



Smith River Rancheria
140 Rowdy Creek Road
Smith River, CA 95567
Tel.: (707) 487-9255 Fax: (707) 487-0930

Kara Brundin Miller, Chairperson
Loren J. Bommelyn, Vice-Chairperson
Terile A. Keevil, Secretary
Denise L. Padgette, Treasurer

Marian M. Lopez, Council Member
Sharyne R. Harper, Council Member
Brock O. Richards, Council Member
Russ Crabtree, Tribal Administrator

RESOLUTION NO. 06—10

DATE APPROVED: April 25, 2006

RESOLUTION: To authorize and approve the Smith River Rancheria Tribal Court Ordinance

WHEREAS: The Smith River Rancheria is a federally recognized Indian tribe located in the State of California and organized pursuant to the Constitution of the Howonquet Indian Council of the Smith River Rancheria which was duly adopted by the members of the Smith River Rancheria; and

WHEREAS: The Smith River Rancheria Tribal Council is the duly elected governing body of the Smith River Rancheria with the Constitutional duties and responsibilities to preserve, protect and promote the best interests of the Smith River Rancheria; and

WHEREAS: The Constitution of the Howonquet Indian Council of the Smith River Rancheria Article IV Section 1(a) delegated to the Tribal Council the power and authority to represent the Rancheria and act in all matters that concern the general welfare of the Rancheria, and Article IV Section 1(g) specifically delegated to the Tribal Council the power and authority to establish and prescribe rules for governing Rancheria courts; and

WHEREAS: Public Law 280, 28 U.S.C. 1360, does not divest the Tribe of its inherent sovereign authority to establish and operate its own judicial system; and

WHEREAS: The establishment of a Tribal Court is necessary to maintain peace and tranquility on tribal lands.

THEREFORE BE IT RESOLVED; that the Tribal Council of the Smith River Rancheria does hereby:

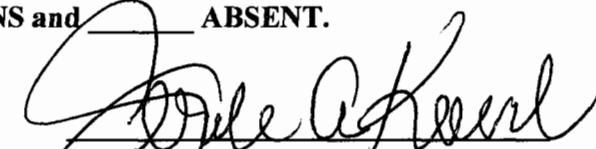
1. Authorize the adoption of the Tribal Court Ordinance as it is in the best interests of the membership and furthers the administration of justice within the Tribe's Jurisdiction; and
2. State that the Chairperson and Secretary of the Smith River Rancheria Tribal Council are hereby authorized to sign this Resolution and any and all other documents which are necessary to effectuate the intents and purposes of this Resolution.


Chairperson


Secretary

CERTIFICATION

I hereby certify that the Smith River Rancheria Tribal Council met in a duly called and noticed meeting on the 25th day of April 2006, at which ____ Tribal Council members were present to constitute a quorum and that this Resolution was approved by a vote of ____ FOR, ____ OPPOSED, ____ ABSTENTIONS and ____ ABSENT.


Secretary

TRIBAL COURT ORDINANCE

SMITH RIVER RANCHERIA TRIBAL COURT



ESTABLISHED BY RESOLUTION OF THE TRIBAL COUNCIL

OF THE

SMITH RIVER RANCHERIA

Adopted April 25, 2006

TABLE OF CONTENTS

SMITH RIVER RANCHERIA TRIBAL COURT ORDINANCE

TABLE OF CONTENTS

Summary Table of Contents	1
Section I. Establishment of the Smith River Tribal Court	2
Section II. Appropriations	2
Section III. Definitions	3
Section IV. Judicial Oversight Committee	3
A. Purpose of the JOC.....	3
B. Duties of the JOC	4
C. Structure, and Terms of Members of the JOC.....	4
D. Filing Vacancies on the JOC and Qualifications of Members	4
E. Authority and Decision-Making Process of the JOC	5
Section V. Jurisdiction and Powers	5
A. Civil Jurisdiction	5
B. Powers of the Tribal Court	6
C. Full Faith and Credit	6
D. Inclusion of Language from other Laws, Application of other Laws	7
E. No Acceptance of State Jurisdiction	7
Section VI. Judges	7
A. Types of Judges and Qualifications	7
B. Duties	7
C. Removal	8
D. Disqualification of Judges.....	9
E. Acting Judges.....	9
F. Compensation.....	9

Section VII. Court Clerk/Administrator 10
 A. Duties 10
 B. Hiring 11
 C. Qualifications 11
 D. Bond 11
 E. Seal 12
Section VIII. Court Procedures 12
 A. Civil, Criminal and Appellate Rules of Court 12
Section IX. Appeals 12
 A. Court of Appeal 12
 B. Composition and Jurisdiction 12
 C. Rules of Appellate Procedure 13
 D. Finality 13
Section X. Appearances 13
 A. Counsel or Spokesperson 13
 B. Self-representation 14
 C. Witnesses 14
Section XI. Records 14
 A. Docket 14
 B. Copies of Proceedings 14
 C. Copies of Laws 14
 E. Fee Schedule 15
Section XII. Diversion, Mediation and Family Unity..... 15
 A. Establishment and Purpose 15
Section XIII. Limitation of Actions and Sovereign Immunity 15
Section XIV. Effective Date 16
Section XV. Certification 16

I. Establishment of the Smith River Tribal Court

The Tribal Council of the Smith River Rancheria (the "Tribe") does hereby ordain as follows:

- (a) Public Law 83-280, (18 U.S.C. §1162; 28 U.S.C. §1360), did not divest the Tribe of its inherent sovereign authority to establish and operate its own judicial system.
- (b) The Courts of the State of California and Oregon lack jurisdiction over many civil disputes and criminal acts that occur on Tribal lands.
- (c) The establishment of a Tribal Court that can exercise jurisdiction over civil disputes and criminal acts occurring on Tribal lands and over members wherever situated, particularly those disputes and acts over which the Courts of the State of California and Oregon lack jurisdiction, is necessary to maintain peace and order on Tribal lands.
- (d) The adoption of this Ordinance is in the best interests of the members of the Tribe and furthers the administration of justice on lands and over persons within the Tribe's jurisdiction.
- (e) The Smith River Rancheria hereby establishes the Smith River Tribal Court. The Tribal Court shall consist of the following Divisions: 1) Administrative; 2) Civil; 3) Children's; 4) Juvenile; 5) Domestic Relations; 6) Natural Resources; 7) Probate and 8) Appellate. The Tribal Court is empowered to create such further specialized divisions as necessary to hear matters as defined in the Tribe's laws.
- (f) The Tribal Court shall be an independent branch of Tribal government. Tribal Court decisions and the administration of justice shall not be influenced by political or other governmental issues.

II. Appropriations

- (a) The Tribal Council shall appropriate and authorize the expenditure of Tribal funds for the operation of the Tribal Court. The amounts to be appropriated shall be consistent with the needs of the Tribal Court for proper administration of justice within Tribal Lands and for the Tribe as determined by the Tribal Council.
- (b) To assist the Tribal Council in making such appropriations, the Tribal Court Clerk/Administrator shall submit proposed budgets and reports of expenses and expenditures to the Tribal Council, at such intervals and in such form as may be prescribed by the Tribal Council.

III. Definitions

For the purpose of this ordinance the following words and phrases shall have the following meanings:

- (a) "Council" or Tribal Council" means the governing body of the Smith River Rancheria.
- (b) "Counsel" shall mean any person admitted to the legal bar of any state.
- (c) "Indian" shall be any person of Indian descent who is a member of any federally recognized Indian Tribe.
- (d) "Law" shall include tribal laws and custom, practice and traditions of the Tribe, as well as federal and state laws.
- (e) "Mediator" shall mean a professional mediator who is selected to mediate disputes between parties in the Tribe's Mediation Program.
- (f) "Spokesperson" shall mean any person not admitted to a bar of any state who is a tribal member, relative of a party, or other individual appointed by the party and speaks on behalf of a party to a case in the Tribal Court.
- (g) "Tribal Court" shall mean a court of the Smith River Rancheria unless the context indicates that another Tribe's court is intended.
- (h) "Tribal lands" shall mean the land bounded by Wilson Creek to the South, the Sixes River to the North, East to the watershed on the Coastal Range, and West to Point St. George Lighthouse in the Pacific Ocean, to the extent not inconsistent with federal law, as well as such other lands as may hereafter be acquired.
- (i) "Tribe" shall mean the Smith River Rancheria, sometimes abbreviated herein as "SRR."

IV Judicial Oversight Committee

A. There shall be established a Judicial Oversight Committee (JOC). Purpose of the JOC

- (a) The Purpose of the JOC shall be:
 - (i) To provide oversight of the operations and functions of judicial activities within Smith River Tribal Jurisdiction;

- (ii) To ensure that the Court is upholding of Smith River Constitution, Tribal Rights, Ordinances, Personnel Policies and Procedures, and other Council enactments and policies regulating the Tribe and its entities and agencies within Smith River jurisdiction; and
- (iii) To guard against impropriety or the appearance of impropriety within the Smith River Judiciary System.

B. Duties of the JOC

(a) The duties of the JOC are as follows:

- (i) Assisting the Tribal Court Clerk/Administrator and Tribal Court Judge in making staff hiring recommendations to the Tribal Council;
- (ii) Assisting the Tribal Court Clerk/Administrator and Tribal Court Judge with securing and obligating grants from Federal, State, or other sources to carry out its duties and functions as a Tribal Court;
- (iii) Convening quarterly meetings. The Court Administrator shall submit written and oral reports pertaining to all operations of the judicial system. The JOC shall review such reports, make recommendations, and shall also conduct a performance review of the Tribal Court Judge.
- (iv) Making quarterly reports available to the Council and Tribal membership regarding the stability and the administrative status of the Tribal Court.
- (v) The JOC must follow the Smith River Rancheria's Standing Committee policy.

C. Structure, and Terms of Members of the JOC

- (a) The JOC shall consist of at least five (5) members, appointed by the Tribal Council.

D. Filling Vacancies on the JOC and Qualifications of Members

- (b) Vacant positions on the JOC shall be filled within thirty (30) days after the creation of the vacancy. The Tribal Council shall given notice that nominations are being accepted for the JOC, along with requirements for such positions.
- (c) Because the JOC shall be responsible for ensuring the ethical operation of the Tribal Court, in order to uphold the honesty, honor and integrity of the Tribal Court, no person shall serve on the JOC who has been convicted in any court of

competent jurisdiction of a crime involving dishonesty within three years prior to being appointed.

E. Authority and Decision-Making Process of the JOC

- (a) Following the appointment of the JOC, the Tribal Council shall delegate the responsibilities of the oversight of the Smith River Tribal Judicial System to that JOC.
- (b) Decisions of the JOC shall be made by majority vote.

V Jurisdiction And Powers

A. Civil Jurisdiction

- (a) Subject Matter Jurisdiction. The Tribal Court shall have civil jurisdiction over all matters in law or in equity arising within the territorial jurisdiction of the Tribe, and as may be more fully described in specific Tribal Codes and Ordinances covering the different Divisions of the Tribal Court
- (b) The Tribal Court may decline to exercise its jurisdiction if it finds any of the following exist:
 - (i) Another court has the jurisdiction to hear the case and it would be more convenient for the parties than the Tribal Court;
 - (ii) One or more of the parties is not a person over which the Tribal Court can exercise its jurisdiction; or,
 - (iii) The case is of such a nature that the Tribal Court should not hear it.
- (c) Concurrent Jurisdiction. The jurisdiction invoked by this Ordinance over any person, cause of action, or subject may be concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; provided, however, this Ordinance does not recognize or cede jurisdiction to any other political or governmental entity in which jurisdiction does not otherwise exist in law. In the event of concurrent jurisdiction controversies, the Tribal Court shall compel and hear sufficient evidence and legal arguments to make a prompt jurisdictional determination for each such controversy.
- (d) Exclusive Jurisdiction. The Tribal Court shall have exclusive jurisdiction over internal Tribal matters, such as Tribal enrollment and membership, election disputes and determination of Tribal cultural resources. Additionally, upon

approval of the Secretary of the Department of the Interior of the Tribe's Petition to Reassume Exclusive Jurisdiction, the Tribe shall have exclusive jurisdiction over Indian Child Welfare cases involving all Indian children domiciled or residing on all lands and service areas set forth in such Petition.

B. Powers of the Tribal Court

The Tribal Court is granted all the powers necessary to exercise its jurisdiction in accordance with the procedures set forth in this Ordinance. Additionally, the Tribal Court may exercise its jurisdiction in accordance with any suitable procedures where specific procedures are not set forth in this Ordinance, so long as such procedures do not conflict with the Tribe's Constitution. The Tribal Court Judge, in consultation with the Tribal Council shall adopt such Rules of Court that are necessary for the efficient prosecution or processing of cases through all of the divisions of the Tribal Court.

C. Full Faith and Credit

- (a) The Tribal Court will generally give full faith and credit to the orders and judgments of the courts of other tribes, states, federal courts, and local, state, and federal governments (particularly child support orders, IRS tax liens and domestic violence protection orders) unless:
 - (i) The court in question does not recognize the orders and judgments of the Tribal Court;
 - (ii) The court in question did not have jurisdiction over the case or a party or parties to it;
 - (iii) The order or judgment was based on fraud;
 - (iv) To do so would violate the public policy of the Tribe or would be likely to harm the culture, traditions, or sovereignty of the Tribe; or
 - (v) The order or judgment is on appeal or being contested in another jurisdiction.
- (b) The Tribal Council may enter into intergovernmental agreements with other Indian Tribes, Tribal Courts, states and other governmental entities, and may enact laws that expand upon or modify the Tribal Court's jurisdiction, acceptance and transfer of cases, and affording comity or full faith and credit to other court orders. In the event of conflicts, such subsequent agreements or laws shall take precedence over this Tribal Court Ordinance.

D. Inclusion of language from other laws, application of other laws

- (a) Inclusion of language, definitions, procedure, or other statutory or administrative provisions of the State of California and Oregon or other state or federal entities in the Smith River Tribal Court Ordinance shall not be deemed an adoption of that law by the Smith River Rancheria and shall not be deemed an action deferring to state or federal jurisdiction within the Smith River Rancheria where such state or federal jurisdiction may be concurrent or does not otherwise exist.
- (b) When choosing what law applies, the Court shall apply the law of the Tribe first, the law of other Tribes second, Federal law third, and California and Oregon law last, except to the extent that Federal law governs. Determination of which law shall be applied shall be on a case-by-case basis.

E. No Acceptance of State Jurisdiction

Nothing in this Ordinance shall be deemed to constitute acceptance of or deference to the jurisdiction of the State of California and Oregon over any civil matter, where such jurisdiction does not otherwise exist.

VI Judges

A. Types of Judges and Qualifications

- (a) The Tribal Court shall consist of one (1) Tribal Court Judge and such Associate Judges as the Tribal Council may appoint. The Tribal Council may appoint an interim Tribal Court Judge during the initial phases of Tribal Court development.
- (b) Tribal Court Judge. The Tribal Court Judge shall be at least 30 years of age and have earned a bachelor's degree. Additionally, the Tribal Court Judge shall have a demonstrable knowledge and experience with Tribal Courts, Indian law, Federal law, and California and Oregon law.
- (c) Associate Judge Associate Judges shall be at least 25 years of age with a bachelor's degree and a demonstrable knowledge and experience with Tribal Courts, Indian law, Federal law, and California and Oregon law.

B. Duties

- (a) Tribal Court Judge The Tribal Court Judge will be responsible for:
 - (i) Enforcing the Tribal ordinances and law;
 - (ii) Hearing all matters delegated to the Court by ordinance;

- (iii) Developing and maintaining a list of qualified judges (approved by the Tribal Council) to be called upon to hear cases in the event of disqualification of a judge or as deemed necessary. The list shall always contain a minimum of three (3) qualified judges;
- (iv) Maintaining, with the assistance of the Clerk of the Court, a docket system;
- (v) Maintaining, with the assistance of the Clerk of the Court, current copies of Tribal, Federal, and State laws applicable to proceedings coming before the Court;
- (vi) Assisting the Court Administrator with preparing the Court's annual plan and budget;

C. Removal

- (a) When information has been received indicating a violation of any of the Tribe's laws or Judicial Codes of Ethics, the Judicial Oversight Committee (JOC) shall render a decision after a full hearing in closed session has been held. A vote by the JOC must consist of a majority of the JOC members whether or not any Judge may be suspended, dismissed, or removed for cause. Should the JOC vote for suspension, dismissal, or removal, the recommendation shall then be made to the Tribal Council for a vote.
- (b) The Tribal Council may only vote on the issue of removal after receipt of a recommendation for suspension, dismissal, or removal for cause by the JOC.
- (c) Any Judge or Mediator may then be suspended, dismissed, or removed for cause by the Tribal Council by a majority vote of the Council if a quorum is established.
- (d) The Tribal Chairperson or his/her designate shall make available copies of a written statement setting out the facts and reasons for the proposed action to the Judge or other Court personnel in question, the other Judges, and to members of the Tribal Council at least fourteen (14) calendar days before the next regularly scheduled meeting of the Tribal Council.
- (e) That meeting shall be a closed session hearing where the accused Judge or other Court personnel shall be given an adequate opportunity to answer any and all charges.
- (f) Causes deemed sufficient for bringing such action shall include all those listed in the SRR Personnel Policies and Procedures as well as but not be limited to: sexual

misconduct, sexual harassment, excessive use of intoxicants, conviction of any offense other than minor traffic violations and other infractions, use of official position for personal gain, or failure to perform judicial duties adequately and in accordance with the terms of this Ordinance.

- (g) The decision of the Tribal Council shall be final.

D. Disqualification of Judges

- (a) Conflict of Interest. No judge shall be qualified to act as such in any case where she/he has any direct interest, or where any party involved in the case includes a relative by marriage or blood in the first or second degree. A Judge may be disqualified upon his/her own motion or by application by any party in the proceeding upon filing a verified motion in writing.
- (b) Bias or Prejudice. Upon the filing of any affidavit by a party setting forth facts establishing that by reason of bias or prejudice of the Judge to whom the case is assigned, the party cannot have a fair trial, the Judge shall disqualify himself/herself. Such affidavit shall be filed within five days of a Judge being assigned to the case, within five (5) days after any material decision is made in the case by the Judge and in any other situation at least five (5) days prior to trial. Only one such affidavit may be filed by a party.

E. Acting Judges

- (a) In the event that there is no qualified Judge or there are an insufficient number of Judges available to hear a particular case, the Tribal Court Judge shall appoint an Acting Judge or Acting Judges selected by random drawing from the Temporary Judge list, with the full powers of a regularly-appointed Tribal Judge to hear and dispose of the case. The Temporary Judge must meet the minimum qualifications of Associate Judges and must be approved by the Tribal Council. Such appointment shall be only for the period of time necessary to dispose of the case in question, and shall not be used to avoid giving full tenure to a regularly appointed judge.
- (b) Complaints filed against a Judge shall be made in writing and shall be signed by the complainant. Each complaint shall be filed with the Court Clerk/Administrator, who shall acknowledge receipt of the complaint. Upon receipt of such a complaint, the Clerk shall immediately notify the JOC, who shall investigate the complaint and take all necessary action.

F. Compensation

The Tribal Court Judge, Associate Judges, and any Temporary Judge shall be compensated at a

rate and under such terms and conditions as the Tribal Council shall, from time to time, establish.

VII Court Clerk/Administrator

A. Duties

The Tribal Court Clerk/Administrator shall be responsible for such administrative and ministerial duties as may be prescribed by this Ordinance or assigned to her/him by the Tribal Court Judge. The duties of the Clerk/Administrator shall include but shall not be limited to the following:

- (a) Maintaining records of all Tribal Court proceedings to include identification of the title and nature of all cases, the names of the parties, the substance of the petition, the names and addresses of all witnesses, the dates of hearings and trials, names and addresses of all parties and witnesses appearing at all hearings and trials, all Tribal Court rulings and jury decisions, findings, orders and judgments, and any other facts or circumstances decided by the judges of the Tribal Courts or deemed important by the Clerk of Court.
- (b) Maintaining all pleadings, documents, and other materials filed with the Tribal Court.
- (c) Maintaining all evidentiary materials, transcripts, and records of testimony filed with the Tribal Court.
- (d) Collecting and accounting for fines and other monies and properties taken into custody by the Tribal Court.
- (e) Giving assistance to the Tribal Court, the Tribal Police, the general public, residents of the Reservation and any Tribal members as required, provided that the Clerk may not provide legal advice;
- (f) Attending all sessions of the Tribal Court;
- (g) Preparing and mailing Court-issued notices, summons, subpoenas, warrants, rulings, findings, opinions, and orders as prescribed by this Ordinance and as may be designated by the Judges of the Tribal Court.
- (h) Administering oaths and witnessing execution of documents.
- (i) Maintaining a supply of blank forms to be prescribed by the Tribal Court for use by all persons having business before the Tribal Court.
- (j) Providing copies of documents in Tribal Court files to other persons upon request, and upon receipt of a charge therefore to be prescribed by the Clerk to cover the

costs of such services; provided, however, there shall be no charge for such service to the Judges of the Tribal Court, and provided further, no copies of documents or material shall be provided from files which are to be kept confidential or unavailable for public inspection pursuant to any provisions of this Ordinance or other ordinance of the Tribal Council, or if prohibited by any court order.

- (k) Providing security for all files, documents and materials filed with or in the custody of the Tribal Court, and insuring that they are not removed from the offices of the Clerk and the Tribal Courts except upon the specific instructions of a Judge of the Tribal Court.
- (l) Maintaining a library of laws, regulations, orders, opinions, and decisions of the United States and its administrative agencies and courts, the Tribal Council and the Courts of the Tribe, and of the various states and other Indian Tribes, insofar as they may be pertinent to the administration of justice for the Tribe, and within Tribal lands. The acquisition of such materials shall be subject to appropriations of funds therefore by the Tribal Council. Materials in the library shall be available for use in the office of the Clerk during normal working hours by any person subject to the jurisdiction of the Tribal Court, and her/his authorized representative.
- (m) Performing such other duties related to the operation of the Court, other than those specifically performed by a judge, as the Tribal Council shall designate.

B. Hiring

The Court Clerk shall be hired in accordance with the Smith River Rancheria Personnel Policies and Procedures Manual adopted and approved by the Tribal Council.

C. Qualifications

The Court Clerk shall have a high school diploma or the equivalent thereof; experience as a secretary or Court Clerk; be eligible to become a registered notary and shall not have been convicted of a crime involving dishonesty within three (3) years prior to being appointed. There shall be Indian preference in hiring, and the Smith River TERO applies. The Tribe's probationary period after hiring will also apply.

D. Bond

The Clerk shall be bonded, at Tribal expense, in an amount determined by the Tribe. Insurance may be substituted in lieu of a bond.

E. Seal

The Court Clerk shall have an official seal which shall be impressed upon the original of each petition or other paper filed with the Tribal Court, along with a notation of the month, day and year of filing. The Court Clerk shall sign the original document filed with the Tribal Court.

VIII Court Procedures

A. Civil, Criminal and Appellate Rules of Court

- (a) The Tribal Court staff, with the assistance of legal counsel and JOC input, will develop Rules of Court to determine and specifically set forth the procedures for hearing cases in each of the Tribal Court divisions.
- (b) The Tribal Court staff will conduct advisory sessions, which will include, by not be limited to tribal community members, the local legal community and where necessary governmental representatives, in order to educate the community and improve the Court's procedures to best meet the needs of the Smith River Tribal community.
- (c) The Tribal Court will then submit the proposed final procedures to the Tribal Council for its review, suggestions and approval.

IX Appeals

A. Court of Appeal

A Court of Appeal is hereby established.

B. Composition and Jurisdiction

- (a) The Court of Appeal consists of at least one Appellate Justice, who did not adjudicate the matter at the trial court level.
- (b) The provisions for appointment and disqualification of Judges set forth in this Ordinance, or Rules of Court, shall apply to any appellate judges.
- (c) The Tribal Court shall maintain a roster of Tribal Council approved Appellate Justices. After one Appellate Justice is chosen and agrees to hear a case, when the next appeal arises, the Tribal Court shall contact the next Appellate Justice on the roster for that next appellate case, and so on, to maintain an objective, fair practice of choosing Appellate Justices.
- (d) The Court of Appeal shall have jurisdiction to review final orders, commitments,

and judgments of the Tribal Court. On appeal, the record and decision of the Tribal Court shall be reviewed for error. The Court of Appeal may affirm, modify, or reverse any judgment, decree, or order of the Tribal Court; remand the case and order a new trial; direct the entry of an appropriate judgment, decree or order; or require such other action of further proceedings as may be just in the circumstance.

C. Rules of Appellate Procedure

The Tribal Court shall enact Rules of Appellate Procedure that shall govern the process for appeals of Tribal Court orders.

D. Finality

A decision of the Court of Appeal shall be final.

X Appearances

A. Counsel or Spokesperson

- (a) Counsel Any party has a right to assistance of counsel at the party's expense. Such assistance shall be arranged by the party.
- (b) Spokespersons and Advocates
 - (i) Any party has a right to assistance of a spokesperson at the party's expense. The spokesperson shall be required to comply with this Ordinance and Rules adopted by the Tribal Court for the processing of cases.
 - (ii) The Rules of Court shall address the requirements for certification, training and admission to practice before the Smith River Rancheria Tribal Court, including a provision for judicial discretion to allow appointment of spokespersons without formal admission, on a case-by-case basis.
 - (iii) The Court ***shall not appoint*** counsel or a spokesperson for any party at the Tribe's expense.
 - (iv) The Court may establish programs and/or agreements to enable appointment of a Guardian ad Litem (GAL) or Court Appointed Special Advocate ("CASA") for children to advocate for the best interest of the child in those cases deemed appropriate.

B. Self-representation

Any individual party may appear and represent himself or herself in any proceeding before the Tribal Court. Judges of the Tribal Court shall insure that all parties have equal opportunity to present their case and cross-examine opposing witnesses. Parties representing themselves shall be held to the same standards of procedural conduct as are required of legal counsel and spokespersons.

C. Witnesses

- (a) Summons to Appear. On motion by any party to the case, or on the Tribal Court's own motion, the Tribal Court shall issue a summons to compel the attendance of witnesses, or the production of books, records, documents, papers and things necessary to the determination of the cause. Failure to comply with a summons shall constitute contempt of court.
- (b) Fees for Witnesses
 - (i) Each party shall be responsible for his/her own witnesses and any witness fees.
 - (ii) The Smith River Rancheria or any of its Departments, Agencies, Corporations and/or entities shall pay witnesses summoned on its behalf at the rate established by the Court.

XI Records

A. Docket

The Court Clerk shall keep a docket which shall contain the names of each plaintiff and defendant in any civil or criminal proceeding, the type of proceeding, the date of issuance and the return date of any legal order or process issued in the proceeding, the appearance or default of parties summoned, the date and the amount of any judgment, appeal and all other proceedings and documents as directed by the Tribal Court Judge.

B. Copies of Proceedings

Any party may obtain a certified copy of proceedings in the Tribal Court at their own expense; the seal of the Court Clerk shall be applied to all copies so certified. This section shall not apply to matters or records sealed or expunged by the Tribal Court as permitted by this Ordinance or Federal Law.

C. Copies of Laws

The Tribal Court shall obtain copies of this Ordinance and copies of tribal ordinances, federal and state laws and regulations as are deemed by the Tribal Court to be necessary, helpful, and proper to secure the rights and privileges of persons subject to the jurisdiction of the Tribal Court and its judicial powers and responsibilities. Copies of same shall be available for review by

those persons using the Court

D. Fee Schedule

The Tribal Court shall develop a fee schedule in its Rules of Court for document filing, witness fees, copying and processing fees.

XII Diversion, Mediation and Family Unity Programs

A. Establishment and Purpose

- (a) The Tribal Council may establish a Diversion, Peacemaker/Mediation and Family Unity programs to assist with the administration of justice and effective services to Tribal members.
- (b) In the event any of these programs is established, the Tribal Council shall create formal guidelines to outline the process and procedures of the programs and shall reflect the Tribe's historical traditions and modern methods of dispute resolution to resolve conflicts.

XIII. Limitation of Actions and Sovereign Immunity

- (a) Sovereign Immunity. Except as required by federal law or the Tribe's Constitution or specifically waived by a resolution, ordinance or written contract specifically referencing such waiver and duly approved by the Tribal Council, the Smith River Rancheria, its officers and employees, and tribal governmental entities and their respective officers and employees, including but not limited to Tribal Court Judges and Mediators, shall be immune from suit in any civil action for liability arising from the performance of their official duties.
- (b) Actions by or Against the Tribe or its Officers or Employees. In any action otherwise authorized by or against the Tribe or its officers or employees arising from the performance of their official duties, the following procedures shall apply:
 - (i) The periods of time specified for civil cases or for appeals of either a civil or criminal nature for which an answer, reply, or other pleading or response of any kind shall be required shall be double the normal period;
 - (ii) Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties, either as Plaintiff or Defendant, shall be liable for the payment of costs or expenses of the opposing parties;
 - (iii) Neither the Tribe nor its officials or employees when involved in a civil action arising from the performance of their duties, either as Plaintiff or Defendant, shall be required to post security bond or otherwise for any purpose; and

- (iv) Any liability shall be limited to declaratory, injunctive and equitable relief and no monetary damages shall be awarded, unless such remedy has been expressly allowed by the Tribal Council.
- (c) Adoption by Reference Does Not Constitute a Waiver of Sovereignty. The adoption of any law, code, or other document by reference into the Tribal Code shall in no way constitute a waiver or secession of any sovereign power or immunity of the Smith River Rancheria to the jurisdiction whose law or code is adopted or in any way diminish such sovereign power and immunity, but shall result in the law or code thus adopted becoming the law of the Smith River Rancheria.
- (d) Statute of Limitations. Unless otherwise specifically provided in this Code, the following limitations on the bringing of a civil action shall apply:
 - (i) Any action against the Tribe or its officers or employees or a tribal governmental entity or its officers or employees arising from their performance of their official duties must be commenced within one year of the date that the cause of action occurred;
 - (ii) Any other action against the Tribe or its officers or employees or a tribal governmental entity or its officers or employees must be commenced within two years the cause of action occurred, provided, however that any cause of action based upon fraud or intentional misrepresentation shall not be deemed to have occurred until the aggrieved party has discovered the facts constituting the fraud or intentional misrepresentation.

XIV Effective Date

This Ordinance shall become immediately effective upon approval of the Tribal Council in accordance with its Constitution, and can only be amended by approval of the Tribal Council.

XV Certification

The undersigned Tribal Chairperson of the Smith River Rancheria hereby certifies that the foregoing Tribal Court Ordinance is a true and correct copy of the Tribal Court Ordinance that was approved by a vote conducted on the ____ day of **April, 2006**, was duly adopted by a vote of ____ For, __ Opposed, __ Abstentions.

The Tribal Council is comprised of __ members of which __ (a quorum) vote

Date: _____

Kara Miller
Tribal Chairperson

The Tribal Council adopted Resolution _____,

**SMITH RIVER RANCHERIA TRIBAL COURT ORDINANCE
TABLE OF CONTENTS**

	SECTION	PAGE
I	ESTABLISHMENT	2
II	APPROPRIATIONS	2
III	DEFINITIONS	3
IV	JUDICIAL OVERSIGHT COMMITTEE	3
V	JURISDICTION AND POWERS	5
VI	JUDGES	7
VII	COURT CLERK/ADMINISTRATOR	10
VIII	COURT PROCEDURES	12
IX	APPEALS	12
X	APPEARANCES	13
XI	RECORDS	14
XII	DIVERSION, MEDIATION AND FAMILY UNITY.....	15
XIII	LIMITATION OF ACTIONS AND SOVEREIGN IMMUNITY ...	15
XIV	EFFECTIVE DATE	16
XV	CERTIFICATION	16

I. Establishment of the Smith River Tribal Court

The Tribal Council of the Smith River Rancheria (the "Tribe") does hereby ordain as follows:

- (a) Public Law 83-280, (18 U.S.C. §1162; 28 U.S.C. §1360), did not divest the Tribe of its inherent sovereign authority to establish and operate its own judicial system.
- (b) The Courts of the State of California and Oregon lack jurisdiction over many civil disputes and criminal acts that occur on Tribal lands.
- (c) The establishment of a Tribal Court that can exercise jurisdiction over civil disputes and criminal acts occurring on Tribal lands and over members wherever situated, particularly those disputes and acts over which the Courts of the State of California and Oregon lack jurisdiction, is necessary to maintain peace and order on Tribal lands.
- (d) The adoption of this Ordinance is in the best interests of the members of the Tribe and furthers the administration of justice on lands and over persons within the Tribe's jurisdiction.
- (e) The Smith River Rancheria hereby establishes the Smith River Tribal Court. The Tribal Court shall consist of the following Divisions: 1) Administrative; 2) Civil; 3) Children's; 4) Juvenile; 5) Domestic Relations; 6) Natural Resources; 7) Probate and 8) Appellate. The Tribal Court is empowered to create such further specialized divisions as necessary to hear matters as defined in the Tribe's laws.
- (f) The Tribal Court shall be an independent branch of Tribal government. Tribal Court decisions and the administration of justice shall not be influenced by political or other governmental issues.

II. Appropriations

- (a) The Tribal Council shall appropriate and authorize the expenditure of Tribal funds for the operation of the Tribal Court. The amounts to be appropriated shall be consistent with the needs of the Tribal Court for proper administration of justice within Tribal Lands and for the Tribe as determined by the Tribal Council.
- (b) To assist the Tribal Council in making such appropriations, the Tribal Court Clerk/Administrator shall submit proposed budgets and reports of expenses and expenditures to the Tribal Council, at such intervals and in such form as may be prescribed by the Tribal Council.

III. Definitions

For the purpose of this ordinance the following words and phrases shall have the following meanings:

- (a) "Council" or Tribal Council" means the governing body of the Smith River Rancheria.
- (b) "Counsel" shall mean any person admitted to the legal bar of any state.
- (c) "Indian" shall be any person of Indian descent who is a member of any federally recognized Indian Tribe.
- (d) "Law" shall include tribal laws and custom, practice and traditions of the Tribe, as well as federal and state laws.
- (e) "Mediator" shall mean a professional mediator who is selected to mediate disputes between parties in the Tribe's Mediation Program.
- (f) "Spokesperson" shall mean any person not admitted to a bar of any state who is a tribal member, relative of a party, or other individual appointed by the party and speaks on behalf of a party to a case in the Tribal Court.
- (g) "Tribal Court" shall mean a court of the Smith River Rancheria unless the context indicates that another Tribe's court is intended.
- (h) "Tribal lands" shall mean the land bounded by Wilson Creek to the South, the Sixes River to the North, East to the watershed on the Coastal Range, and West to Point St. George Lighthouse in the Pacific Ocean, to the extent not inconsistent with federal law, as well as such other lands as may hereafter be acquired.
- (i) "Tribe" shall mean the Smith River Rancheria, sometimes abbreviated herein as "SRR."

IV Judicial Oversight Committee

A. There shall be established a Judicial Oversight Committee (JOC). Purpose of the JOC

- (a) The Purpose of the JOC shall be:
 - (i) To provide oversight of the operations and functions of judicial activities within Smith River Tribal Jurisdiction;

- (ii) To ensure that the Court is upholding of Smith River Constitution, Tribal Rights, Ordinances, Personnel Policies and Procedures, and other Council enactments and policies regulating the Tribe and its entities and agencies within Smith River jurisdiction; and
- (iii) To guard against impropriety or the appearance of impropriety within the Smith River Judiciary System.

B. Duties of the JOC

(a) The duties of the JOC are as follows:

- (i) Assisting the Tribal Court Clerk/Administrator and Tribal Court Judge in making staff hiring recommendations to the Tribal Council;
- (ii) Assisting the Tribal Court Clerk/Administrator and Tribal Court Judge with securing and obligating grants from Federal, State, or other sources to carry out its duties and functions as a Tribal Court;
- (iii) Convening quarterly meetings. The Court Administrator shall submit written and oral reports pertaining to all operations of the judicial system. The JOC shall review such reports, make recommendations, and shall also conduct a performance review of the Tribal Court Judge.
- (iv) Making quarterly reports available to the Council and Tribal membership regarding the stability and the administrative status of the Tribal Court.
- (v) The JOC must follow the Smith River Rancheria's Standing Committee policy.

C. Structure, and Terms of Members of the JOC

- (a) The JOC shall consist of at least five (5) members, appointed by the Tribal Council.

D. Filling Vacancies on the JOC and Qualifications of Members

- (b) Vacant positions on the JOC shall be filled within thirty (30) days after the creation of the vacancy. The Tribal Council shall given notice that nominations are being accepted for the JOC, along with requirements for such positions.
- (c) Because the JOC shall be responsible for ensuring the ethical operation of the Tribal Court, in order to uphold the honesty, honor and integrity of the Tribal Court, no person shall serve on the JOC who has been convicted in any court of

competent jurisdiction of a crime involving dishonesty within three years prior to being appointed.

E. Authority and Decision-Making Process of the JOC

- (a) Following the appointment of the JOC, the Tribal Council shall delegate the responsibilities of the oversight of the Smith River Tribal Judicial System to that JOC.
- (b) Decisions of the JOC shall be made by majority vote.

V Jurisdiction And Powers

A. Civil Jurisdiction

- (a) Subject Matter Jurisdiction. The Tribal Court shall have civil jurisdiction over all matters in law or in equity arising within the territorial jurisdiction of the Tribe, and as may be more fully described in specific Tribal Codes and Ordinances covering the different Divisions of the Tribal Court
- (b) The Tribal Court may decline to exercise its jurisdiction if it finds any of the following exist:
 - (i) Another court has the jurisdiction to hear the case and it would be more convenient for the parties than the Tribal Court;
 - (ii) One or more of the parties is not a person over which the Tribal Court can exercise its jurisdiction; or,
 - (iii) The case is of such a nature that the Tribal Court should not hear it.
- (c) Concurrent Jurisdiction. The jurisdiction invoked by this Ordinance over any person, cause of action, or subject may be concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; provided, however, this Ordinance does not recognize or cede jurisdiction to any other political or governmental entity in which jurisdiction does not otherwise exist in law. In the event of concurrent jurisdiction controversies, the Tribal Court shall compel and hear sufficient evidence and legal arguments to make a prompt jurisdictional determination for each such controversy.
- (d) Exclusive Jurisdiction. The Tribal Court shall have exclusive jurisdiction over internal Tribal matters, such as Tribal enrollment and membership, election disputes and determination of Tribal cultural resources. Additionally, upon

approval of the Secretary of the Department of the Interior of the Tribe's Petition to Reassume Exclusive Jurisdiction, the Tribe shall have exclusive jurisdiction over Indian Child Welfare cases involving all Indian children domiciled or residing on all lands and service areas set forth in such Petition.

B. Powers of the Tribal Court

The Tribal Court is granted all the powers necessary to exercise its jurisdiction in accordance with the procedures set forth in this Ordinance. Additionally, the Tribal Court may exercise its jurisdiction in accordance with any suitable procedures where specific procedures are not set forth in this Ordinance, so long as such procedures do not conflict with the Tribe's Constitution. The Tribal Court Judge, in consultation with the Tribal Council shall adopt such Rules of Court that are necessary for the efficient prosecution or processing of cases through all of the divisions of the Tribal Court.

C. Full Faith and Credit

- (a) The Tribal Court will generally give full faith and credit to the orders and judgments of the courts of other tribes, states, federal courts, and local, state, and federal governments (particularly child support orders, IRS tax liens and domestic violence protection orders) unless:
 - (i) The court in question does not recognize the orders and judgments of the Tribal Court;
 - (ii) The court in question did not have jurisdiction over the case or a party or parties to it;
 - (iii) The order or judgment was based on fraud;
 - (iv) To do so would violate the public policy of the Tribe or would be likely to harm the culture, traditions, or sovereignty of the Tribe; or
 - (v) The order or judgment is on appeal or being contested in another jurisdiction.
- (b) The Tribal Council may enter into intergovernmental agreements with other Indian Tribes, Tribal Courts, states and other governmental entities, and may enact laws that expand upon or modify the Tribal Court's jurisdiction, acceptance and transfer of cases, and affording comity or full faith and credit to other court orders. In the event of conflicts, such subsequent agreements or laws shall take precedence over this Tribal Court Ordinance.

D. Inclusion of language from other laws, application of other laws

- (a) Inclusion of language, definitions, procedure, or other statutory or administrative provisions of the State of California and Oregon or other state or federal entities in the Smith River Tribal Court Ordinance shall not be deemed an adoption of that law by the Smith River Rancheria and shall not be deemed an action deferring to state or federal jurisdiction within the Smith River Rancheria where such state or federal jurisdiction may be concurrent or does not otherwise exist.
- (b) When choosing what law applies, the Court shall apply the law of the Tribe first, the law of other Tribes second, Federal law third, and California and Oregon law last, except to the extent that Federal law governs. Determination of which law shall be applied shall be on a case-by-case basis.

E. No Acceptance of State Jurisdiction

Nothing in this Ordinance shall be deemed to constitute acceptance of or deference to the jurisdiction of the State of California and Oregon over any civil matter, where such jurisdiction does not otherwise exist.

VI Judges

A. Types of Judges and Qualifications

- (a) The Tribal Court shall consist of one (1) Tribal Court Judge and such Associate Judges as the Tribal Council may appoint. The Tribal Council may appoint an interim Tribal Court Judge during the initial phases of Tribal Court development.
- (b) Tribal Court Judge. The Tribal Court Judge shall be at least 30 years of age and have earned a bachelor's degree. Additionally, the Tribal Court Judge shall have a demonstrable knowledge and experience with Tribal Courts, Indian law, Federal law, and California and Oregon law.
- (c) Associate Judge Associate Judges shall be at least 25 years of age with a bachelor's degree and a demonstrable knowledge and experience with Tribal Courts, Indian law, Federal law, and California and Oregon law.

B. Duties

- (a) Tribal Court Judge The Tribal Court Judge will be responsible for:
 - (i) Enforcing the Tribal ordinances and law;
 - (ii) Hearing all matters delegated to the Court by ordinance;

- (iii) Developing and maintaining a list of qualified judges (approved by the Tribal Council) to be called upon to hear cases in the event of disqualification of a judge or as deemed necessary. The list shall always contain a minimum of three (3) qualified judges;
- (iv) Maintaining, with the assistance of the Clerk of the Court, a docket system;
- (v) Maintaining, with the assistance of the Clerk of the Court, current copies of Tribal, Federal, and State laws applicable to proceedings coming before the Court;
- (vi) Assisting the Court Administrator with preparing the Court's annual plan and budget;

C. Removal

- (a) When information has been received indicating a violation of any of the Tribe's laws or Judicial Codes of Ethics, the Judicial Oversight Committee (JOC) shall render a decision after a full hearing in closed session has been held. A vote by the JOC must consist of a majority of the JOC members whether or not any Judge may be suspended, dismissed, or removed for cause. Should the JOC vote for suspension, dismissal, or removal, the recommendation shall then be made to the Tribal Council for a vote.
- (b) The Tribal Council may only vote on the issue of removal after receipt of a recommendation for suspension, dismissal, or removal for cause by the JOC.
- (c) Any Judge or Mediator may then be suspended, dismissed, or removed for cause by the Tribal Council by a majority vote of the Council if a quorum is established.
- (d) The Tribal Chairperson or his/her designate shall make available copies of a written statement setting out the facts and reasons for the proposed action to the Judge or other Court personnel in question, the other Judges, and to members of the Tribal Council at least fourteen (14) calendar days before the next regularly scheduled meeting of the Tribal Council.
- (e) That meeting shall be a closed session hearing where the accused Judge or other Court personnel shall be given an adequate opportunity to answer any and all charges.
- (f) Causes deemed sufficient for bringing such action shall include all those listed in the SRR Personnel Policies and Procedures as well as but not be limited to: sexual

misconduct, sexual harassment, excessive use of intoxicants, conviction of any offense other than minor traffic violations and other infractions, use of official position for personal gain, or failure to perform judicial duties adequately and in accordance with the terms of this Ordinance.

- (g) The decision of the Tribal Council shall be final.

D. Disqualification of Judges

- (a) Conflict of Interest. No judge shall be qualified to act as such in any case where she/he has any direct interest, or where any party involved in the case includes a relative by marriage or blood in the first or second degree. A Judge may be disqualified upon his/her own motion or by application by any party in the proceeding upon filing a verified motion in writing.
- (b) Bias or Prejudice. Upon the filing of any affidavit by a party setting forth facts establishing that by reason of bias or prejudice of the Judge to whom the case is assigned, the party cannot have a fair trial, the Judge shall disqualify himself/herself. Such affidavit shall be filed within five days of a Judge being assigned to the case, within five (5) days after any material decision is made in the case by the Judge and in any other situation at least five (5) days prior to trial. Only one such affidavit may be filed by a party.

E. Acting Judges

- (a) In the event that there is no qualified Judge or there are an insufficient number of Judges available to hear a particular case, the Tribal Court Judge shall appoint an Acting Judge or Acting Judges selected by random drawing from the Temporary Judge list, with the full powers of a regularly-appointed Tribal Judge to hear and dispose of the case. The Temporary Judge must meet the minimum qualifications of Associate Judges and must be approved by the Tribal Council. Such appointment shall be only for the period of time necessary to dispose of the case in question, and shall not be used to avoid giving full tenure to a regularly appointed judge.
- (b) Complaints filed against a Judge shall be made in writing and shall be signed by the complainant. Each complaint shall be filed with the Court Clerk/Administrator, who shall acknowledge receipt of the complaint. Upon receipt of such a complaint, the Clerk shall immediately notify the JOC, who shall investigate the complaint and take all necessary action.

F. Compensation

The Tribal Court Judge, Associate Judges, and any Temporary Judge shall be compensated at a

rate and under such terms and conditions as the Tribal Council shall, from time to time, establish.

VII Court Clerk/Administrator

A. Duties

The Tribal Court Clerk/Administrator shall be responsible for such administrative and ministerial duties as may be prescribed by this Ordinance or assigned to her/him by the Tribal Court Judge. The duties of the Clerk/Administrator shall include but shall not be limited to the following:

- (a) Maintaining records of all Tribal Court proceedings to include identification of the title and nature of all cases, the names of the parties, the substance of the petition, the names and addresses of all witnesses, the dates of hearings and trials, names and addresses of all parties and witnesses appearing at all hearings and trials, all Tribal Court rulings and jury decisions, findings, orders and judgments, and any other facts or circumstances decided by the judges of the Tribal Courts or deemed important by the Clerk of Court.
- (b) Maintaining all pleadings, documents, and other materials filed with the Tribal Court.
- (c) Maintaining all evidentiary materials, transcripts, and records of testimony filed with the Tribal Court.
- (d) Collecting and accounting for fines and other monies and properties taken into custody by the Tribal Court.
- (e) Giving assistance to the Tribal Court, the Tribal Police, the general public, residents of the Reservation and any Tribal members as required, provided that the Clerk may not provide legal advice;
- (f) Attending all sessions of the Tribal Court;
- (g) Preparing and mailing Court-issued notices, summons, subpoenas, warrants, rulings, findings, opinions, and orders as prescribed by this Ordinance and as may be designated by the Judges of the Tribal Court.
- (h) Administering oaths and witnessing execution of documents.
- (i) Maintaining a supply of blank forms to be prescribed by the Tribal Court for use by all persons having business before the Tribal Court.
- (j) Providing copies of documents in Tribal Court files to other persons upon request, and upon receipt of a charge therefore to be prescribed by the Clerk to cover the

costs of such services; provided, however, there shall be no charge for such service to the Judges of the Tribal Court, and provided further, no copies of documents or material shall be provided from files which are to be kept confidential or unavailable for public inspection pursuant to any provisions of this Ordinance or other ordinance of the Tribal Council, or if prohibited by any court order.

- (k) Providing security for all files, documents and materials filed with or in the custody of the Tribal Court, and insuring that they are not removed from the offices of the Clerk and the Tribal Courts except upon the specific instructions of a Judge of the Tribal Court.
- (l) Maintaining a library of laws, regulations, orders, opinions, and decisions of the United States and its administrative agencies and courts, the Tribal Council and the Courts of the Tribe, and of the various states and other Indian Tribes, insofar as they may be pertinent to the administration of justice for the Tribe, and within Tribal lands. The acquisition of such materials shall be subject to appropriations of funds therefore by the Tribal Council. Materials in the library shall be available for use in the office of the Clerk during normal working hours by any person subject to the jurisdiction of the Tribal Court, and her/his authorized representative.
- (m) Performing such other duties related to the operation of the Court, other than those specifically performed by a judge, as the Tribal Council shall designate.

B. Hiring

The Court Clerk shall be hired in accordance with the Smith River Rancheria Personnel Policies and Procedures Manual adopted and approved by the Tribal Council.

C. Qualifications

The Court Clerk shall have a high school diploma or the equivalent thereof; experience as a secretary or Court Clerk; be eligible to become a registered notary and shall not have been convicted of a crime involving dishonesty within three (3) years prior to being appointed. There shall be Indian preference in hiring, and the Smith River TERO applies. The Tribe's probationary period after hiring will also apply.

D. Bond

The Clerk shall be bonded, at Tribal expense, in an amount determined by the Tribe. Insurance may be substituted in lieu of a bond.

E. Seal

The Court Clerk shall have an official seal which shall be impressed upon the original of each petition or other paper filed with the Tribal Court, along with a notation of the month, day and year of filing. The Court Clerk shall sign the original document filed with the Tribal Court.

VIII Court Procedures

A. Civil, Criminal and Appellate Rules of Court

- (a) The Tribal Court staff, with the assistance of legal counsel and JOC input, will develop Rules of Court to determine and specifically set forth the procedures for hearing cases in each of the Tribal Court divisions.
- (b) The Tribal Court staff will conduct advisory sessions, which will include, by not be limited to tribal community members, the local legal community and where necessary governmental representatives, in order to educate the community and improve the Court's procedures to best meet the needs of the Smith River Tribal community.
- (c) The Tribal Court will then submit the proposed final procedures to the Tribal Council for its review, suggestions and approval.

IX Appeals

A. Court of Appeal

A Court of Appeal is hereby established.

B. Composition and Jurisdiction

- (a) The Court of Appeal consists of at least one Appellate Justice, who did not adjudicate the matter at the trial court level.
- (b) The provisions for appointment and disqualification of Judges set forth in this Ordinance, or Rules of Court, shall apply to any appellate judges.
- (c) The Tribal Court shall maintain a roster of Tribal Council approved Appellate Justices. After one Appellate Justice is chosen and agrees to hear a case, when the next appeal arises, the Tribal Court shall contact the next Appellate Justice on the roster for that next appellate case, and so on, to maintain an objective, fair practice of choosing Appellate Justices.
- (d) The Court of Appeal shall have jurisdiction to review final orders, commitments,

and judgments of the Tribal Court. On appeal, the record and decision of the Tribal Court shall be reviewed for error. The Court of Appeal may affirm, modify, or reverse any judgment, decree, or order of the Tribal Court; remand the case and order a new trial; direct the entry of an appropriate judgment, decree or order; or require such other action of further proceedings as may be just in the circumstance.

C. Rules of Appellate Procedure

The Tribal Court shall enact Rules of Appellate Procedure that shall govern the process for appeals of Tribal Court orders.

D. Finality

A decision of the Court of Appeal shall be final.

X Appearances

A. Counsel or Spokesperson

- (a) Counsel Any party has a right to assistance of counsel at the party's expense. Such assistance shall be arranged by the party.
- (b) Spokespersons and Advocates
 - (i) Any party has a right to assistance of a spokesperson at the party's expense. The spokesperson shall be required to comply with this Ordinance and Rules adopted by the Tribal Court for the processing of cases.
 - (ii) The Rules of Court shall address the requirements for certification, training and admission to practice before the Smith River Rancheria Tribal Court, including a provision for judicial discretion to allow appointment of spokespersons without formal admission, on a case-by-case basis.
 - (iii) The Court ***shall not appoint*** counsel or a spokesperson for any party at the Tribe's expense.
 - (iv) The Court may establish programs and/or agreements to enable appointment of a Guardian ad Litem (GAL) or Court Appointed Special Advocate ("CASA") for children to advocate for the best interest of the child in those cases deemed appropriate.

B. Self-representation

Any individual party may appear and represent himself or herself in any proceeding before the Tribal Court. Judges of the Tribal Court shall insure that all parties have equal opportunity to present their case and cross-examine opposing witnesses. Parties representing themselves shall be held to the same standards of procedural conduct as are required of legal counsel and spokespersons.

C. Witnesses

- (a) Summons to Appear. On motion by any party to the case, or on the Tribal Court's own motion, the Tribal Court shall issue a summons to compel the attendance of witnesses, or the production of books, records, documents, papers and things necessary to the determination of the cause. Failure to comply with a summons shall constitute contempt of court.
- (b) Fees for Witnesses
 - (i) Each party shall be responsible for his/her own witnesses and any witness fees.
 - (ii) The Smith River Rancheria or any of its Departments, Agencies, Corporations and/or entities shall pay witnesses summoned on its behalf at the rate established by the Court.

XI Records

A. Docket

The Court Clerk shall keep a docket which shall contain the names of each plaintiff and defendant in any civil or criminal proceeding, the type of proceeding, the date of issuance and the return date of any legal order or process issued in the proceeding, the appearance or default of parties summoned, the date and the amount of any judgment, appeal and all other proceedings and documents as directed by the Tribal Court Judge.

B. Copies of Proceedings

Any party may obtain a certified copy of proceedings in the Tribal Court at their own expense; the seal of the Court Clerk shall be applied to all copies so certified. This section shall not apply to matters or records sealed or expunged by the Tribal Court as permitted by this Ordinance or Federal Law.

C. Copies of Laws

The Tribal Court shall obtain copies of this Ordinance and copies of tribal ordinances, federal and state laws and regulations as are deemed by the Tribal Court to be necessary, helpful, and proper to secure the rights and privileges of persons subject to the jurisdiction of the Tribal Court and its judicial powers and responsibilities. Copies of same shall be available for review by

those persons using the Court

D. Fee Schedule

The Tribal Court shall develop a fee schedule in its Rules of Court for document filing, witness fees, copying and processing fees.

XII Diversion, Mediation and Family Unity Programs

A. Establishment and Purpose

- (a) The Tribal Council may establish a Diversion, Peacemaker/Mediation and Family Unity programs to assist with the administration of justice and effective services to Tribal members.
- (b) In the event any of these programs is established, the Tribal Council shall create formal guidelines to outline the process and procedures of the programs and shall reflect the Tribe's historical traditions and modern methods of dispute resolution to resolve conflicts.

XIII. Limitation of Actions and Sovereign Immunity

- (a) Sovereign Immunity. Except as required by federal law or the Tribe's Constitution or specifically waived by a resolution, ordinance or written contract specifically referencing such waiver and duly approved by the Tribal Council, the Smith River Rancheria, its officers and employees, and tribal governmental entities and their respective officers and employees, including but not limited to Tribal Court Judges and Mediators, shall be immune from suit in any civil action for liability arising from the performance of their official duties.
- (b) Actions by or Against the Tribe or its Officers or Employees. In any action otherwise authorized by or against the Tribe or its officers or employees arising from the performance of their official duties, the following procedures shall apply:
 - (i) The periods of time specified for civil cases or for appeals of either a civil or criminal nature for which an answer, reply, or other pleading or response of any kind shall be required shall be double the normal period;
 - (ii) Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties, either as Plaintiff or Defendant, shall be liable for the payment of costs or expenses of the opposing parties;
 - (iii) Neither the Tribe nor its officials or employees when involved in a civil action arising from the performance of their duties, either as Plaintiff or Defendant, shall be required to post security bond or otherwise for any purpose; and

- (iv) Any liability shall be limited to declaratory, injunctive and equitable relief and no monetary damages shall be awarded, unless such remedy has been expressly allowed by the Tribal Council.
- (c) Adoption by Reference Does Not Constitute a Waiver of Sovereignty. The adoption of any law, code, or other document by reference into the Tribal Code shall in no way constitute a waiver or secession of any sovereign power or immunity of the Smith River Rancheria to the jurisdiction whose law or code is adopted or in any way diminish such sovereign power and immunity, but shall result in the law or code thus adopted becoming the law of the Smith River Rancheria.
- (d) Statute of Limitations. Unless otherwise specifically provided in this Code, the following limitations on the bringing of a civil action shall apply:
 - (i) Any action against the Tribe or its officers or employees or a tribal governmental entity or its officers or employees arising from their performance of their official duties must be commenced within one year of the date that the cause of action occurred;
 - (ii) Any other action against the Tribe or its officers or employees or a tribal governmental entity or its officers or employees must be commenced within two years the cause of action occurred, provided, however that any cause of action based upon fraud or intentional misrepresentation shall not be deemed to have occurred until the aggrieved party has discovered the facts constituting the fraud or intentional misrepresentation.

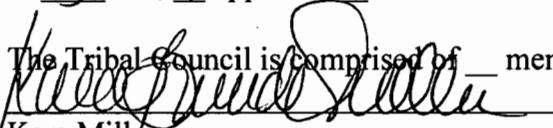
XIV Effective Date

This Ordinance shall become immediately effective upon approval of the Tribal Council in accordance with its Constitution, and can only be amended by approval of the Tribal Council.

XV Certification

The undersigned Tribal Chairperson of the Smith River Rancheria hereby certifies that the foregoing Tribal Court Ordinance is a true and correct copy of the Tribal Court Ordinance that was approved by a vote conducted on the 25 day of **April, 2006**, was duly adopted by a vote of 5 For, 1 Opposed, 1 Abstentions.

The Tribal Council is comprised of _____ members of which _____ (a quorum) vote

 Date: 4/25/06
 Kara Miller
 Tribal Chairperson

The Tribal Council adopted Resolution 06-10,