Proof of service shall be had when the Court Clerk calls the calendar.

c. Notice of Default Judgment: A copy of the default judgment shall be served in person or mailed in accordance with the Rules of Service.

d. Motion to Set Aside Default: Within thirty (30) days after the date of notice of the default, the defendant may file a motion to set aside the default judgment which the Peacemakers will review the motion and if such motion alleges sufficient grounds, the Court shall set the matter for a hearing.

#### 11-105 Satisfaction of Judgment

Satisfaction of judgment shall be by writ of execution; notice, and other papers relating to enforcement and satisfaction of judgment, shall be issued to both parties by the Clerk of the Court.

Article 12. Motion for a New Trial

12-101 Time

A motion for a new trial may be made after the order of judgment has been rendered, and shall be filed within ten (10) days from the entry of judgment.. Failure to assert a new trial motion within the prescribed time limit shall cause said judgment to become final; but filing such a motion is not a condition precedent to taking of an appeal.

12-102 Basis for Granting New Trial Motion

Upon motion of a party, or upon the Court's own initiative, a new trial shall be granted and ordered to any of the parties to an action, on all or part of the issues, for any reason for which new trials have heretofore been granted under the laws, customs, and practices, of the Seneca Nation of Indians. Where doubt arises as to tribal laws, customs, and practices, the Peacemakers will explain or request the advice of tribal councillors familiar with such custom and practices.

Article 13. Appeals

13-101 Time

An appeal to the Seneca Nation Tribal Council shall be filed within thirty (30) days from the date of final judgment in the Office of the Clerk of the Seneca Nation, such judgment being certified to the Peacemakers Court as the true facts of the cause and the determination, upon the filing of an appeal.

13-102 Costs of Appeal

Within fifteen (15) days from filing of the appeal, the party seeking the appeal shall file with the Office of the Clerk of the Seneca Nation, a certification that the costs of the Peacemaker's Court has been fully paid, or in lieu thereof an escrow deposit to pay said costs.

13-103 Process

a. Upon receipt of the certification of escrow deposit under Section (a) herein, the Office of the Clerk of the Nation shall notify the President of the Seneca Nation who shall set the hearing of same, stipulating a date, time, and location which shall be the next General Session of the Seneca Nation Tribal Council.

b. After the Clerk of the Seneca Nation is notified of the date, time, and location, she will notify the parties of the same.

c. Either party may request a Special Session of Council to hear the appeal within thirty (30) days from noting the appeal and filing certification. In such instance, the party requesting said Special Session shall provide bond or escrow deposit to pay the costs of said Special Session, regardless of the decision on appeal. If a Special Session, regardless of the decision on appeal. If a Special Session is requested, the Office of the Clerk of the Nation shall notify the President who shall set the time, date, and location of such Special Session. Upon notice of the time, date and location of said Special Session, the Clerk of the Seneca Nation shall notify the parties of said Special Session.

13-104 Grounds of Appeal

The grounds for appeal upon which the parties may base their motion are as set forth below:

a. Appeals as of Right: An appeal may be taken to the Seneca Nation Tribal Council Appellate Court as of right in any action



originating in the Seneca Nation Peacemaker's or Surrogate's Court, or any administrative agency under the Seneca Nation:

(1) From an order of a Peacemakers or Surrogates Court, which finally determines an action where there is directly involved the construction of the Seneca Nation Constitution;

(2) From a judgment of a court of record of original instance which finally determines an action where the only question involved on the appeal is the validity of a law of the Seneca Nation under the Seneca Nation constitution.

(3) From an order granting a new trial or hearing, upon stipulation for judgment absolute.

b. Appeals by Permission: An appeal may be taken to the Seneca Nation Tribal Council Appellate Court by permission when an action, originating in the Peacemakers or Surrogates Court or administrative agency, has received a final judgment on an order from one of the aforementioned courts or agencies.

c. The notice of appeal shall include:

(1) Designation of judgment or the part appealed from thereof;

(2) Name the court from which appeal was taken;

(3) Grounds for appeal.

d. Upon notice to either party and at any time, fifteen (15) days prior to the date of the next General Session of Seneca Nation Tribal Council set to hear the appeal, either party may file a Brief of Memorandum of Points and Authorities in support of his appeal. A reply thereto may be filed five (5) days prior to the date of the Council Session.

e. The Memorandum shall:

(1) Be accompanied by a Certification of Service upon the opposing party;

(2) Copied, and said thirty (30) copies filed in the Office of the Clerk of the Nation.

f. When Appeal Deemed Final: If the Seneca Nation Tribal Council Appellate Court disposes of all the issues in the action, its order shall be considered a final one, and no further appeal may be taken from that order, nor from any

judgment or order entered pursuant to it.

Article 14. Injunction

14-101 Grounds for Preliminary Injunction and Temporary Restraining Order

a. Preliminary Injunction: A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do, or is doing to procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual, or in any action where the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which if committed or continued during the pendency of the action, would produce injury to the plaintiff.

(1) Notice Requirements: Preliminary Injunction

(a) A preliminary injunction may be granted only upon notice to either party in appropriate circumstances.

(b) Notice of the motion may be served with the summons or at anytime thereafter and prior to judgment.

(2) Motion Papers

(a) Affidavit: On a motion for preliminary injunction the plaintiff shall show, by affidavit and such other evidence as may be submitted, that there is a cause of action, and either that defendant threatens or is about to do, or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action and tending to render judgment ineffectual; or that the plaintiff has demanded and would be entitled to a judgment restraining the defendant from the commission or continuance of an act, which if committed or continued during the pendency of the action, would produce injury to the plaintiff.

(b) Undertaking: Prior to the granting of a preliminary injunction, the plaintiff shall give an undertaking in an amount to be fixed by the Court, that the plaintiff, if it is finally determined that he was not entitled to an injunction, will pay to the defendant all damages and costs which may be sustained by reason of the

Injunction, including:

(i) If the injunction is to stay proceedings in another action, on any ground other than that a verdict, report, or decision was obtained by actual fraud, all damages and costs which may be, or which have been, awarded in the other action to the defendant as well as all damages and costs which may be awarded him in the action in which the injunction was granted;

(ii) If the injunction is to stay proceedings in an action to determine ownership or recover real property, or for life lease, on any ground other than that a verdict, report or decision was obtained by actual fraud, all damages and costs which may be, or which have been, awarded to the party in the action in which the injunction was granted, including the reasonable rents and profits of, and any wastes committed upon, the real property which is sought to be recovered or which is the subject of the action for life lease, after the granting of the injunction; or

(iii) If the injunction is to stay proceedings upon a judgment for a sum of money of any ground other than that the judgment was obtained by actual fraud, the full amount of the judgment as well as all damages and costs which may be awarded to the defendant in the action in which the injunction was granted.

b. Temporary Restraining Order: If, on a motion for a preliminary injunction, the plaintiff shall show that immediate and irreparable injury, loss or damages will result unless the defendant is restrained before a hearing can be had, a temporary restraining order may be granted without notice. Upon granting a temporary restraining order, the Court shall set the hearing for the preliminary injunction at the earliest possible time.

(1) Service: A temporary restraining order together with the papers upon which it was based, and a notice of hearing for a preliminary injunction, shall be personally served in the same manner as a summons.

(2) Undertaking: Prior to granting of a temporary restraining order the court may in its discretion, require the party to give an undertaking in the amount to be fixed by the Court.

(3) Content of a Temporary Restraining Order: Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; and shall be filed forthwith in the Office of the Clerk of the Peacemakers Court. The temporary restraining order shall:

(i) define the injury, stating why it is irreparable and why the order was granted without notice;

(ii) expire by its own terms within such time after entry, not to exceed fifteen (15) days, as the court fixes, unless the time so fixed in the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a longer period.

c. Vacating or Modifying Preliminary Injunction or Temporary Restraining Order: A defendant enjoined by a preliminary injunction may move at any time, on notice to the plaintiff, to vacate or modify it and upon such motion the Court shall have the discretion to vacate or modify the order. An order granted without notice and vacating or modifying a temporary restraining order shall be effective when, together with the papers upon which it is based, it is filed with the Clerk of the Nation and served upon the plaintiff. As a condition to granting an order vacating or modifying a preliminary injunction or a temporary restraining order, a court may require the defendant give an undertaking, in an amount fixed by the Court, that the defendant shall pay to plaintiff any loss sustained by reason of the vacating or modifying order.

(1) Ascertainment of Damages Sustained by Reason of Preliminary Injunction or Temporary Restraining Order: The damages sustained by reason of a preliminary injunction or temporary restraining order may be ascertained upon motion on minimum of notice to all interested person as the court shall direct. The required minimum notice shall be a phone call from the Peacemakers Court.

Article 15. Attachment \* See Amendment of  
May 8, 1993

15-101 Grounds

An order of attachment may be granted in any action, where the

plaintiff has demanded and would be entitled to a money judgment against one or more defendants when:

- a. The defendant is an Indian residing outside the Nation, or is a non-Indian corporation not qualified to do business in the Nation; or
- b. The defendant resides or is domiciled in the Nation and cannot be personally served despite diligent efforts to do so; or
- c. The defendant, with intent to defraud his creditors or frustrate enforcement of a judgment that might be rendered in plaintiffs favor, has assigned, disposed of, encumbered or secreted property, or removed it from the Seneca Nation or is about to do any of the aforesaid acts; or
- d. The cause of action is based on a judgment, decree or order of a court of the United States or New York State which is entitled to full faith and credit in the Seneca Nation under 28 USCA section 1738.

15-102 Debt or Property Subject to Enforcement

a. A money judgment may be enforced against any property, or debt past due or yet to become due upon demand of the judgment debtor, whether incurred within or without the Nation, to or from a resident or non-resident, unless it is exempt from application to the satisfaction of the judgment.

b. Proper garnishee for particular property or debt:

(1) Where property consists of a right or share in the stock of an association or corporation or interests or profits for which a certificate of stock or other negotiable instrument is not outstanding, the corporation or the president or the treasurer of the association shall be the garnishee.

(2) Where property or a debt is evidenced by a negotiable instrument for the payment of money, a negotiable document of title or a certificate of stock of an association or corporation, the instrument, document or certificate shall be treated as property capable of delivery and the person holding it shall be the garnishee.

15-103 Attaching Creditor's Rights in Personal Property

Where a plaintiff has delivered an order of attachment to the

Marshall of the Seneca Nation, the plaintiff's rights in a debt owed to the defendant in personal property against which debt or property a judgment may be enforced, are superior to the extent of the amount of the attachment to the rights of any transferee of the debt or property, except:

a. A transferee who acquired the debt or property before it was levied upon for fair consideration or without knowledge of the order of attachment; or

b. A transferee who acquired the debt of property for fair consideration after it was levied upon without knowledge of the levy while it was not in the possession court.

#### 15-104 Discharge of Garnishee's Obligation

A defendant, who pursuant to an order of attachment, pays or delivers to the Court, money or other personal property in which a defendant has or will have an interest, is discharged from his obligation to the extent of the payment or delivery.

#### 15-105 Order of Attachment on Notice; Temporary Restraining Order; Contents

Upon a motion on notice of an order of attachment, the court may, upon notice to the defendant, grant a temporary restraining order prohibiting the transfer of assets by a garnishee as provided in subparts (a) and (b) in 15-103.

#### 15-106 Order of Attachment Without Notice

a. When Granted; Contents: An order of attachment may be granted without notice, before or after service of summons and at any time prior to judgment. It shall specify:

(1) The amount to be secured by the order of attachment

including any interest, costs, Law Enforcement fees and expenses;

(2) Be endorsed with the name and address of the plaintiff's attorney;

(3) Shall be directed to the Sheriff of any Nation territory where any property in which the defendant has an interest is located or where a garnishee may be served;

(4) The order shall direct the Nation Law Enforcement Officer to levy within his jurisdiction, at any time before final judgment, upon such property in which the defendant has an interest and upon such debts owed to the defendant as will satisfy the amount specified in the order of attachment.

b. Confirmation of Order: An order of attachment granted without notice shall provide that within a period not to exceed five (5) days after levy, the plaintiff shall move, on such notice as the Court shall direct to the defendant, the garnishee, and the Nation Law Enforcement Officer, for an order confirming the order of attachment. If the plaintiff fails to make such motion within the required period, the order of attachment and any levy thereunder shall have no further effect and shall be vacated upon motion. An order of attachment granted without notice may provide that the Nation Law Enforcement Officers refrain from taking any property levied upon into its actual custody, pending further order of the Court.

15-107 Motion Papers: Undertakings: Filing: Demand: Damages

a. Affidavit: On a motion for an order of attachment, or for an order to confirm an order of attachment, the plaintiff shall show, by affidavit and other such written evidence as may be submitted, that there is cause of action; that it is probable that the plaintiff will succeed on the merits; that one or more grounds for attachment exist; and that the amount demanded from the defendant exceeds all counterclaims known to the plaintiff.

b. Undertaking: On a motion for an order of attachment, the plaintiff shall give an undertaking, in a total amount to equal that which is sufficient to cover defendant's costs and damages, which may be sustained by the attachment, if the defendant recovers judgment.

c. Filing: As in an answer to subsequent pleadings, within ten (10) days after granting the order of attachment, the plaintiff shall file it and the summons and complaint in the action. Failure to so file will render the order of attachment invalid.

d. Damages: The plaintiff shall be liable to the defendant for all costs and damages which may be sustained by reason of the attachment if the defendant recovers judgment, or if it is decided the plaintiff was not entitled to an attachment of the defendant's property.

#### 15-108 Discharge of Attachment

A defendant whose property or debt has been levied upon may move, upon notice to the plaintiff and the Nation Law Enforcement Department, for an order discharging the attachment as to all or part of the property or debt upon payment of the Law Enforcement's fees and expenses. On such a motion the defendant shall submit to the Court an undertaking in the amount of any judgment which may be levied against him.

#### 15-109 Vacating or Modifying Attachment

a. Vacating: The defendant having an interest in the property or debt may move, on notice to each party, and the Nation Law Enforcement Department, for an order vacating or modifying the order of attachment. The plaintiff shall have an opportunity to correct any defect. The Burden of Proof to vacate or modify an order of attachment shall be on the plaintiff to establish the need to continue the levy and demonstrate he will succeed on the merits.

#### 15-110 Annulment of Attachment

An order of attachment is annulled when the action in which it was granted abates or is discontinued, or judgment is fully satisfied, or a judgment is entered therein in favor of the defendant.



### 15-111 Return of Property

Upon a motion of any interested party, on notice to the Nation Law Enforcement Department, the Court may direct the Clerk of the Court to cancel a notice of attachment and direct said Law Enforcement Department to dispose of, account for, assign, return or release any property or debt, or the proceeds thereof, or any undertaking.

## Article 16. Civil Subpoenas

### 16-101 Scope

A civil subpoena requires the attendance of a person to give testimony upon an order of the Peacemakers Courts. A subpoena duces tecum requires the production of books, papers, and other things.

### 16-102 Authority to Issue

a. Issuance by Court: A subpoena to compel production of an original record or document where a certified transcript or copy is admissible in evidence shall be issued by the Court. Unless the Court orders otherwise, a motion for such subpoena shall be made on at least one day's notice to the person having custody of the record or document.

### 16-103 Service of Subpoena

A subpoena shall be served in the same manner as a summons. Any person subpoenaed shall be paid or tendered in advance authorized traveling expenses and one day's witness fee of thirty (30) dollars.

### 16-104 Motion to Quash, Fix Conditions or Modify

A motion to quash, fix conditions or modify a subpoena shall be made promptly in the Court in which the subpoena is returnable. Reasonable conditions may be imposed upon the granting or denial of a

motion to quash or modify.

16-105 Attendance Required Pursuant to Subpoena: Possession of Books, Records, Documents or Papers

a. When a Person Required to Attend: A subpoena may provide that the person subpoenaed shall appear on the date of trial hearing or examination. Reasonable notice shall be given to the person subpoenaed of any recess or adjournment.

b. Subpoena Duces Tecum; Attendance by Substitute: Any person may comply with a subpoena duces tecum by having the requisite books, documents or things produced by a person able to identify them and testify respecting their origin, purpose, and custody.

c. Inspection, Examination and Audit of Records: Whenever by rule or ordinance any department or agency of Seneca Nation of Indians, or any Nation officer thereof, is authorized to issue a subpoena requiring the production of books, records, documents or papers, the issuing party shall have the right to the possession of such material for a period of time, and on terms and conditions as may reasonably be required for the inspection, examination or audit of material.

16-106 Disobedience of Subpoena

a. Judicial: Failure to comply with a civil subpoena issued by the Peacemakers or Surrogates Court shall be punishable as a contempt of court and subject the disobedient party to a civil fine within the discretionary determination of the Court.

b. Penalty: A subpoenaed person who fails to comply with a civil subpoena issued by a Peacemaker or Surrogate shall be liable to the person on whose behalf the subpoena was issued for damages by reason of the failure to comply.

Article 17. Contempt

17-101

a. Disobedience or resistance of any order, decree or command

of the Peacemaker or Surrogate Courts or these rules, shall constitute contempt and after a show cause hearing, may be punishable by a fine. When contempt is committed in the presence of the court, it may be punished summarily. In such event, a written order shall be made reciting the facts constituting the contempt, adjudging the person guilty of contempt and prescribing the punishment therefore. Such order shall be final and conclusive.

b. The Peacemakers and Surrogates Courts of the Seneca Nation shall assess a fine of \$75.00 for each violation of any order, decree, or command constituting contempt.

#### Article 18. Accelerated Judgment

##### 18-101 Motion to Dismiss

A party may move for judgment dismissing one or more causes of action asserted against him on the ground that:

- a. A defense is founded on documentary evidence;
- b. The Court does not have jurisdiction over the subject matter of the cause of action;
- c. The party asserting the cause of action has no legal capacity to sue;
- d. There is another action pending between the same parties for the same cause of action in a Surrogates Court of any non-Seneca tribal court, state court or court of the United States.
- e. The cause of action may not be maintained because of arbitration and award, or other disability not herein mentioned, or agreement by stipulation against suit.
- f. Evidence Permitted: Upon hearing of a motion made under any of the above, either party may submit any evidence that could properly be considered on a motion for summary judgment.

##### 18-102 Motion for Summary Judgment

a. Time; Kind of Action:-- Any party may move for summary judgment in any action, after the issue has been joined.

b. Supporting Proof: A motion for summary judgment shall be supported by affidavit, by a copy of the pleadings and by other available proof, such as depositions and written admissions. The affidavit shall be by a person having knowledge of the facts; it shall recite all the material facts; and it shall show that there is no defense to the cause of action or that the cause of action has no merit.

c. When Granted: The motion shall be granted if, upon all the papers and proof submitted, the cause of action or defense shall be established sufficiently to warrant the Court as a matter of law in directing judgment in favor of either party.

d. When Denied: If upon submission of all papers and proof, it shall be shown that a genuine issue of fact exists in the cause of action before the Court, the Court may deny the motion for summary judgment and where appropriate, order an immediate trial of such issues of fact.

e. Partial Summary Judgment: In any action summary judgment may be granted as to one or more causes of action, or part thereof, in favor of one or more parties, to the extent warranted, on such terms as may be just, the Court may order:

(1) the cause of action as to which summary judgment is granted shall be severed from any remaining cause of action; or

(2) that the entry of summary judgment shall be held in abeyance pending the determination of any remaining cause of action.

18-103 Want of Prosecution

a. Where a party unreasonably neglects to proceed generally in an action or otherwise delays in the prosecution thereof against any party who may be liable to a separate judgment, or unreasonably fails to notify the Peacemakers of their readiness for trial, the Court on its own initiative or upon motion, may dismiss the party's pleading on terms, not on the merits of the case.

b. No dismissal shall be directed unless:

(1) Issue has been joined;

(2) One year shall have elapsed since the joinder of issue;

(3) The party seeking such relief shall have served a written demand by registered or certified mail requiring the party against whom such relief is sought to resume prosecution of the action within ninety (90) days after receipt of such demand.

c. Should the party upon whom the demand for prosecution of the action is served file a note of issue within such ninety-day period, the same shall be deemed sufficient compliance and diligent prosecution of the action, and no court initiative or motion to dismiss shall be made.

#### 18-104 Voluntary Discontinuance

a. Without an Order: Any party asserting a claim may discontinue it without an order:

(1) By serving upon all parties to the action a notice of discontinuance at any time before a responsive pleading is served or within twenty (20) days after service of the pleading asserting the claim, whichever is earlier, and filing a notice with proof of service with the Court.

(2) Effect: The discontinuance is without prejudice, except that a discontinuance by means of notice operates as an adjudication on the merits if the party has once before discontinued this action.

### Article 19. Evidence

#### 19-101 Self-Incrimination

A competent witness shall not be excused from answering a relevant question on the ground that the answer may tend to establish his liability in a civil suit.

#### 19-102 Attorney

Unless a client waives the privilege, an attorney, or his employee, or any person who obtains without the knowledge of the client, evidence of a confidential communication made between the attorney or his employee and the client in the course of professional

employment, shall not disclose, or be allowed to disclose, such communication, in any trial action, hearing, administrative action, proceeding or hearing conducted by or on behalf of the Nation.

19-103 Physician, Dentist, Nurse

Unless a patient waives the privilege, a person authorized to practice Medicine, or Dentistry, or Nursing shall not disclose any information which he obtained in attending the patient in his professional capacity.

19-104 Confidential Communication to Clergy

Unless the person confessing or confiding waives the privilege, a clergyman, or other minister of any religion, shall not be allowed to disclose a confession or confidence made to him in his professional capacity.

19-105 Impeachment

In addition to impeachment in the manner permitted by common law, any party may introduce proof that any witness has made a prior statement inconsistent with this testimony if the statement was made in writing, signed by him, or was made under oath.

19-106 Prior Testimony of an Unavailable Witness

Where a witness's testimony is not available because of privilege, death, physical or mental illness, absence beyond the jurisdiction of the court to compel appearance by its process, or his whereabouts are unknown after due diligence by the proponent of his statement, or due to his incompetency to testify, then his testimony,

and all exhibits and documents may be introduced as evidence by any party, except where it can be shown his unavailability was procured by, or through the wrongdoing of the proponent of his statement.

19-107 Business Records

Any writing or record, whether in the form of an entry in a book or otherwise, made as a memorandum of a record of any act, transaction, occurrence or event, shall be admissible in evidence in proof of that act, transaction, occurrence or event, if the Court finds it was made in the regular course of any business and that it was at the time of the act, transaction, occurrence, or event, which concerns the making of the memorandum or record may be proved to affect its weight but shall not affect its admissibility. The term business includes a business, profession, occupation and calling of every kind.

19-108 Certificate or Affidavit of Public Officer

Where a public officer is required or authorized by special provision of law, to make a certificate or an affidavit of a specific fact, or act performed, by him in the course of his official duty, and to file or deposit it in a public office of the Nation, the document so filed shall be evidence of the facts stated.

19-109 Lack of Record

A statement signed by an officer or a deputy of an officer having legal custody of specified records, that he has made a diligent search of the records and found no entry of a specific nature, is evi-

dence that the records contain no such entry.

19-110 Ancient Filed Maps, Surveys and Records Affecting Real Property

All maps, surveys and official records affecting real property within the Nation which are on file in any office or agency of the Seneca Nation, or on file in the Offices of Clerk in Erie, Cattaraugus and Chautauqua Counties are evidence of their contents.

19-111 Search by Title Insurance or Abstract Company

A search affecting real property when made and certified to by a title insurance company, may be used in place of, and with the same legal effect as, an official search.

19-112 Marriage Certificate

An original certificate of marriage made by a person by whom it was solemnized within the Nation, or the original entry thereof made pursuant to Nation law by the Clerk, is evidence of the marriage.

19-113 Affidavit of Service

An affidavit by a person who served, posted or affixed a notice, showing such service, is evidence of the service, posting or affixing if the affiant is dead, mentally ill or cannot be compelled with due diligence to attend the trial.

19-114 Affidavit of Publication in Newspaper

An affidavit of the printer or publisher of a newspaper published in the Nation, or in the general locality of the Nation, showing publication of a notice required by the law of the Nation or a



Peacemakers or Surrogates court order, is evidence of publication and statements showing the deponent is authorized to make the affidavit where the affidavit is annexed to a printed copy of the notice.

19-115 X-Rays in Personal Injury Actions

In an action in which a claim for personal injuries is asserted, an X-ray of any party thereto is admissible in evidence if:

- a. The X-ray is photographically inscribed with the name of the injured party, the date when taken, the identifying number thereof, and the name and address of the physician supervising the same.
- b. At least ten (10) days prior to the date of trial of the action, the attorney for the party intending to offer such X-ray, serve upon the attorney or attorneys for the person or persons against whom the X-rays are being offered, a notice of intention to offer the X-rays in evidence at trial and provide them with an opportunity for inspection of said X-rays at his office, provided that such X-ray has not been previously so examined.
- c. The aforesaid notice be accompanied by an affidavit of the physician identifying the X-ray and attesting to the information inscribed thereon.

19-116 Proof of Damages

An itemized bill or invoice, receipted or marked paid, for services or repairs up to \$1500 is admissible in evidence of the reasonable value and necessity of the services itemized thereon, provided it bears a certification by the person, firm, or corporation or an authorized agent or employee making such repairs or services and contains a statement that no refund may be had and that such charges are the customary rates.

19-117 Standard of Measurement Used by Surveyor

An official certificate of the Nation surveyor, elected or appointed pursuant to the laws of the Nation, or his statement under oath, that the chain or measure used by him conformed to the Nation's standard at that time the survey was made is evidence of that fact.

19-118 Proof of Writing by Comparison of Handwriting

Comparison of a disputed writing proved to the satisfaction of the Court to be handwriting of the person claimed to have made the disputed writing shall be permitted as evidence.

19-119 Reproductions of Original

If, in the regular course of business, an officer causes a writing, entry, print, or representation to be reproduced, such reproduction, when satisfactorily identified is admissible as evidence as the original, whether the original is in existence or not, but the admission of the reproduction does not preclude the admission of the original into evidence.

19-120 Authentication of Official Court Records

A transcript from the docketbook of a New York State or County court outside the Nation, the minutes of the proceedings, judgment rendered or execution issued thereon, shall be evidence of that Court's jurisdiction in the cause and of the matters shown by the transcript.

19-121 Proof of Non-Seneca Nation Records and Documents Non-Seneca Nation Record:

An official non-Seneca Nation record, or an entry therein, when

admissible for any purpose, may be evidenced by an official publication thereof attested by a person authorized to make the attestation, and accompanied by a final certification as to the genuineness of the signature and official position:

- a. of the attesting person;
- b. and his official position to make the attestation.

19-122 Proof of Facts or Writing by Methods Other than Those Authorized in This Article

Nothing in this article prevents the proof of a fact or writing by any method authorized by the laws, or custom and practice of the Nation.

Article 20. Enforcement by Summons

20-101 Authority

The Seneca Nation Law Enforcement Department shall be empowered to issue a summons to any person, or entity, or authorized representative or designated agent, residing within, or possessing a permanent domicile upon, temporarily present within, or trespassing upon, Seneca Nation lands, pursuant to their inherent sovereign authority of the Seneca Nation, and as granted under the Constitution of the Seneca Nation of 1898, as amended October 7, 1966, and September 12, 1978, Section VII, requiring said person, entity, or authorized agent, to appear before the Seneca Nation Peacemaker's Court to answer such summons.

## 20-102 Service of Process

Service of the summons shall meet all the requirements of Process Service as set forth in Article 5. A copy of the summons shall also be sent to the Clerk of the Nation, who shall record its issuance and note the date upon which it is required the recipient appear before said Court.

## 20-103 Hearing

The defendant shall have a fair opportunity for a speedy hearing which shall be made available upon receipt of such summons and shall include the following:

(a) Notice: Notice to the defendant shall be presumed to have occurred upon issuance and receipt of the summons by the person so charged.

(b) Opportunity: The defendant shall have an opportunity to be heard which shall include the right to confront all accusations as they appear on the summons, and present proof to establish, by a preponderance of the evidence, that such allegations are unfounded.

(c) Impartial Hearing Body: The hearing shall be held within ten (10) days of the issuance of a summons, before an impartial judicial officer duly sworn to uphold the laws of the Seneca Nation and empowered to preside over all causes of action brought before the Seneca Nation Peacemaker's Court pursuant to authority granted under the Constitution of the Seneca Nation of 1898, as amended October 7, 1966 and September 12, 1978, Section IV.

(d) Judgment: The defendant shall be entitled to swift and fair judgment based upon a preponderance of the proof presented at the hearing.

## Article 21. Seizure

### 21-101 Impoundment

The Seneca Nation Law Enforcement Department shall have th

authority to execute the immediate impoundment of any equipment, vehicle, apparatus, illegal weapon, or any other another mentioned personal property of any individual person, entity, in the commission of a violation of any Seneca Nation ordinance or law.

#### 21-102 Procedure

The Seneca Nation Law Enforcement Officer shall peaceably execute the impoundment, of any personal property of any individual or entity subject to this provision. All impoundments shall require a receipt be issued to the owner, or possessor of the property by the Law Enforcement Officer upon execution of the seizure.

#### 21-103 Protection of the Impounded Property

During that period preceding resolution of the case, all impounded property shall be kept under the protection of the Law Enforcement Department, in whatever facility or structure is appropriate to best preserve the property from impairment or destruction.

#### 21-104 Return of Impounded Property

Upon judgment and payment of any fines assessed by the Court, all impounded property being held under the protection of the Seneca Nation Law Enforcement Department shall be returned forthwith to the defendant after presentation of the receipt issued upon seizure of the property.

#### 21-105 Confiscation of Impounded Property

In the event the defendant in any action before the

Peacemaker's Court for a violation of any Seneca Nation ordinance or law shall fail to appear in said Court as ordered by summons issued by the Seneca Nation Law Enforcement Department, all property duly recorded and being held under impoundment and in the protective custody of said Law Enforcement Department, shall be ordered by the Court to be forthwith sold at public auction, the proceeds of which shall be returned to the Court in satisfaction of the judgment or fine.

#### 21-106 Notice of Public Sale

Notice of the public auction shall be made by publication, in at least two local newspapers, two weeks prior to such sale, stating the purpose as satisfaction of judgment in default of payment of fines, so as to provide notice to the defendant that he shall have an opportunity to repurchase any item of his personal property to be sold at the auction.

#### 21-107 Return of Property Prior to Public Auction

At any time prior to the Public Auction of confiscated personal property under impoundment by the Peacemaker's Court as a result of unsatisfied judgment or fine, the defendant shall have the right to remit to the Court that amount which is owed by virtue of the judgment or fine, and shall, upon request of the court, be entitled to regain the possession of his property forthwith.

### Article 22. Proceeding Against Body or Officer of the Seneca Nation Tribal Council

#### 22-101 Nature of Proceeding

Relief obtained by writs of mandamus or prohibitions shall be obtained in a proceeding under this article. Except where otherwise provided by law, a proceeding under this article shall not be used to challenge a determination:

(a) Which is not final or can be adequately reviewed by appeal to the Seneca Nation Appellate Court or to some other body, or officer or where the body or officer making the determination is expressly authorized by ordinance to rehear the matter upon petitioner's application unless the determination to be reviewed was made upon a rehearing, or a rehearing has been denied, or the time within which the petitioner can procure a rehearing has elapsed; or

(b) Which was made in a civil action unless it is an order summarily punishing a contempt committed in the presence of the court.

#### 22-102 Parties: Definition

(a) Body or Officer: Includes every Seneca Nation court, tribunal, board, corporation, officer, or other person, or aggregation of persons whose action may be affected by a proceeding under this article.

(b) Persons whose terms of office have expired; successors. Whenever necessary to accomplish substantial justice, a proceeding under this article may be maintained against an ~~officer exercising judicial or quasi-judicial functions, or member of a body whose term of office has expired.~~ A notice of the proceeding shall be served upon the Clerk of the Nation, and any party may join the successor of such officer or member of a body, or other person having custody of the record of proceedings under review.

(c) Prohibition in favor of another: Where the proceeding is brought to restrain the Council or a Nation official from proceeding without or in excess of jurisdiction in favor of another, the latter shall be joined as a party.

(d) Other Interested Persons: The court may direct that notice of the proceeding be given to any person. It may allow other interested persons to intervene.

#### 22-103 Questions Raised

The only questions that may be raised in a proceeding under this article are:

(a) Whether the Tribal Council or Nation official failed to perform a duty enjoined upon it by law; or

(b) Whether the Council or Nation official proceeded, is proceeding, or is about to proceed without or in excess of jurisdiction; or

(c) Whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion as to the measure or mode of penalty or discipline imposed; or

(d) Whether a determination made as a result of a hearing held, and at which evidence was taken, pursuant to direction by law is, on the entire record, supported by substantial evidence.

#### 22-104 Procedure

(a) Where Brought: A proceeding under this article shall be brought in the Seneca Nation Peacemaker's Court, in a Special Proceeding.

(b) Time for Service of Notice of Petition and Answer: Unless the Court grants an Order to Show Cause to be served in lieu of a notice of petition at a time and in a manner specified therein;

(1) A notice of petition, together with the petition, and affidavits specified in the notice shall be served on any adverse party at least twenty (20) days before the time at which the petition is noticed to be heard;

(2) An answer and supporting affidavits, if any, shall be served at least five (5) days before such time as the petition is to be heard;

(3) A reply together with supporting affidavits, if any, shall be served at least one day before such time;

(4) In the case of a proceeding pursuant to this article against any Seneca body or officers commenced either by order to show cause, or notice of petition must be served upon the Clerk of the Nation, in the reservation where the action is pending.



(c) Pleading: There shall be a verified petition, which may be accompanied by affidavits or other written proof. Where there is an adverse party there shall be a verified answer, which must state pertinent and material facts showing the grounds of the respondent's action complained of. There shall be a reply to a counterclaim denominated as such and there shall be a reply to new matter in the answer or where the accuracy of the proceedings attached to the answer is disputed.

(d) Answering Affidavits. Record to be Filed; Default:

(1) The Council or Nation official shall file with the answer a certified transcript is on file with the Clerk of the Nation. The defendant shall also serve and submit with the answer affidavits or other written proof showing evidentiary facts as shall entitle him to a trial of any issue of fact.

(2) The court may order the body or officer to supply any defect or omission in the answer, transcript or an answering affidavit. Statements made in the answer, transcript or an answering affidavit are into conclusive upon the petitioner.

(3) Should the body or officer fail either to file and serve an answer or to move to dismiss, the court may either issue a judgment in favor of the petitioner or order than an answer be submitted.

(e) Objections in Point of Law: The defendant may raise an objection in point of law by setting forth in his answer or by a motion to dismiss the petition, made upon notice within the time allowed for answer. If the motion is denied, the court shall permit the defendant to answer, and unless the order specifies otherwise, the answer shall be served and filed within five (5) days after service of the order with notice of entry. The petitioner may renotice the matter for hearing upon two (2) days notice. The petitioner may raise an objection in point of law to new matter contained in the answer by setting forth in his reply or by moving to strike such matter on the day the petition is noticed or re-noticed to be heard.

(f) Hearing and Determination; Transfer to Tribal Council:

(1) Where an issue specified in Rule 3, Section (d) is not raised, the court in which the proceeding is commenced shall itself dispose of the issues in the proceeding. Where such an issue is raised, the court shall make an order directing their proceeding be transferred for

disposition to the next regularly scheduled session of the appellate division held within the Seneca Nation Tribal Council;

(2) The court may pass an objections in point of law;

(3) When the proceeding comes before it, whether by appeal or transfer, the Appellate Court shall dispose of all issues in the proceeding. Where papers are insufficient, the court may remit the proceeding.

(g) Trial: Where a tribal issue of fact arises, it shall be tried forthwith. Where the proceeding was transferred to the appellate division, the issue or fact may be tried de novo by the Appellate Court, and the verdict, report, or decision rendered after the trial shall be returned to, and the order thereon made by, the Appellate Court;

(h) Stay: On a motion by any party or on its own initiative, the court must stay further proceedings, or the enforcement of any determination under review, upon terms, including notice, security and payment of costs, except that an order issued by the appellate division in a proceeding under this article may be stayed only by order of the Appellate Court.

(i) Judgment: The judgment may grant the petitioner the relief to which he is entitled, or may dismiss the proceeding either on the merits or with leave to renew. If the proceeding was brought to review a determination, the judgment may annul or conform the determination in whole or in part, or modify it, and may direct or prohibit specified action by the defendant. Any restitution or damages granted to the petitioner must be incidental to the primary relief sought by the petitioner, and must be such as he might otherwise recover on the same set of facts in a separate action or proceeding usable in the Peacemaker's Court against the same body or officer in its or his official capacity.

### Article 23. Conservation Violations

#### 23-101 Jurisdiction

The Peacemaker's Court shall have jurisdiction of all violations of the Fishing and Conservation Laws of the Seneca Nation, including all Environmental laws and those hereinafter enacted, which

take place within the exterior boundaries of the Seneca Reservations, pursuant to Council resolution.

23-102 Court Organization - Peacemakers

- (a) The Conservation Court shall consist of at least two (2) Peacemakers, who shall hear the case, and a concurrence of two (2) shall be necessary to a determination

23-103 Court Procedures - General

- (a) Sessions - Sessions for the Conservation Court shall be prosecution by the Conservation Officer issuing the summons, within five (5) days of issuance.

(b) Defendant Representative - A person appearing in Conservation Court shall have the right to be represented by a spokesperson or an attorney at his/her own expense, provided such person or attorney has made proper application to the Court for admission to practice before it.

(c) Practice Before Court - The Conservation Court shall adopt the regulations and standards for admission to practice before the Court, as found in Section 4-106 of the C.P.R.

(d) Judicial Duty - It shall be the duty of the Court to Judge all cases brought before it by duly authorized enforcement personnel. This Court shall decide in a fair and just manner whether violations of the Conservation, Fishing or Environmental laws of the Seneca Nation have been committed.

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(e) The Court shall collect all penalties and other monies generated through enforcement of these ordinances and transmit them to the Tribal Office of Fiscal Affairs.

23-104 Appeals

Any person found in violation of the Fishing, Conservation or Environmental laws of the Seneca Nation may at the time of judgement request a review by the Appellate Court of the Seneca Nation and must give written notice within thirty (30) days after the Court decision and proceed under Article 13 of the Rules of Civil Procedure for the

Seneca Nation Peacemakers Court. The Appellate Court shall review the cases and by a majority vote, affirm or reverse the judgment or reduce the penalty imposed. If the decision is reversed or penalty modified, any monies due the defendant will be refunded. In any case where the party has perfected the right to review as established in Article 13, the judgment of the Court shall not be executed until after final disposition by the Appellate Court.

#### 23-105 Witnesses: Subpoenas

The Peacemakers shall have the power to issue subpoenas for the attendance of witnesses who are residents of the Seneca Reservations, on the request of any party to the case, which shall be the signature of the Peacemaker issuing it. Service of subpoenas shall be by enforcement personal. Witnesses shall testify under oath.

#### 23-106 Default Judgements

(a) Defendant - Upon failure of a defendant to appear within one (1) hour of the time stated in the summons, the enforcement officer may proceed to offer evidence including proof of service, and the Court may render a civil default judgment, ~~including forfeiture of property seized by the enforcement officer~~ provided that the defaulting party may apply in writing to the Court for a new trial within ten (10) days of entry of judgment, after showing good cause for his failure to appear. The Court shall have the sole discretion to determine if there should be a new trial or may affirm the judgment of default.

(b) Plaintiff - Upon failure of the enforcement officer to appear at the time set for hearing without just, the Court may dismiss the cause with prejudice, which will bar future action.

#### 23-107 Enforcement of Judgments

(a) A judgment assessing a money penalty against a defendant shall be considered a lawful debt due the Seneca Nation of

Indians. The Nation may bring suit in any federal court to collect such debt.

#### 23-108 Penalties

(a) All penalties assessed shall be in accordance with the provisions set forth in the Fishing and Conservation Laws of the Seneca Nation, to wit, a CIVIL compromise of up to \$500.00 may be imposed for each violation of the Seneca Nation hunting, fishing or conservation laws, or as is deemed just and proper in the discretion of the Court.

(b) Any person adjudged to have violated Seneca Nation Conservation, Fishing or Environmental Law shall be subject to a penalty as described by Seneca Law.

(c) The Court may in its discretion, in addition to the above mentioned penalties, revoke or suspend the permit of any violator of these ordinances, or invoke any other equitable remedy.

(d) In addition, any equipment used in violation which shall be seized and impounded will be returned only upon payment of penalty assessed. Procedures for the sale of property ordered confiscated or forfeited shall be governed by Article 21 of the Peacemakers Court C.P.R.

#### Article 24. Evictions

#### 24-101 Definitions

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a. Eviction - A legal proceeding by a party to recover possession of real property by force or process of law.

b. Adverse Possession - Acquiring title to land as against all others including the owner of record by open, notorious exclusive and continuous occupancy for the period prescribed by law.

c. Landowner/Landlord - Owner/Lessor of real property; one who surrenders the right to use the property for a specified period of time in exchange for rent money.

d. Tenant - One who is given possession of real estate for a fixed period or at will (a definite period).

e. Holdover Tenant - A tenant who remains in possession of real

property after the expiration of the term agreed upon.

#### 24-102 Jurisdiction

The Peacemakers Court shall have jurisdiction of actions to recover possession of real property within the exterior boundaries of the Seneca Reservations.

#### 24-103 Court Organization

(a) Peacemakers where title to land is at issue at least two Peacemakers may hear the case, and a concurrence of two shall be necessary to make a determination.

(b) Where title to land is not at issue (as in holdover tenancy) upon petition accompanied by a sworn affidavit one Peacemaker may issue an order to vacate ex parte; provided a hearing on the matter may be held under (a) of this section. (

#### 24-104 Appeals

Any person found to be in unlawful possession of real property may at the time of judgment request a review by the Nation Appellate Court as governed by Article 13 of the Rules of Civil Procedure for the Peacemakers Court.

#### 24-105 Evidence

Production of evidence at hearing shall be governed by Article 19 of the C.P.R.

#### 24-106 Witnesses; Subpoenas

The Court shall have the power to issue subpoenas for the attendance of witnesses who reside on the Seneca Reservations at the request of any party to the action which shall be the signature of the

issuing Peacemaker. Service shall be pursuant to C.P.R. rule 5-103(D). Witnesses shall testify under oath.

#### 24-107 Default Judgments

(a) Defendant - Upon failure to appear by the defendant the plaintiff may proceed to offer evidence, including proof of service and the Court may render a default judgment where title to land is at issue. Where proof of ownership at issue, upon failure to appear the order to vacate is final after 10 days.

(b) Plaintiff - Plaintiff's failure to appear without just cause will result in a dismissal with prejudice which will bar future action.

#### 24-108 Venue

The place of hearing shall be the Peacemakers Court, for the reservation in which the real property is situated.

#### 24-109 Court Procedures: General

(a) Hearings - The merits of the case will be governed by Article 10 of the Peacemakers Court C.P.R.

(b) Defendant Representative - A person appearing before the Peacemakers Court shall have the right to be represented by a lay advocate or an attorney at his/her own expense, provided such advocate/attorney has made proper application to the Court for admission to practice, as provided in Section 4-106 of the Peacemakers Court C.P.R.

(c) Judicial Duty - It shall be the duty of the Peacemakers to judge each case before it in a fair and just manner, deciding whether the action complained of has been committed.

#### (d) Title

(i) Upon issuance of an ex parte determination and order, the order to vacate shall be returnable to the Peacemakers Court within the (10) days of service by the Nation Marshal unless the defendant vacates and the defendant shall have the opportunity to show cause why he/she should not be ordered to vacate the premises. After 10 days the order becomes final upon failure to appear.

(ii) Rent Upon issuance of an ex parte determination and order to vacate, the tenant has 72 hours to vacate the premises, or such time as the Court deems reasonable. Defendant's failure to vacate will result in physical removal from the premises by the Nation Marshals.

(e) Defenses - It shall be a defense to an action to recover possession of real property:

- (1) proof of ownership
- (2) payment of rent or forgiveness.

Article 25. Seneca Nation Housing Authority  
Summary Proceeding To Recover Possession  
Of Realty (Summary Eviction)

25-101 Definitions

- a. Homebuyer - one who is in one of the HUD Programs that is designed for eventual home ownership.
- b. Landowner/Landlord - owner/lessor of real property; one who surrenders the right to use the property for a specified period of time in exchange for rent money.
- c. Mortgage - a written instrument that creates a lien upon real estate as security for the payment of a specified debt.
- d. Mortgagee (creditor) - one who holds a lien on real property or title to property as security for a debt.
- e. Mortgagor (debtor) - one who pledges real property as security for a loan.
- f. Summary Eviction - a special proceeding to recover possession of real property in an expedited manner.
- g. Tenant - one who is given possession of real property for a fixed period or at will.

25-102 Jurisdiction

1. The place of hearing is the reservation where the real property is located. However, a change of venue to the other reservation may be granted at the discretion of the Peacemaker Judge in accordance with the Seneca Nation Scope of Rules. See Scope of Rules Article 3.



2. This proceeding does not try title but does try right to possession.

25-103 Grounds for Proceeding

1. The tenant/mortgagor/homebuyer has held over beyond the expiration date of his/her term.

2. The tenant/mortgagor/homebuyer has defaulted in the payment of rent or mortgage, after proper demand for payment has been made.

3. The tenant/mortgagor/homebuyer is using the premises for some business or purpose illegal under Seneca Law.

4. The person in possession willfully or negligently causes a serious and continuing health hazard to exist on the premises, or causes extensive and continuing physical injury to the premises.

25-104 Commencement of Action

1. Complaint is filed with the Clerk of the Peacemaker Court. See Scope of Rules Article 5 Section 5-101 and 7-102.

2. The Clerk of the Peacemaker's Court then issues a summons commanding the defendant to appear for a hearing on a date within 7 days of the issuance of the summons. See Scope of Rules Article 5 Section 5-102, 7-103.

3. The Summons shall inform the defendant that if he/she pays all cost due and owing prior to the convening of the hearing, court cost will be avoided. Process (summons and complaint) must be served not less than three (3) days before the hearing date and is normally served by the Marshal of the Seneca Nation or S.N.I. Law Enforcement Officer.

25-105 Manner of Service

1. Personal Service

a. Personal service of the summons and complaint shall be in person upon the principal tenant/mortgagor/homebuyer or upon any occupant of the house who is of suitable age and discretion.

b. Service shall be complete immediately upon personal

delivery.

c. Where personal service is had, service shall be made by the Marshal of the Seneca Nation or S.N.I. Law Enforcement Officer.

d. Filing of proof of service shall be with the Clerk of the Peacemaker's Court. Proof of service shall identify the person served and state the date, time, and place of service.

## 2. Alternate Service

a. If personal service is impracticable, service may be made by the Marshal of the Seneca Nation or S.N.I. Law Enforcement Officer by affixing a copy of the summons and complaint upon a conspicuous part of the property sought to be recovered.

b. In addition, within 24 hours after such affixing, the summons and complaint shall be mailed by registered or certified mail.

c. Service shall be complete upon the filing of proof of service with the Clerk of the Peacemaker's Court.

3. A person domiciled in the Seneca Nation or subject to the jurisdiction of the courts of the Seneca Nation under Article 2 of the Scope of Rules, or his/her executor or administrator, may be served with the process (summons and complaint) outside the Seneca Nation, in the same manner as service is made within the Nation.

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## 25-106 Contents of Complaint (See Scope of Rules Article 5 Section 5-102 (c), 7-102)

### 1. Every complaint shall inter alia.

a. State the interest of the plaintiff in the premises from which removal is sought.

b. State the defendant's interest in the premises and his relationship to plaintiff with regard thereto.

c. Describe the premises from which the special proceeding is based.

d. State the facts from which the special proceeding is based.

e. State the relief sought. The relief may include inter alia; a judgment for rent due, for court costs (except not for attorney's fees) and for possession of the premises.

f. Briefly describe the type of program in which the defendant is involved (Rental or homebuyer).

#### 25-107 Answer

1. If the defendant wishes to answer he/she must do so in writing either before or on the date set in the summons or orally by appearing on the date set in the summons.

2. If the defendant pays all cost due and owing prior to the hearing date, court cost will be waived.

#### 25-108 Appearance

1. If the defendant has been served and fails to appear, the Judge may enter judgment in the landlords favor.

2. If the defendant appears at the stated time, the matter must be heard then, unless the court for a good cause adjourns the hearing.

3. Plaintiff's failure to appear without just cause may result in a dismissal with prejudice.

#### 25-109 Judgment

~~1. The Court shall direct that a final judgment be entered determining the rights of the parties. The judgment shall award court costs, except attorney's fees, to the successful party.~~

2. If the landlord/mortgagee/landowner is held entitled to possession, the Court shall issue an order directing restitution of possession and an order of eviction against the tenant/mortgagor/homebuyer. The writ may be issued forthwith if Inter alia:

a. The possessor has entered without "Color of title or other possessory interest".

b. The tenant/mortgagor/homebuyer is willfully or negligently causing a health hazard or seriously injuring the premises.

c. If the reason for eviction is failure to pay rent.

3. The tenant/mortgagor/homebuyer shall be given at least 72 hours notice in writing of the eviction order unless the Judge determines that the order should be issued forthwith. Defendant's failure to vacate will result in physical removal from the premises by the S.N.I.'s Marshals or S.N.I. Law Enforcement.

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# Seneca Nation of Indians

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Tel. (716) 532-4907  
FAX (716) 532-9132



Treasurer - Rae L. Snyder

P.O. BOX 231  
SALAMANCA, NEW YORK 14779

Tel. (716) 945-1790  
FAX (716) 945-3917

At the Special Session of Council  
of the Seneca Nation of Indians,  
held on May 4, 1994, at the William  
Seneca Administration Building on  
the Cattaraugus Indian Reservation,  
Irving, NY 14081

EXECUTIVES PRESENT:

ROSS JOHN, SR. - ACTING CHAIRMAN  
BARBARA A. HEMLOCK - CLERK  
RAE L. SNYDER - TREASURER

JUDICIAL/SECTION 22-105/UNAVAILABILITY OF PRE-JUDGMENT RELIEF

MOTION: by Richard Jemison, seconded by Rickey Armstrong, that  
Tribal Council approves the additional section added to the  
existing Civil Procedure Rules for the Surrogate's and the  
Peacemaker's Court of the Seneca Nation, as follows:

Section 22-105 Unavailability of Pre-Judgment Relief

Notwithstanding any other law or rule contained in the Civil  
Procedure Rules, in any proceeding under this article,  
temporary or pre-judgment relief against a body or officer  
shall not be available. Although injunctive relief may  
still be sought, that relief may only be granted by the  
court following the exchange of pleadings, the completion of  
all discovery and a written decision by the court concerning  
any objections in point of law. Relief granted by the court  
shall be immediately appealable on an expedited basis to the  
Court of Appeals, which shall hear and determine the matter  
within 24 hours. Determinations of the Court of Appeals  
under this article shall be immediately appealable on an  
expedited basis to the Nation's Council, which shall hear  
and determine the matter within 24 hours. The Nation's  
Council shall have authority to issue a stay of an order  
issued by any court under this article until the Council  
shall have an opportunity to hear and determine the issues  
raised in the proceeding.

JUDICIAL/SECTION 22-105/UNAVAILABILITY OF PRE-JUDGMENT RELIEF  
SPECIAL COUNCIL SESSION  
MAY 4, 1994  
PAGE 2

This Section will take effect immediately and be applicable  
to all actions or proceedings commenced on or after May 1,  
1994.

All In Favor.

MOTION CARRIED

-----  
CERTIFICATION

I hereby certify that the foregoing extract is a true and correct  
copy from the Minutes of the Special Session of Council of the  
Seneca Nation of Indians held on May 4, 1994, original of which  
is on file in the Clerk's Office of the Seneca Nation of Indians:

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and  
cause the seal to be affixed at the William Seneca Administration  
Building on the Cattaraugus Indian Reservation, Irving, New York,  
on the 5th day of May, 1994.

ATTEST:

Barbara A. Hemlock  
BARBARA A. HEMLOCK, CLERK  
THE SENECA NATION OF INDIANS

( S E A L )

# Seneca Nation of Indians

President - Barry E. Snyder, Sr.  
Clerk - Barbara A. Hemlock

1490 ROUTE 438  
IRVING, NEW YORK 14081

Tel. (716) 532-4900  
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Treasurer - Rae L. Snyder

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SALAMANCA, NEW YORK 14779

Tel. (716) 945-1790  
FAX (716) 945-3917

At the Special Session of Council  
of the Seneca Nation of Indians,  
held on May 9, 1994, at the William  
Seneca Administration Building on  
the Cattaraugus Indian Reservation,  
Irving, NY 14081

EXECUTIVES PRESENT:

ROSS JOHN, SR. - ACTING CHAIRMAN  
BARBARA A. HEMLOCK - CLERK  
RAE L. SNYDER - TREASURER

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CIVIL PROCEDURE RULES/ARTICLE 22-106

MOTION: by Richard Jemison, seconded by Karen Bucktooth, that  
Tribal Council approves the following resolution:

WHEREAS, the Seneca Nation of Indians Civil Procedure Rules Law  
requires that plaintiff to give an undertaking in actions  
and proceedings of extraordinary nature to cover costs for  
the defendant if the plaintiff is not successful in its  
action (Art. 14, Injunctions, Section 14-101(2)(b) Undertak-  
ing; Art. 15, Attachment, Section 15-107, Motion Papers;  
Undertaking, Filing; Demand; Damages; and,

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WHEREAS, there is no present Undertaking provision in the ex-  
traordinary action of relief in the nature of an injunction,  
show cause, temporary restraining orders against a Nation  
official or one of its units;

BE IT THEREFORE RESOLVED, that Article 22 is hereby amended,  
adding a new Section 22-106, Undertaking as follows:

Section 22-106. Undertaking Requirement

CIVIL PROCEDURE RULES/ARTICLE 22-106  
SPECIAL COUNCIL SESSION  
MAY 9, 1994  
PAGE 2

To bring or maintain any action against the Council or one of the Nation's agencies or against one of its officials, the petitioner must file an Undertaking Bond with the Clerk of the Nation for a minimum of \$20,000.00 which shall be automatically forfeited for costs, including court cost and attorney fees to be paid by then Nation/Council or by an officer. The Clerk shall require an increase in the amount of the bond if in the Clerk's judgment the costs exceed the amount originally filed. No action or proceeding can begin or continue in any court unless the Clerk of the Nation notifies the Clerk of the Court that the Undertaking Requirement is satisfied.

This law shall take effect immediately and is applicable to any pending action.

All In Favor.

MOTION CARRIED

CERTIFICATION

I hereby certify that the foregoing extract is a true and correct copy from the Minutes of the Special Session of Council of the Seneca Nation of Indians held on May 9, 1994, original of which is on file in the Clerk's Office of the Seneca Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and cause the seal to be affixed at the William Seneca Administration Building on the Cattaraugus Indian Reservation, Irving, New York, on the 10th day of May, 1994.

ATTEST:-

Barbara A. Hemlock  
BARBARA A. HEMLOCK, CLERK  
THE SENECA NATION OF INDIANS

(SEAL)



# Seneca Nation of Indians

President - Rickey L. Armstrong, Sr.  
Clerk - Sheila L. Kettle

P.O. BOX 231  
SALAMANCA, NEW YORK 14779

Tel. (716) 945-1790  
FAX (716) 945-1565



Treasurer - Shelley R. Huff

12837 ROUTE 438  
IRVING, NEW YORK 14081

Tel. (716) 532-4900  
FAX (716) 532-6272

AT THE REGULAR SESSION OF COUNCIL OF THE  
SENECA NATION OF INDIANS HELD ON MAY 8, 2004,  
AT THE G.R. PLUMMER BUILDING ON THE  
ALLEGANY INDIAN RESERVATION, SALAMANCA,  
NEW YORK 14779

CN: R-05-08-04-15

EXECUTIVES PRESENT:

PRESIDENT - RICKEY L. ARMSTRONG, SR.  
CLERK - SHEILA L. KETTLE  
TREASURER - SHELLEY R. HUFF

## REVISED FEE SCHEDULE/SENECA NATION OF INDIANS PEACEMAKERS AND SURROGATES COURT CIVIL PROCEDURES RULES/APPROVAL

MOTION: by Duane J. Ray, seconded by Adrian V. Stevens, that Tribal Council approves the following recommendations from the Judicial Committee for a revised fee schedule to the Seneca Nation of Indians Peacemakers and Surrogates Court Civil Procedures Rules as follows:

### 4-105 Fee Schedules

Fee schedules shall be as follows:

|   | Current Fees | <i>Proposed Revised Fees</i> |
|---|--------------|------------------------------|
| A. Civil Actions                                |              |                              |
| 1. <u>Divorce / Separation</u>                  |              |                              |
| Marshall Fee                                    | \$25.00      | \$100.00                     |
| Court Recorder Fee                              | \$35.00      | \$50.00                      |
| Peacemakers Fee (3 x \$30 / session)            | \$105.00     | \$225.00                     |
| Initial Filing Fee                              | \$100.00     | \$125.00                     |
| TOTAL COST (Paid in Full)                       |              | \$500.00                     |
| 2. <u>Annulment (uncontested)</u>               |              |                              |
| Fee   |              | \$200.00                     |
| 3. <u>Eviction and Show Cause Orders</u>        |              |                              |
| Marshall Fee                                    | \$25.00      | \$25.00                      |
| Filing Fee                                      | \$10.00      | \$100.00                     |
| Senior Peacemakers Fee (Ex parte document sig.) | \$40.00      | \$50.00                      |
| TOTAL COST                                      |              | \$175.00                     |

REVISED FEE SCHEDULE/SENECA NATION OF INDIANS PEACEMAKERS AND SURROGATES  
COURT CIVIL PROCEDURES RULES/APPROVAL  
REGULAR SESSION OF COUNCIL  
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|    |  |          |                 |
|----|--|----------|-----------------|
| 4. | <u>Land Dispute</u>  |          |                 |
|    | Marshall Fee/Survey  | \$25.00  | \$25.00         |
|    | Filing Fee   | \$10.00  | \$10.00         |
|    | Peacemakers Fee  | \$105.00 | \$225.00        |
|    | Court Recorder Fee   | \$35.00  | \$50.00         |
|    | TOTAL COST   |          | \$310.00        |
| 5. | <u>Name Change Action (Adults, No fee for minors 18 &amp; under)</u> |          |                 |
|    |  | \$10.00  | \$25.00         |
| 6. | <u>Peacemakers Additional Sitting</u>                                | \$35.00  | \$75.00         |
| 7. | <u>Emancipation of Minors</u>  |          | No Fee          |
| 8. | <u>Assessors Fee - per evaluation (for Court appearances)</u>        |          | \$75.00         |
| 9. | <u>Xerox Copies and Transcripts</u>                                  |          | \$1.00 per page |

Assessor's fee may be paid in conjunction with Court action wherein the service is performed for the Court.

Where requested by plaintiff is indigent, the Court may at its discretion waive the assessor's fee.

Where the plaintiff or defendant is indigent, all Peacemakers Court fees shall be waived; the burden of proof shall be on the moving party claiming the indigent status to establish by a preponderance of the evidence that the indigency does exist.

All fees are payable to "The Seneca Nation of Indians"

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REVISED FEE SCHEDULE/SENECA NATION OF INDIANS PEACEMAKERS AND SURROGATES  
 COURT CIVIL PROCEDURES RULES/APPROVAL  
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SURROGATE'S COURT FEES

|  | <u>CURRENT FEES:</u> | <u>PROPOSED FEES:</u> |
|--|----------------------|-----------------------|
| ADMINISTRATION PAPERS, EXECUTOR & LETTERS OF TESTAMENTARY                              | \$35.00              | \$35.00               |
| APPLICATION OF FIDUCIARY TO RESIGN   | \$15.00              | \$15.00               |
| APPOINTMENT OF GUARDIAN  | \$7.00               | \$10.00               |
| GUARDIANSHIP, PERMANENT  | \$10.00              | \$10.00               |
| GUARDIANSHIP, TEMPORARY  | \$10.00              | \$10.00               |
| APPOINTMENT OF SUCCESSOR CUSTODIAN   | \$7.00               | \$10.00               |
| CERTIFIED COPIES OF PAPERS   | \$4.00               | \$ 5.00               |
| COPIES (XEROX-PER PAGE)  | \$0.15               | \$ 1.00               |
| DEEDS, (ADMIN / EXECUTOR)  | \$10.00              | \$15.00               |
| DEEDS, (RECORDING OF-PER PAGE)   | \$3.00               | \$ 1.00               |
| FURNISHING A TRANSCRIPT OF A DECREE, (PER PAGE)  | \$7.00               | \$ 2.00               |
| OBJECTION OR ANSWER IN PROCEEDING OTHER THAN PROBATE                                   | \$35.00              | \$35.00               |
| OPEN SAFE DEPOSIT BOX  | \$7.00               | \$10.00               |
| PETITION TO COMPEL FIDUCIARY TO ACCOUNTING   | \$15.00              | \$15.00               |
| POWER OF ATTORNEY (FILING FEE)   | \$5.00               | \$ 5.00               |
| PROCEEDINGS AGAINST A FIDUCIARY  | \$10.00              | \$10.00               |
| PROCEEDINGS TO DISCOVER PROPERTY   | \$35.00              | \$35.00               |
| RECORDING OF DOCUMENTS IN SURROGATE'S RECORD (PER PAGE)                                | \$3.00               | \$ 2.00               |
| SUSPEND, MODIFY, REVOKE LETTERS OR REMOVE A CUSTODIAN OR GUARDIAN                      | \$15.00              | \$15.00               |
| SUSPEND, MODIFY, REVOKE LETTERS OR REMOVE A FIDUCIARY OTHER THAN CUSTODIAN OR GUARDIAN | \$35.00              | \$35.00               |
| CONTEMPT OF COURT  | \$75.00              | \$100.00              |
| WILL, (COMPEL PRODUCTION OF)   | \$7.00               | \$35.00               |
| FILING FEE   | \$5.00               | \$ 5.00               |
| WILL, (CONSTRUCTION OF)  | \$35.00              | \$35.00               |
| WILL (PROBATE OF)  | \$15.00              | \$25.00               |
| FILING FEES  | \$25.00              | \$25.00               |

1. Statement of monies received from insurance policies of the deceased.
2. Statement of Distribution of monies from insurance policies, or bank accounts of the deceased.
3. Statement of funeral expenses- unpaid or paid in full from Funeral Home
4. Statement of Administration expenses - Paid in full
5. Statement of unpaid expenses, Medical, Creditors claim, etc.
6. Any Deeds or land descriptions pertaining to this estate.

REVISED FEE SCHEDULE/SENECA NATION OF INDIANS PEACEMAKERS AND SURROGATES  
COURT CIVIL PROCEDURES RULES/APPROVAL  
REGULAR SESSION OF COUNCIL  
MAY 8, 2004  
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## PEACEMAKER'S COURT FINES

| PEACEMAKER'S COURT FINES            |  |   |                |                             |                |
|-------------------------------------|--|---|----------------|-----------------------------|----------------|
| VIOLATION                           | 1ST<br>OFFENSE   | 2ND<br>OFFENSE  | 3RD<br>OFFENSE | PLUS                        | COURT<br>COSTS |
| FISHING                             | \$ 100.00  | \$ 500.00   | \$ 1,000.00    | Denial To Purchase Permit   | \$ 150.00      |
| HUNTING                             | \$ 100.00  | \$ 1,000.00   | \$ 5,000.00    | No Return of Firearm (gun)  | \$ 150.00      |
| TRESPASS                            | \$ 50.00   | \$ 500.00   | \$ 1,000.00    |                             | \$ 150.00      |
| ATV & SNOWMOBILES                   | \$ 50.00   | \$ 100.00   | \$ 500.00      | Liable For Property Damage  | \$ 150.00      |
| DOG CONTROL / PLUS                  | \$ 25.00   | \$ 100.00   |                | Food & Shelter Costs **     | \$ 150.00      |
| LITTERING                           | \$50-\$100.00  | \$ 200.00   | \$ 500.00      | 2-3 Days Community Service* | \$ 150.00      |
| GARBAGE DUMPING                     | \$ 50.00   | \$ 200.00   | \$ 500.00      | Indigent Party              | \$ 150.00      |
|                                     |  | Section - 201 A, B Indigent Party / Community Service * |                |                             | \$ 150.00      |
| LITTER/ LEASED LANDS                | Not more than \$1,000.00 [ Nation attorney agreement with violator ]   |   |                |                             | \$ 150.00      |
| WASTE DISPOSAL                      | Seize equipment, vehicles or other equipment used to transport   |   |                |                             |                |
|                                     | Not to exceed \$5,000.00 escrow bond, Plus Court Costs   |   |                |                             | \$ 150.00      |
| TIMBER - CIVIL FINE                 | Not to exceed \$5000.00 escrow bond , Plus Court Costs   |   |                |                             | \$ 150.00      |
| TIMBER ORDINANCE                    | Civil Fines Plus Damages   |   |                |                             |                |
| ALCOHOL BEVERAGES                   | NOT MORE   | NOT MORE  | NOT MORE       | NOT MORE                    | \$ 150.00      |
| Sec/ 7 No More Than:                | THAN   | THAN  | THAN           | THAN                        |                |
| Liquor Ord 89-01... 1/24/1990       | \$ 5,000.00  | \$ 5,000.00   | \$ 5,000.00    | \$5,000.00                  |                |
| Indigency: CPR Sec 4-102 (b)        | Indigent Part - Court may order Indigent Party to make restitution to the injured party by community service or such means as the Court deems just and proper. |   |                |                             | \$ 150.00      |
| UNLAWFUL DRUGS/ 1/21/1989           | Discretion of Judges   |   |                |                             |                |
| SNi Tribal Council Resolution       |  |   |                |                             | \$ 150.00      |
| *Judges Discretion                  |  |   |                |                             |                |
| **cost of Dog Pound when applicable |  |   |                |                             |                |
| dated 04/27/2004                    |  |   |                |                             |                |

REVISED FEE SCHEDULE/SENECA NATION OF INDIANS PEACEMAKERS AND SURROGATES  
COURT CIVIL PROCEDURES RULES/APPROVAL  
REGULAR SESSION OF COUNCIL  
MAY 8, 2004  
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ALL IN FAVOR

MOTION CARRIED


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CERTIFICATION

I hereby certify the foregoing extract is a true and correct copy from the minutes of the Regular Session of Council of the Seneca Nation of Indians held on May 8, 2004, on the Allegany Indian Reservation, original of which is on file in the Clerk's Office of the Seneca Nation of Indians.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the seal to be affixed at the G.R. Plummer Building on the Allegany Reservation, Salamanca, New York 14779, on the 12<sup>th</sup> day of May 2004.

ATTEST:

  
Sheila L. Kettle, Clerk  
SENECA NATION OF INDIANS

{SEAL}





## THE SENECA NATION OF INDIANS POSITION DESCRIPTION

POSITION TITLE: \_\_\_\_\_ Court Clerk \_\_\_\_\_ GRADE: \_\_\_\_\_ 8/NE

SUPERVISOR'S TITLE: \_\_\_\_\_ Administrative Judge \_\_\_\_\_ DEPT: \_\_\_\_\_ Judicial

DEPARTMENT HEAD: \_\_\_\_\_ DATE: \_\_\_\_\_

HUMAN RESOURCES: \_\_\_\_\_ DATE: \_\_\_\_\_

### BASIC FUNCTION:

Assist the assigned court Judge in research, analysis and administrative functions on a daily basis. Gathers statistical data generated through court activities in order to advise and assist the Court Judge in carrying out appropriate administration of the Court.

### GENERAL RESPONSIBILITIES:

1. Exercise confidentiality in all matters.
2. Must have thorough working knowledge of the Court rules and procedures.
3. Assist clients in filling out appropriate documents.
4. Must have working knowledge of procedures and processes for the preparing of notification (Due Process requirements for notices) court orders, entries, legal correspondence, taking of appropriate notes in Court proceedings, documents relating to the types of hearings and filings, prepares calendar of court cases to be called.
5. Assist the Judge in analyzing law sources such as statutes, recorded Judicial decisions that will be imputed into a database.
6. Assist the Judge(s) in researching Federal Indian State and Tribal Laws, Ordinances and statutes to assist in updating and maintaining current up to date case precedent decisions.
7. Records minutes and transcribes proceedings in a timely manner.
8. Maintains an up to date file on all Court cases.
9. Secures information for Judge(s) and contacts witnesses, Attorneys, Lay Advocates, litigants to obtain information for Court and informs parties when to appear.
10. Collect and records fines and fees and transmits money to the SNI Accounting Department.
11. Maintains effective working relationships with the public, Attorneys, law firms, Legal Agencies, Seneca Nation Child & Family Services, Human Services, County and State agencies, Courts, medical clinics, doctors, schools and/or other jurisdictions.
12. Assist the Judge with preparing the Budgets and assist the Administrative Judges in administering monthly and quarterly reports.
13. Prepares intake forms for litigants filing Writ of Permissions and delivers to SNI Clerk and other parties.
14. Maintains a neat and orderly work area.
15. Performs other duties as assigned.

### MINIMUM QUALIFICATIONS:

Associate's Degree in Legal studies and/or three (3) years experience in the legal field. Knowledge of the overall SNI Policies and Procedures. Legal terminology and dictation a must. Typing speed of 50 WPM, Notary preferred. Must be able to carry on the day-to-day operations of the Court in the absence of the Administrative Court Judge. Position is subject to pre-employment and random drug screens.

(This position description is not intended to be all-inclusive but to give a general outline of duties to be performed.)  
Reviewed 6/2006 HR

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