

FORT McDERMITT PAIUTE SHOSHONE TRIBAL COURT

Tribal Court Rules

1. Scope of Rules

These Rules shall govern all proceedings brought in the Tribal Court or any division thereof, except civil litigation wherein the amount at issue is less than \$5,000.00. In civil litigation, if the amount at issue is less than \$5,000.00, all rules shall apply except number five (5) herein. The hearing in such case will proceed in an informal manner and not subject to evidentiary rules. The court may issue separate Rules of Criminal Procedure which shall replace these Rules in criminal cases. **These rules shall apply to all cases filed from the date appearing above as well as to all currently pending cases.**

2. Amendment of Rules

Court rules shall be promulgated by the Tribal Judge but must be approved by the Tribal Council. The Rules may be amended from time to time by the court, subject to Council approval.

3. Priority of Rules Included in Specific Ordinances

Any procedural rules included in any ordinance enacted by the Paiute-Shoshone Tribe shall govern proceedings under that ordinance. If any conflict exists between these Tribal Court Rules and the rules set forth in an ordinance, the rules described in the ordinance shall be followed.

4. Use of Federal Rules of Procedure

Where these rules are silent, The Federal Rules of Civil/Criminal Procedure may be employed.

5. Use of Federal Rules of Evidence

The Federal Rules of Evidence will be strictly applied insofar as they do not conflict with specific Ordinances.

6. Representation: Self Representation, Counselors

Any attorney or tribal advocate who represents another in a case shall pay a licensing fee, and shall be admitted to practice before this Tribunal before undertaking any actions on behalf of a party.

- a. Self-representation.** Any adult who has not been adjudged incompetent who wishes to commence a court action, or, who has been named as a party to a proceeding, may represent himself/herself before the court. In cases wherein the

amount in controversy is less than \$5000.00, a party may be represented by a family member or close friend and still be considered to be representing him/herself. Likewise, a juvenile in any case before the Court may be represented by an adult family member or guardian and still be considered to be representing him/herself.

b. Attorney/Advocate Representation. Admission to practice is set forth by Tribal Ordinance.

7. Duties of Parties

A party to a civil case, whether represented or not, shall be under the duty to maintain contact with his representative or with the court in order to remain informed of the status of the party's case and of dates when s/he is required to appear before the court. A party will not be excused for failure to file a response, failure to appear, or any other act of default based on assertion that his/her counselor did not notify him/her.

A party to a criminal case, whether represented or not, shall be under the duty to appear at each scheduled court hearing, and to fully comply with all resulting court orders and conditions of release.

8. Judges

a. Assignment. All cases shall be initially assigned to the Chief Tribal Judge. Upon assignment of a case, the Chief Tribal Judge shall assume responsibility for the case until it is fully resolved, unless the Chief Tribal Judge recuses himself for good cause. The Chief Judge may, in the judge's discretion: (1) assign an associate or pro tem judge to take responsibility for and preside over a particular case; or (2) assign an associate or pro tem judge to preside over and conduct all court hearings on a particular court date. If an associate or Judge Pro Tem is assigned to preside over a particular case, that judge shall, unless recused, excused, or disqualified, preside over all proceedings in a case.

b. Disqualification of the Judge. A judge may be disqualified only on his/her own initiative, or for cause upon the filing of a motion for disqualification. A judge shall disqualify himself/herself for cause shown. The judge's decision on a motion for disqualification shall be a final order of the court. A motion for disqualification by a Plaintiff must be filed within ten (10) calendar days of filing the document which commences the action, or by a Defendant, within ten (10) calendar days of being served the document which commences the action.

c. Ex parte communication. The parties, attorneys, advocates, or representatives shall have no ex parte communications with any judge regarding the matter presented.

9. Court Clerk.

Wherever these rules indicate an act is to be performed by the Clerk of the Court, that act may be performed by the Court Clerk, Deputy Clerk, Bailiff, or the Judge, except that a Judge may not serve process.

10. Filing Fees

a. Payment of Filing Fee. Any party, either plaintiff or defendant, who starts or defends any case shall pay a filing fee, unless the judge waives the filing fee for good cause shown. The court shall maintain a separate Filing Fee Schedule that shall be posted in the courthouse and that shall remain in effect until amended by order of the court.

b. Waiver of Filing Fee. A person who can demonstrate indigence may apply for a waiver of required filing fees. A waiver shall be granted by Order of the court in writing and shall be filed in the case file.

11. Commencement of Actions

A court case is commenced by the filing of a complaint, petition, or application with the court and by paying all applicable fees. The court will not take up a case that has not been properly filed, in writing or where the required filing fee has not been paid or waived by court order. **No case will be opened on behalf of a person who is representing himself/herself unless said person 1) pays the filing fees set out in the Schedule of Fees, and 2) completes a statement in substantially the following form:**

I, _____, have read the applicable laws and the Tribal Court Rules. I understand that if I do not follow the applicable laws and rules, my case may be dismissed and I may not be able to refile it.

Dated: This _____ day of _____, _____.

Printed Name

Signature

12. Summons

a. Issuance and service. The Clerk of the Court shall assign each newly filed case a case number, and shall issue a Summons or other appropriate notice to the parties to the case. In civil cases, a copy of the Summons must accompany the Complaint. Both must be personally served upon the defendant, unless the defendant's whereabouts are unknown in which case service may be

effectuated by publication. A party evading service may be served via public notice or publication.

b. **Form.** A summons shall be in substantially the following form:

**IN THE TRIBAL COURT OF THE PAIUTE-SHOSHONE TRIBE
OF THE FORT McDERMITT RESERVATION**

)	
vs.)	Case No. _____
)	SUMMONS
)	
Defendant(s).)	
)	

NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PLAINTIFF(S): THE COURT MAY ENTER JUDGMENT AGAINST YOU WITHOUT FURTHER NOTICE UNLESS YOU RESPOND WITHIN 20 DAYS. READ THE INFORMATION BELOW.

TO: _____

You are hereby notified that in order to defend this lawsuit, an appropriate written response must be filed with the above designated court within 20 days after service of this Summons on you. If you fail to so respond the court may enter judgment against you as demanded by the plaintiff(s) in the Complaint.

A copy of the Complaint is served with this Summons. If you wish to seek the advice of or representation by an attorney in this matter, you should do so promptly so that your written response, if any, may be filed in time and other legal rights protected.

An appropriate written response shall also include:

1. The title and number of this case.
 2. If your response is an Answer to the Complaint, it must contain admissions or denials of the separate allegations of the Complaint and other defenses you may claim.
 3. Your signature, mailing address and telephone number, or the signature, mailing address and telephone number of your attorney.
 4. Proof of mailing or delivery of a copy of your response to the plaintiff or plaintiff 's attorney, as designated above.
- To determine whether you must pay a filing fee with your response, contact the Clerk of the above-named court.

DATED this _____ day of _____, 20____.

CLERK OF THE COURT

By _____

13. Service of Process in Criminal Cases

All initial notices, criminal complaints, and any other court documents issued by or through the Tribal Court shall be personally served upon the defendant in criminal court cases. After a defendant's initial appearance, documents are effectively served if sent to the address provided by the defendant.

14. Service of Process Civil Cases

a. Personal Service. It is the responsibility of the party, NOT THE COURT, to serve the party's documents on the other party. Failure to properly serve documents may result in the case being dismissed.

1) Any court document issued by the Tribal Court may be served upon any person found within the Fort McDermitt Indian Reservation or on Paiute-Shoshone Tribal property by any person over the age of 18 years who is not a party to the proceedings.

2) Personal service is accomplished by delivering a copy of a Tribal Court document to the named party at any place he may be found, or, by leaving a copy of the document at the party's usual place of residence with a household member of 18 years of age or older and of reasonable competence.

3) The summons and complaint together must be personally served upon the defendant/respondent in a civil case within sixty (60) days of the issuance of the summons. If the summons and complaint are not served within sixty (60) days, a new complaint must be filed, new summons must be issued, and both must be served.

b. Service by Mail. After initial personal service of the Complaint and Summons, Paiute-Shoshone Tribal Court documents may be served on individuals by mail provided that a Certificate of Service or Mailing is attached that states that the document was mailed by first class mail, states the date on which the document was mailed, certifies that adequate postage was affixed to the envelope, and states the name of the party and the address to which the document was mailed. Service by mail shall be deemed completed on the third day after the Declaration of Mailing or Service is signed.

c. Service by Inter-office Delivery. Service may be made on persons who hold positions within the Paiute-Shoshone tribal government by inter-office delivery in accordance with the Tribe's normal delivery procedures so long as a Declaration of Service is attached that indicates the manner of service.

d. Service by Publication or by Public Notice

1) If the whereabouts of a party are not immediately known, that party may be served with process by publishing the complaint or notice in a newspaper or newsletter of general circulation in the vicinity of the last known address of the

party. The legal notice shall be published for a reasonable length of time, but may not occur later than ten (10) calendar days prior to a hearing. Service shall be deemed completed on the date of the last publication.

2) If a party avoids service after reasonable steps have been taken to serve that person with any civil court document, the party may be served by Public Notice. A process server is required to document at least two attempts to serve the party personally or by mail. Thereafter, upon payment of a fee by the requesting party, the Clerk or his/her designee may affix the legal notice to the residence of the party in a conspicuous place. Upon payment of a fee by the requesting party, the Clerk may also post legal notice naming the party and notifying him that legal action is pending in at least three other public places that are open to the members of the Paiute-Shoshone Tribe. This service shall be deemed constructive notice to the party that he is required to appear at the time stated and that further information is available by contacting the Clerk of the Court. The exact nature of the court action shall not be declared in the public notice.

e. Service of Foreign Court Documents Upon Tribal Members. When the document is issued by any court other than the Paiute-Shoshone Tribal Court, the following procedures shall be observed:

1) The person or party who wishes to accomplish service must present the document to the Tribal Court Clerk for review. The Clerk will affix the "Approved for Service" stamp to the front of the document.

2) The "Approved for Service," stamp must be dated and signed by the judge. If a document has not been so stamped and signed, it cannot be lawfully served within Paiute-Shoshone Tribal Territory.

3) Any delivery of a document issued by a court other than the Paiute-Shoshone Tribal Court to a person within the territorial jurisdiction of the Tribe without observing these requirements shall be deemed to be defective service.

15. Proof of Service

When a document is served upon any party, proof of service shall be filed with the court. Said proof shall be in writing and shall specify the manner of service, the date and place of service, and shall be signed by the person completing the service. The return (certificate) of service shall list and identify all documents served, and the name and address of those persons on whom the documents were served or the manner in which the service was accomplished. The person serving the document may request the signature of the person being served as acknowledgement that he/she received the document, but such signature is not required for the service to be completed.

16. Required Service

Every document filed with the court shall be served on all parties to the case, except those motions which may be heard ex parte and those filed against parties who are in default by reason of that party's failure to answer or appear.

17. Certificate of Mailing or Service

Every document filed with the court shall bear either a Certificate of Service or a Certificate of Mailing or Service. **Other than an original complaint, the Court Clerk may not accept a filing without proof that the document has been served upon or mailed to the opposing party.** The Certificate of Mailing or Service shall name the document; shall include the name of the person who is certifying to the court that the service took place; the method of service; the date of service; and the name and address of each person or party on whom the document was served. The Certificate of Mailing or Service shall be signed by the person who is certifying the service.

18. Filing

Before a document may become an official part of the court record, it must first be file-stamped or signed "Filed" by the Clerk of the Court. The file-stamp shall be dated and signed. The Clerk shall keep original documents in the court's file. All documents in the case file shall be maintained in chronological order, with the latest documents appearing on top.

19. Filing an Answer or Responsive Pleading

A person who is made a party to a court case shall file an Answer or other responsive pleading within twenty (20) days of receipt of service of the Summons and Complaint or may be subject to judgment by default.

20. Time Computation

The time permitted for any action or response shall be counted from the day after the act, event, or completed service which sets the time period in motion. If the final day for filing a response or taking other appropriate action falls on a non-business day or holiday, the time period will extend to the next regular day of business. Every calendar day shall be counted in computing the permitted time periods for all time limits of five days or more. Periods of time of less than five days shall exclude weekends and holidays from the count.

A party may make a motion for an extension of time, which shall only be granted for good cause.

21. Motions

a. Filing of Motions. An application to the court for an order shall be made by motion and shall state the relief sought and the rule, statute, or reasoning on which the motion is based. The reasoning may be in the form of a written brief by the party or by the party's counsel, including points and authorities, or may be a declaration signed under penalty of perjury by the party. The opposing party may file a written reply within ten (10) days after completion of service of the written motion. A reply to the opposing party's response may be filed within five (5) days after service of the response. Thereafter, the court may rule on the motion based on the written submissions or may require oral argument. Failure to file a written reply may be deemed to be a party's stipulation that the motion is ready for a ruling by the court. If a motion is ready for a ruling by the court, either party may at any time submit a Notice to Submit.

b. Hearing on Motion. Except as otherwise provided by ordinance, a party desiring hearing on a motion must contact the Clerk of the Court for a time and date for the motion to be heard, and serve the opposing party notice of the motion no later than ten (10) day prior to the motion being heard. If the court resets a motion for its own purposes, the court will notify the parties of the hearing date.

22. Signing of Documents

Every document filed with the court must be signed by the party filing it, or by his or her attorney or representative. Signature upon a document is the signer's affirmation that the contents of the document are true and correct to the best of the signer's knowledge.

23. Counterclaims or Cross claims

Defendants shall include any counterclaims or cross claims which arise from the same set of facts complained of by the plaintiff. A cross claim is a claim against a co-defendant.

24. Amendments to Pleadings

A party may amend a pleading at any time prior to the filing of an answer or other response by the opposing party. If a response has been filed, the party seeking to amend a pleading may do so only by order of the court, after filing a motion to amend and giving notice and an opportunity to be heard to the opposing party.

25. Scheduling Orders

In order to maintain orderly progress in the matters that come before the court, the judge presiding in a case in which a responsive pleading has been filed may issue a Scheduling Order and such other orders as may be necessary. The Scheduling Order

may include, but not be limited to, an Order governing the extent of discovery that will be permitted.

26. Continuances

A party may request a continuance or a postponement of any proceeding or any required action by filing a motion for continuance with the court in written form. The motion must be filed and heard pursuant to these rules, and shall state the reason why the continuance is needed. Granting a continuance shall be within the discretion of the court.

27. Setting Cases for Hearing or for Trial

a. Clerk. The Clerk of the Court shall be responsible for scheduling matters for hearing or trial in conjunction with these rules. Scheduling shall at the direction of the judge or by the Clerk's own authority in order to maintain the orderly flow of cases to come before the court.

b. Parties. The Plaintiff in a civil case may file a Request for Trial. The request shall state the approximate length of time required for the trial and shall state the issues of law and the issues of fact which shall be tried. It shall state whether the party elects to have a trial by jury or by the court. The request shall also disclose the names of the witnesses to be called and shall include a list of exhibits to be presented. The responding party shall include the same information in a written response. The court shall set the matter for trial at a time convenient to the parties and to the court.

28. Discovery

a. Civil Cases. Parties may conduct discovery, without court order, pursuant to Title V of the Federal Rules of Civil Procedure.

b. Criminal Cases. Parties may conduct discovery, without court order, pursuant to Rule 16 of the Federal Rules of Criminal Procedure.

29. Subpoena

At the request of a party, the Clerk of the Court may issue subpoenas for the attendance of witnesses at court, at depositions, or hearings, or for any other legitimate use in connection with court proceedings, including the production of documents. A subpoena must be personally served upon a witness. **It is the duty of the party requesting subpoenas, NOT THE DUTY OF THE COURT, to have the subpoenas served.** If a subpoena is served and the court date is changed for any reason, a new subpoena shall be issued and served, setting forth the new time and date for the person to appear.

30. Dismissal of Inactive Cases

If a party fails to prosecute a civil complaint by failing to act on it within a period of six months, the court may dismiss the case. Before a case will be dismissed for inactivity, the court will notify the Plaintiff that he/she has 30 days to take some appropriate action. If appropriate, the notice may require the parties to appear for a status conference. Thereafter, if nothing is filed, the case may be dismissed.

31. Judgments and Orders

The court shall enter a judgment or order in writing in each matter presented, which shall be date stamped and filed by the Clerk. All judgments issued after trial of a matter shall include findings of fact and conclusions of law. The final judgment of the court or any final order shall be subject to appeal in accordance with the rules on appeal set forth in the Paiute-Shoshone Ordinances.

32. Default Judgment

If a party fails to plead or otherwise respond, the complaining party may file a motion for judgment by default which shall be accompanied by a declaration confirming adequate service of process, and that the opposing party is of legal age, sound mind, and not on active military duty. The court may set the matter for a default hearing and may enter judgment against the party who is in default. The judgment shall not be set aside except by the showing of good cause for the failure to plead.

33. Attorney Fees and Costs

If a party includes a prayer for attorney fees and costs in the party's initial pleading in civil matters, the court may in its discretion award such fees and costs as the court deems reasonable, but only upon the filing of a Memorandum of Fees and Costs by the party seeking them.

34. Ex Parte Matters

a. Ex Parte Motions. Where permitted by ordinance, a party may file an ex parte motion and the court may grant such motion based on its equitable powers, only when the motion intends to maintain law and order, to provide necessary emergency relief, or to preserve the status quo. Such motion shall be made in writing and shall include a declaration under penalty of perjury that states the reason why the relief requested should be granted without notice to any party who may oppose it.

b. Orders resulting from Ex Parte Motions. The Order granting the relief sought in an ex parte motion shall be served on all parties to the proceeding.

35. Court Proceedings. All cases shall be tried before a judge or jury, pursuant to ordinance. The Clerk of the Court shall administer all oaths and shall maintain a complete audio record of the trial.

36. Settlement

Nothing in these rules shall prohibit the parties agreeing to a mutually acceptable settlement of their dispute. In such case, the parties shall file a Stipulation for Settlement, signed by all parties and their counsel, if applicable. The stipulation must be accompanied by a proposed order for the court's signature.

37. Sanctions

The court may impose any appropriate sanction against a party or a representative for a violation of court order, these rules, or any act that constitutes contempt as determined by the court. Sanctions may include, but are not limited to: a fine, community service, or jail time. Any sanctions imposed shall be imposed in accordance with the Tribe's Law and Order Code.

38. Change or Withdrawal of Counsel

a. Change of Counsel. A party's counsel of record in an action may be changed or a new attorney substituted by notice to the court and to all parties signed by both withdrawing counsel and new counsel without first obtaining leave of court. If new counsel appears, the action shall proceed as if the new attorney were the attorney of record from the time the action was commenced, unless the court finds good cause for delaying the proceedings.

b. Withdrawal of Counsel.

1) Except as otherwise proved by order of the court, no counsel may withdraw as counsel of record for any party to an action without first obtaining leave and order of the court. Said order shall be issued only upon motion filed with the court, and a hearing on the motion after proper notice to all parties to that action, including the client of withdrawing counsel. Leave to withdraw as counsel may be granted by the court for good cause and upon such conditions or sanctions as will prevent any delay in determination and disposition of the action and the rights of the parties. Provided that at the entry of judgment or any time thereafter, counsel wishing to withdraw as counsel of record may give notice via the judgment or by filing a notice of withdrawal, but withdrawal shall not become effective until the appeal time has expired. Withdrawing counsel shall provide the last known address of the client in any notice of withdrawal.

2) If counsel is granted leave to withdraw, the court shall enter an order permitting counsel leave to withdraw and directing the former client to appoint another attorney to appear, or to appear in persons by filing written notice with the court stating how the party will proceed without counsel, within twenty (20) days from the date of entry of the order. After the order is entered, withdrawing

counsel shall forthwith, with due diligence, serve copies of the order upon the former client and all other parties to the action, and shall file proof of service with the court. Service upon the former client shall be by personal service or certified mail to the former client's last known address, which service shall be complete upon mailing. Upon entry of a withdrawal order in a civil case, no further proceeding shall be had in that action which will affect the rights of the party of the withdrawing attorney for a period of twenty (20) days after the entry of the order. If such party fails to file and serve an additional written appearance in the action within the twenty (20) day period, that failure shall be sufficient ground for entry of default and default judgment against the party, with prejudice, without further notice, all of which shall be stated in the order allowing the attorney to withdraw.

39. Certified Copies of Court Documents

The Clerk of the Court is authorized to issue copies of court documents that the Clerk certifies to be an exact duplicate of any document on file with the Court. The certification must be stamped on the document and dated and signed by the Clerk.

40. Appeals and Stay of Execution

Appeals and stay of execution are governed by ordinance.

41. Court Records

a. Tribal Court Records. Court records consist of all papers or documents filed with the Clerk of the Court, and the minutes or transcripts of any trial or hearing, and any materials admitted into evidence. Court records are not available for inspection except by parties and their counsel. No record may be removed from the immediate supervision of the Clerk.

b. Juvenile Court Records. Records and files in juvenile matters are confidential. Only those persons authorized by the court may have access to these records.

c. Copies. Copies of court records or of recorded hearings are available to authorized persons upon payment of applicable fees.