

# FALLON PAIUTE-SHOSHONE TRIBE



## LAW AND ORDER CODE

### Title 1

### The Tribal Court

# Fallon Paiute-Shoshone Tribe Law & Order Code

## LAW & ORDER CODE TITLE 1 THE TRIBAL COURT

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**Law and Order Code  
TITLE 1  
THE TRIBAL COURT**

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**TITLE 1 – THE TRIBAL COURT**

**1-10 AUTHORIZATION AND DEFINITIONS**

**1-10-010 Establishment of the Tribal Court**

Pursuant to the authority granted to the Fallon Business Council by Article VI, Section 1 (h) of the Constitution and By-Laws of the Fallon Paiute-Shoshone Tribe, there is hereby established a Tribal Court to be known as the Fallon Paiute-Shoshone Tribal Court.

**1-10-020 Definitions**

The following words have the meanings given below when used in this Law and Order Code:

- (a) Clerk: Clerk of the Tribal Court
- (b) Code: The Law and order code of the Fallon Paiute-Shoshone Tribe
- (c) Colony and Reservation: The territory within the jurisdiction of the Fallon Paiute-Shoshone Tribe as set forth in the Tribe’s Constitution
- (d) He, Him and His: She, her, and hers, when appropriate
- (e) Indian: Any person of Indian descent who is a member or eligible to be a member of any presently or previously recognized Indian Tribe presently or previously under Federal jurisdiction.
- (f) Member: Any person who is or is eligible to be a member of the Fallon Paiute-Shoshone Tribe
- (g) Reservation: means that area encompassed within exterior boundaries of the Fallon-Paiute Shoshone Reservation, Colony, and any lands added thereto
- (h) Tribe: The Fallon Paiute-Shoshone Tribe
- (i) Tribal Court: The court operating within the jurisdiction of the Fallon Paiute-Shoshone Tribe.

**1-10-030 Tribal Immunity**

The Fallon Paiute-Shoshone Tribe has and retains all sovereign immunity and does not consent to the filing of any suit or to the entry of any judgment or order against it, the effect of which is to order the payment of money directly or indirectly. However, the Fallon Paiute-Shoshone Tribe does submit to the jurisdiction of the Tribal Court for writs in the nature of mandamus, prohibition or injunction for declaratory or equitable relief solely for the purpose of allowing review and enforcement of compliance with the Tribe’s own procedures and the essentials of due process. No order of mandamus, prohibition, nor any injunction may order the payment of money or equivalent, nor the

transfer, nor return of any property, but may order the Tribe to provide procedural protections that were or are about to be denied.

#### **1-10-040 Immunity of Officials and Employees**

- (a) Any elected or appointed official or employee of the Fallon Paiute-Shoshone Tribe shall enjoy the same immunity from suit as the Fallon Paiute-Shoshone Tribe for any act performed in the course of duty or in the reasonable belief that such actions were within the scope of official duties, unless it is established that such action was taken with malicious intent or in bad faith.
- (b) Section 1-10-040(a) above shall not apply to suits brought by the Tribe against officials or employees. However, the Tribe shall not institute suit against any present or former official or employee except upon at least 2/3 affirmative vote of the entire Fallon Business Council.

### **1-20 JURISDICTION OF THE TRIBAL COURT**

#### **1-20-010 Territorial Jurisdiction of the Tribal Court**

Jurisdiction of the Tribal Court shall extend to all territory within the present exterior boundaries of the Colony and Reservation as defined by the Tribe's Constitution, including trust and non-trust land all roads, water and bridges and to any lands which may be added to the Colony and Reservation in the future or which may become subject to the jurisdiction of the Tribe by virtue of an Executive Order, a Declaration or Regulations of the United States Department of the Interior, a Declaration or Order of a court of competent jurisdiction, or other lawful means.

#### **1-20-020 Civil Jurisdiction**

- (a) The Tribal Court shall have jurisdiction over all civil causes of action, over persons or things, arising or existing within the territorial jurisdiction of the Tribal Court.
- (b) Personal jurisdiction shall exist over all persons who are Indians or who consent to the jurisdiction of the Tribal Court. The act of entry upon territory within the jurisdiction of the Tribal Court shall conclusively be deemed consent to the jurisdiction of the Tribal Court with respect to any civil action arising out of such entry.
- (c) The act of entry upon territory within the jurisdiction of the Tribal Court by an off-reservation seller or his agent to the jurisdiction of the Tribal Court for any dispute arising out the sales, regardless of where the contract was entered into.

#### **1-20-030 Criminal Jurisdiction**

The Tribal Court shall have criminal jurisdiction over all offenses enumerated in this Law and Order Code and any subsequent ordinance adopted by the Tribe when committed within the jurisdiction of the Tribal Court by any Indian, any other person to the fullest extent allowed by the status of any warrant or future federal or state law, statute, regulation or case.

#### **1-20-040 Probate Jurisdiction**

To the extent permitted by Federal law, the Tribal Court shall have probate jurisdiction over all of the real and personal property located within the jurisdiction of the Tribal Court at the time of death

of a descendent who was a member of Indian or other person and the personal property, wherever located, of any member of the Tribe who is a resident of the Colony and Reservation at the time of death.

#### **1-20-050 Juvenile Jurisdiction**

The Tribal Court shall have original jurisdiction in all proceedings and matters relating to, need for supervision, foster care, training, status offenses and other matters not relating to delinquent acts affecting Indians or members under the age of eighteen, when such children are residing within the jurisdiction of or are wards of the Tribal Court whoever, residing (one that would be a crime if committed by a person over the age of eighteen) shall be the same as for criminal jurisdiction under 1-20-030 above. Juvenile jurisdiction shall be exercised to the limits of and consistent with the provisions of the Indian Child Welfare Act of 1978, P.L. 95-608. The Tribal Court shall accept and exercise any portion or incident of jurisdiction transferred to or shared with the Tribal Court, generally or in any particular case by any state, federal or other Tribal Court.

#### **1-20-060 Civil Limitations of Actions**

The Fallon Paiute-Shoshone Tribal Court shall have no jurisdiction over any action brought more than three years after the cause of action arose.

#### **1-20-070 Criminal Limitations of Action**

The Fallon Paiute-Shoshone Tribal Court shall have no jurisdiction over any action brought more than three years after the cause of action arose.

### **1-21 JURISDICTIONS CIVIL SANCTIONS OVER NON-INDIANS**

#### **1-21-010 Definition**

As to any person not subject to the criminal jurisdiction of the Fallon Paiute-Shoshone Tribe at the time of the enactment of any criminal ordinance, the violation of such criminal ordinance shall bear civil sanctions only. For convenience only, persons not subject to criminal jurisdiction at the time of enactment, or remaining or becoming not subject to criminal jurisdiction due to later changes in status or the law, are referred to herein as Non-Indian, without regard to racial origin.

#### **1-21-020 No Arrest**

No person known to a police officer to be a Non-Indian shall be arrested for any offense under the Fallon Paiute-Shoshone Tribe's Law and Order Code.

#### **1-21-030 Burden of Proof, Powers of Authorities when Non-Indian Status in Doubt**

Whenever status as a Non-Indian is not immediately clear or resolved, any person, otherwise subject to arrest, detention, investigation or other action under the law of the Fallon Paiute-Shoshone Tribe may be dealt with by the law enforcement authorities as if jurisdiction existed. The burden of raising the issue of non-jurisdiction (status as a Non-Indian) shall be upon the person claiming the exemption from jurisdiction but the burden of proof of jurisdiction (status as an Indian) remains with the prosecution. *See Eagle v. Yerington Paiute Tribe*, 603 F.3d 1161 (9<sup>th</sup> Cir. 2010).

#### **1-21-040 Release of Non-Indians**

A Non-Indian, non-resident of the territorial jurisdiction of the Fallon Paiute-Shoshone Tribe shall be escorted, in such restraint as is prudent, to the boundaries of the territorial jurisdiction of the Fallon Paiute-Shoshone Tribe and released if:

- (a) The person is sober and able to care for himself, and
- (b) Represents no threat to the safety of himself or others and
- (c) Has committed no offense for which he might be referred to city, state or federal authorities
- (d) A Non-Indian resident of the territorial jurisdiction of the Fallon Paiute-Shoshone Tribe shall be escorted to his home, in such restraint as is prudent, and released if he meets conditions a, b, c above.

#### **1-21-041 Property of Non-Indians**

- (a) Any time a non-Indian resident or non-resident is being released or escorted, pursuant to 1-21-040, the police officer may retain physical custody and control of any items of personal property of, or in the possession of the non-Indian or non-resident until the case is concluded. Such Items may be held either as evidence when appropriate or as security for civil sanctions. A case is concluded if no complaint is filed within the periods under 1-21-070, or if filed and it is brought to proper end.
- (b) The police officer may have vehicles removed from jurisdiction, if not needed for evidence.
- (c) Any item not needed for evidence may be released upon the non-Indian, non-resident posting a cash security equal to the maximum civil sanctions applicable.

#### **1-21-050 Civil Protective Custody of Non-Indians**

Any non-Indian unable to meet conditions (a) and (b) of Section 1-21-040 shall be held in Civil Protective Custody until the conditions are met. Such Civil Protective Custody shall be at the places and for the minimum and maximum periods and subject to the other provisions set forth in Section 1-21-060.

#### **1-21-060 Referral to Other Authorities**

Any non-Indian unable to meet condition (c) of Section 1-21-040 shall be held in restraint for a period not to exceed four hours while contact is attempted with appropriate city, state, or federal authorities. If no citizen's complaint or other city, state, or federal authority is in place within four hours to hold the person, the person shall be released. The restraint shall only be as necessary to protect the peace.

#### **1-21-070 Civil Process and Sanctions for Offenses**

Any person who, except for non-Indian status, would be subject to prosecution for a criminal offense under the laws of the Fallon Paiute-Shoshone Tribe, may be subject to civil sanctions, in a case in which the Tribe is plaintiff, including judgment for money damages up to the limits of any fine otherwise provided for the offense and any other remedy or sanction that could be imposed by the Tribal Court of law or equity. Civil burdens of proof shall apply. At a time that would otherwise correspond with arrest and any time thereafter up to the limit of the civil statute of limitations, if one applies, or if none, then for one year following the date of the discovery of the complained of activity,

the police officer or anyone else on behalf of the Fallon Paiute-Shoshone Tribe may serve a summons and complaint upon such person. The service of a citation or a criminal complaint upon such person shall serve as a Civil Summons and a Complaint. Such citation or criminal complaint bears both (a) a notation that it is in lieu of a civil summons and complaint, and (b) indicates a court date for appearance or filing an answer.

#### **1-21-080 Removal of Non-Members, Power and Grounds**

In addition to any other sanctions, the Tribal Court after hearing, may order the removal or exclusion of a non-member from the Reservation whose presence may be injurious to members of the Fallon Paiute-Shoshone Tribe.

The removal may be for any of the following:

- (a) Violation of any ordinance, regulation, rule, or resolution of the Fallon Paiute-Shoshone Tribe
- (b) Violation of any federal or state law or regulation
- (c) Violation of any agreement with the Fallon Paiute-Shoshone Tribe or any of its members or employees
- (d) Any other action that is injurious to the members of the Fallon Paiute-Shoshone Tribe

#### **1-21-090 Removal, Appeal and Enforcement**

A Tribal Court order for removal or exclusion is an appealable order. A Tribal Court order for removal or exclusion shall be enforced by any enforcement officer having authority within the territorial jurisdiction of the Fallon Paiute-Shoshone Tribe.

#### **1-21-100 Removal by Fallon Business Council**

- (a) The Fallon Business Council shall be informed by the Tribal Court of any case in which there has been a request for removal or exclusion or in which the Tribal Court is considering removal or exclusion on its own motion. The Fallon Business Council, by majority vote, may transfer a removal or exclusion hearing from the Tribal Court to the Fallon Business Council for hearing. The Fallon Business Council's decision on removal or exclusion shall be final and not reviewable by any court.
- (b) The Fallon Business Council, on its own motion or by majority vote, after a request from any member, may initiate removal proceedings against a non-member whether or not any court proceedings are pending. The Fallon Business Council may afford notice and a hearing to the non-member. Exclusion shall be by resolution upon a majority vote.
- (c) The Fallon Business Council's decision on removal or exclusion shall be final and not reviewable by any court.

### **1-30 LAW TO BE APPLIED BY THE TRIBAL COURT**

#### **1-30-010 Tribal Law**

- (a) The Tribal Court shall apply the provisions of this code and any additional ordinances, resolutions or procedures adopted by the tribe.
- (b) When appropriate, the Tribal Court shall rely on previous opinions issued by the Tribal Court or the Tribal Court of Appeals interpreting this Code or any other Tribal Ordinance.

**1-30-020 Tribal Custom**

- (a) In matters not covered by this Code or any Ordinances; the Tribal Court shall apply traditional customs of the Tribe where such customs can be discovered with reasonable certainty by meaningful evidence.
- (b) The Tribal Court shall not consider whether the customs of the Tribe apply unless this issue is raised by one of the parties. It shall be the obligation of the party wishing to benefit by the application of this section to bring to the attention of the Tribal Court the appropriate Tribal custom and to establish that the custom prevails within the Tribe.

**1-30-030 Federal Law**

In any matters not covered by Section 1-30-020, the Tribal Court shall apply any laws of the United States which could be applied by any courts of general jurisdiction of any state, and any regulation of any administrative agency of the United States which may be of general or specific applicability, subject to the provisions of Section 1-30-050.

**1-30-040 State Law**

In any matters not covered by Section 1-30-010 through 1-30-030, the Tribal Court shall apply Nevada Rules of Civil and Criminal Procedures and the general Civil and Criminal Law of the State of Nevada as amended. This shall be used as a guide in cases in the Tribal Court involving claim and complaints between parties, but not so as to impede the administration of justice nor contravene the application of any Tribal Law or Custom of Federal Law, nor to produce any absurd result, nor impose any regulatory scheme or policy not contemplated by the Tribe, nor to interfere with the Tribe's laws or policies on any subject regulated by the Tribe. This revision shall be inclusive of all laws stated in the Tribe's Law and Order Code, Resolutions, Ordinances, Rules, Procedures, and Policies.

(Amended by Resolution 03-F-043-A)

**1-30-050 Inapplicability of 25 Code of Federal Regulation Part 11**

Every ordinance duly enacted by the Tribe shall have full force and shall supersede and preempt any conflicting portion of 25 Code of Federal Regulations (C.F.R.) Part 11. The provisions of 25 C.F.R., Part 11, shall continue to apply on the Colony and Reservation until superseded and preempted by duly enacted ordinances of the Tribe.

Whenever the Tribe adopts a title or ordinance concerning a certain subject matter, all provisions of 25 C.F.R., Part 11 concerning that subject shall be superseded and preempted, and have no application, without regard to any actual conflict between the provisions.

**1-40 JUDGES OF THE TRIBAL COURT**

**1-40-010 Composition of the Tribal Court**

- (a) The Tribal Court shall consist of one Chief Judge and as many Associate Judges as the Fallon Business Council shall deem necessary to carry out the business of the Tribal Court.
- (b) Although the specific number of Associate Judges is left up to the Fallon Business Council, the Fallon Business Council shall take all reasonable efforts to guarantee the

smooth and continuous operation of the Tribal Court by the appointment of the Chief Judge and at least one Associate Judge. If for any reason there are no duly appointed Judges and emergency situations arise in criminal cases not covered by standing bail orders, the Tribal Chairman may set bail or release prisoners. If the law of the Tribe or the U.S. Constitution require action in a criminal matter within less time than a Judge may be appointed, the Tribal Chairman shall request an appointed Judge of any other Nevada Tribe to rule in the case.

#### **1-40-020 Qualifications of Judges**

All Tribal Court Judges may be any person, Indian or Non-Indian, a resident or non-resident of the Colony and Reservation. Judges shall preferably be attorneys licensed to practice law in one or more of the United States, or someone knowledgeable of Indian Law. A Judge must be a person who:

- (a) Is twenty-one (21) years of age or older;
- (b) Has never been convicted of a felony, unless a full pardon has been received for the offense;
- (c) Has not been convicted of a misdemeanor within the last year excluding non-alcohol related traffic offenses;
- (d) Is willing to attend training sessions for Tribal Judges;
- (e) Completes a background check similar to Tribal law enforcement employees; and
- (f) Is willing to be subject to drug tests.

#### **1-40-040 Appointment of Judges**

All Judges shall be appointed by the Fallon Business Council.

#### **1-40-050 Term of Office**

- (a) All Judges shall serve for a term of four years and thereafter until their successors take office, unless removed for cause.
- (b) Judges shall be eligible for reappointment.

#### **1-40-060 Oath of Office**

Before taking office, each Judge shall take the following oath, administered by the Chairman of the Fallon Business Council or his designate at a regular scheduled meeting:

“I \_\_\_\_\_, do solemnly swear that I will administer justice, impartially perform all the duties incumbent upon me as Judge with the best of my abilities and understanding.”

#### **1-40-070 Duties and Powers of Judges**

- (a) The Chief and Associate Judges of the Tribal Court shall have the duty and power to conduct all Tribal Court proceedings, and issue all orders and papers incident thereto, in order to administer justice in all matters within the jurisdiction of this Tribal Court. In so doing, they shall:
  - (1) Hold court regularly at a designated time and place on the Colony and Reservation;
  - (2) Hear and decide all cases;
  - (3) Enter all appropriate orders and judgments;
  - (4) Issue all appropriate warrants;

- (5) Keep such records as are required by Tribal ordinance and the Rules of Court;
  - (6) Perform the duties of the Clerk in the absence of a Clerk; and
  - (7) Perform such other acts as are necessary and proper in the administration of the Tribal Court.
- (b) The Chief Judge shall hear all cases except those which are assigned to an Associate Judge or which must be heard by an Associate Judge in order to assure the prompt administration of justice.

#### **1-40-080 Appointment of Temporary Judges**

If, due to the disqualification or other unavailability of the Chief and Associate Judges, an additional Judge is needed to adjudicate matters at trial or on appeal, the Chief Judge shall have the power to request any other appointed Judge of any other Nevada reservation to hear the case. If for any reason the Chief Judge is not available to make such request and time is of the essence, the Tribal Chairman shall make such request.

#### **1-40-090 Compensation of Judges**

The compensation of all Judges of the Tribal Court shall be set by resolution of the Fallon Business Council. No Judge shall have his compensation reduced during his term of office. Unless agreed to by both parties.

#### **1-40-100 Removal of Judges**

- (a) Judges may be removed for good cause following a hearing process as outlined below.
- (b) Procedures to be followed in removing a Judge:
  - (1) No action will be taken except on a written complaint to the Fallon Business Council setting forth specific facts which justify removal.
  - (2) The Judge shall be immediately notified of the charges against him.
  - (3) Within 60 days of receiving a complaint against a Judge, the Fallon Business Council shall decide by majority vote of a quorum whether the complaint requires a hearing before the Fallon Business Council to determine if the Judge should be removed. Notice of this decision must be sent by certified mail to both the Judge accused and the complainant within five (5) days of the Fallon Business Council decision.
  - (4) If the Fallon Business Council decides a hearing is required, it shall set a date for such hearing at least fifteen (15) days but not more than sixty (60) days from, the decision under paragraph (b) (3) above. The Fallon Business Council shall notify the accused Judge and the complainant of the date of the hearing in the notice required in Subsection (b) (3) of this section. The accused Judge shall be suspended from his duties from the date on which the Fallon Business Council decides that a hearing is necessary.
  - (5) At the hearing scheduled pursuant to Subsection (b) (4) above, both the accused Judge and the complainant shall be given an opportunity to present evidence, call witnesses, and make a statement to the Fallon Business Council in support of their contentions.
  - (6) After a hearing is held, the Fallon Business Council shall vote on whether or not the evidence presented establishes that good cause exists for removing the Judge. A two-thirds (2/3) vote in favor of removal is necessary to remove a

Judge. The parties shall be notified of the Fallon Business Council's decision in the manner provided for in Subsection (b) (3) of this section. Any Judge not removed is reinstated to his duties as of the decision of the Fallon Business Council.

**1-40-110 Disqualification of Judges; Conflict of Interest**

- (a) No Judge shall hear or determine any case when he has a bias or direct interest in the outcome of such case or where he is related by blood or marriage to one of the parties as: husband, wife, brother, sister, father, mother, grandfather, grandmother, grandson, granddaughter, son, daughter, uncle, aunt, nephew, niece, or first cousin. Any party or the Judge may raise the question of conflict of interest. Upon decision by the Judge involved that disqualification is appropriate, another Judge of the Tribal Court shall hear the matter. If the Judge refuses to disqualify himself, such refusal may be made a basis for appeal of the final decision in the case. If the appellate court determines that the Judge should have disqualified himself, it shall order a new trial in the Tribal Court before a different Judge.
- (b) A Judge related to one or both of the parties in one of the blood or marriage relationships listed in Subsection (a) of this section may hear a case if both or all parties know or are advised of the relationship and consent in writing to have that Judge hear the case.
- (c) A writing which documents the consent referred to in Subsection (b) of this section shall be made part of the record of the case.

**1-40-120 Filling Vacancies**

When a Judge's position becomes vacant before the end of the term, the Business Council shall fill the vacancy by appointment. The Judge appointed to fill a vacancy will serve the remainder of the original term and be eligible for reappointment.

**1-50 CLERK**

**1-50-010 Judge May Assume Duties of the Clerk**

When, for whatever reason, the position of Clerk is vacant or the Clerk is unavailable, a Judge may assume and perform the duties of the Clerk.

**1-50-020 When the Clerk May Sign Orders**

In urgent circumstances, when the ends of justice require a Tribal Court order or other document required by law to be signed by a Judge and no Judge is available in person to sign the document, the Clerk, upon oral order from the Judge, may sign a copy of the original as follows: " \_\_\_\_\_ (name of Judge) by \_\_\_\_\_ while Judge was at \_\_\_\_\_." Alternatively the Court Clerk can sign a Tribal Court order or other document with a stamp of the Judge's signature when the Judge provides his approval or authorization. A copy of the document as signed by the Clerk shall be filed and made a part of the record of the case. The original of the document shall be held and signed and dated by the Judge when the Judge is available. The Judge shall note on the original that a copy was earlier signed by the Clerk per the Judge's oral order.

## **1-60 RECORDS OF THE TRIBAL COURT**

### **1-60-010 Court Files**

- (a) Tribal Court files on a particular case are generally open to the public. A party to an action may request by motion that a particular case file be sealed. If a case is sealed, only the parties and persons authorized by the parties, the Tribal Judge, or the Fallon Business Council, as an official body, may inspect the records of a case and obtain copies of documents included therein.
- (b) Authorized persons may inspect such files only during the ordinary working hours of the Clerk or the Judge, to ensure the integrity of court records. Under no circumstances shall anyone except a Judge hearing the case take a file from the Clerk's office without an order from the Judge.
- (c) A copy of any document contained in a court file may be obtained from the Clerk by any authorized person for a reasonable charge to cover the expenses of copying. Upon request, the Clerk shall certify that such copies are accurate copies of the document on file.

### **1-60-020 Recording Court Proceedings**

- (a) When requested to do so by one of the parties, the Clerk shall record the proceedings of the Tribal Court on a recording device. The recording shall be identified by case number by the Clerk and may be kept for one year for use in appeals or collateral proceedings in which the events of the hearing or the manner in which it was conducted in are in issue, or such period of time given to file the appeal.
- (b) To preserve the integrity of the record, the Clerk shall store it in a safe place and release it only to the relevant court, or pursuant to an order of the Judge.

### **1-60-030 Forms of Decisions**

- (a) Each decision of a Tribal Court, whether at trial or on appeal, shall be recorded in writing.
- (b) This decision shall be placed in the case file as an official document of the Tribal Court.

### **1-60-040 Filing Fees**

The Fallon Business Council shall by resolution adopt a system of filing fee for the Tribal Court. Filing fees shall be adopted for civil cases, divorce cases, appeal cases, and others as determined by the Fallon Business Council. Filing fees shall not be charged to the Tribe or Business Council, nor to any Tribal Agency or subdivision, nor to any Tribal officials appearing in their official capacities. (Amended by Resolution No. 92-F-063)

## **1-70 RULES OF THE COURT**

### **1-70-010 Preparation of Rules**

The Chief Judge may prepare Rules of the Court concerning conduct in the Tribal Court. Such rules may include the time and place of court session, the forms and filing deadlines of pleadings, decorum in the court room and other matters which will make the Tribal Court function more efficiently.

**1-70-020 Sanctions**

- (a) The Tribal Court may require observance of the Rules of Court before taking any action in a matter.
- (b) Where one party suffers actual monetary expenses or damages, due to delay in the proceedings or any other reason, because of the failure of some other party before the Tribal Court to obey the Rules of the Court, the party injured may make a motion to recover the actual damages and have an order of the Tribal Court entered in the same case.

**1-70-030 Serving of Papers from Outside Jurisdictions (Civil and Criminal)**

In regards to all court papers from other jurisdictions, if they do not cause an individual to be incarcerated, they shall be served only after the review of the Court Clerk and Tribal Police determining the document is an actual court-issued document. Restraining Orders and Protective Orders issued by other jurisdictions shall be served only after written approval of the Tribal Judge. Search and arrest warrants shall be dealt with as required by Title 4.

(Amended by Resolution No. 93-F-017.)

**1-70-040 News Coverage**

The taking of photographs in the courtroom during judicial proceedings, or the radio or television broadcasting of judicial proceedings from the courtroom, shall not be permitted, unless there are special circumstances, all of the parties consent, and the Judge feels that the purposes of justice will not be thwarted.

**1-80 PRACTICE BEFORE THE TRIBAL COURT**

**1-80-010 Right to Represent Oneself or Have a Representative as Counsel**

- (a) Any person who is a party to a case before the Tribal Court shall have the right to represent himself, unless the Tribal Court determines that the person is not competent to proceed without a representative.
- (b) Any person who is a party to any case may employ a representative as counsel to help present his case.

**1-80-020 Who May be a Representative**

- (a) Any person appearing as a party in any judicial proceeding before a Tribal Court shall have the right to be represented by an attorney or Tribal Court Advocate and to have such person assist in the preparation of his case so long as such representative is acceptable to and approved by the Tribal Court Judge.
  - (1) The Fallon Paiute-Shoshone Tribe shall have no obligation to provide or pay for any attorney or Tribal Court Advocate and such obligation shall rest entirely with person desiring such a counselor.
  - (2) Any person appearing as a Tribal Court Advocate shall be subject to the same ethical obligations of honesty and confidentiality toward his client as would be a professional Attorney, and the Client Attorney Testimonial Privilege shall apply in appropriate circumstances.

- (3) Tribal Court Advocates shall be deemed Officers of the Court for purposes of their representation of a party and shall be subject to the disciplinary authority of the Tribal Court. In all matters related to their representative capacity. This shall include exclusion from practice or representation in the Tribal Court at the discretion of the Tribal Court Judge.
- (4) An Attorney must be certified by the State of Nevada Bar Association or other State Bar for which admission to practice was made. Persons not in possession of a valid State Bar certification will not be recognized as an attorney by the Tribal Court, but as a Tribal Court Advocate.
- (b) Any person wishing to act as a Tribal Court Advocate shall meet the following minimum qualifications:
  - (1) Have a Law Degree from an accredited Law School in the United States; or, have a Para-Legal Certificate from an accredited U.S. college or university with courses in Civil & Criminal Procedures; or, have a high school diploma and 2 years' experience as an advocate before a Tribal Court or Court of Indian Offenses.
  - (2) Demonstrated legal abilities by providing documentation of pleadings, briefs, orders, and other prepared legal documents.
  - (3) Certification that the Advocate has read and is familiar with the Tribal Law & Order Code, and the Rules of Court.
  - (4) Payment of applicable Tribal Advocate fees.
  - (5) Submit a "Motion for Admission" to the Tribal Court by a Tribal Court Advocate or non-Lawyer.
  - (6) Submit the "Oath of Appointment" for Tribal Advocates.
- (c) Each advocate shall complete each year at least three hours of continuing legal education in one or more of the following topics: civil procedure, criminal procedure, trial advocacy or evidence. Classes meeting this requirement must be certified by a state bar association. (Amended by Resolution No. 09-F-056)

**1-80-030 Disbarment and Discipline**

- (a) Whenever it is made to appear to the Chief Judge that any Attorney who practices before the Tribal Courts has been disbarred or involuntarily suspended for malpractice or improper practice from the practice of law in the State of Nevada or other State to which reference for admission to practice was made as a condition to practice before the Tribal Courts, he shall be immediately given notice at his last known address that he shall be suspended from practice before the Tribal Courts for an indefinite period unless he appears within ten (10) days and shows good cause why such order should not be made.
- (b) Any Judge who finds an attorney who practices before the Tribal Courts to be in contempt of court, may in addition to any other sanctions imposed, order the attorney to appear within ten (10) days, or such other time as the Tribal Court deems appropriate, and show cause why he should not be suspended from practicing before the Tribal Courts or held to be in contempt of court.
  - (1) All suspensions from practicing before the Tribal Courts shall be for an indefinite period unless the Judge specifically orders otherwise.
  - (2) Any attorney may petition the Tribal Court for permission to reapply for permission to practice at the end of one year if the petitioner has been reinstated to practice if previously disbarred or suspended in another jurisdiction.

- (c) The Tribal Court may disbar an Attorney or Tribal Court Advocate from practice before the courts, or impose suspension from practice for such time as the Tribal Court deems appropriate on any of the following grounds:
- (1) False swearing.
  - (2) Conviction of a crime in any other jurisdiction that would be a crime if committed on the Reservation.
  - (3) Disbarment or suspension by another Court.
  - (4) Conduct which in the opinion of the presiding Judge is unbecoming an Officer of the Court.
  - (5) Behavior in violation of the Code of Professional Responsibility of the State Bar of Nevada.
  - (6) Any offensive personality, or presentation of facts prejudicial to the honor or reputation of a party or witness, unless required by justice by the cause with which associated.
  - (7) Any disrespect to the Tribal Court or Tribal Court employees, whether in Court or in any matter, in the opinion of the Tribal Judge is related to a court proceeding.
  - (8) Any conduct in Tribal Court towards a party, witness, court official, or any other person involved in the case, which is determined by the Tribal Judge to be unreasonably offensive, unreasonably prejudicial, or unreasonably holds such person out to scorn or ridicule shall be grounds for suspension or disbarment.
- (Amended by TC Meeting March 11, 1997)

**1-80-040 Registration Fees and Proper Identification on All Pleadings and Correspondence with the Court or Tribal Government or Officials**

- (a) All Attorneys and Tribal Court Advocates must register with the Clerk before any representation undertaken in any tribal manner. Such registration shall include proper identification as to the status of the person as a Tribal Court Advocate or Attorney. At the time of such registration, a fee shall be paid to the Clerk in an amount as approved by the Fallon Business Council, along with a completed registration form signed by the attorney/advocate. Said fee shall be due annually and apply for each calendar year. All Attorneys and Tribal Court Advocates who are employed by the Tribe in any official capacity shall be exempt from said fee.
- (b) All pleadings and correspondence with the Tribal Courts shall clearly state the name, address, telephone number, fax number, and signed by the party, their Tribal Court Advocate or Attorney. Failure to comply with this requirement may result in the immediate return of any pleadings, documents, or correspondence without filing or consideration.
- (Amended by Business Council Meeting Minutes of March 11, 1997)

**1-90 APPEALS FROM TRIBAL COURT**

**1-90-010 Composition of the Court of Appeals**

- (a) The Tribal Court of Appeals shall consist of all of the Judges of the Tribal Court except that no Judge from whose decision an appeal is taken, shall sit on the appellate panel deciding the case.

- (b) Each appeal shall be decided by the majority vote of a panel of three (3) Judges. If there are not enough appointed Judges of the tribe to make up an unbiased panel, any appointed Judge of any other Nevada tribe may sit on the panel.
- (c) Appellate panels shall be called to serve by the Clerk or if there are not enough tribal Judges to serve as a panel, the Clerk shall either assemble the panel from the Judges of other tribes. Subpoenas and other process needed for the appeal shall be issued by the Clerk if the panel is assembled by the Clerk.
- (d) Nothing in this section shall prevent the Fallon Business Council from entering into an agreement for different procedures with other Tribes, tribal organizations, reservations and colonies of Nevada Indians whereby Tribal Court Judges are shared among the various Tribal Courts for the purpose of hearing appeals. Any such agreement by the Fallon Business Council shall take precedence over the general provisions contained in Subsections (a) and (b) and (c) of this section.

(Amended by Resolution No. 89-F-049.)

### **1-90-020 Appeal Procedures**

- (a) Any party dissatisfied with a decision of the Tribal Court, except the prosecution in a criminal case, may appeal by filing a written notice of appeal with the Clerk within thirty (30) days of the Judge's decision. Where a decision is not delivered at a hearing with both parties present, the thirty (30) days does not begin to run until the party who wishes to appeal receives formal notice of the decision.
- (b) Upon receiving the notice of appeal, the Clerk shall prepare the case file and transfer the entire record, including any notation indicating the existence of a recording of the proceedings, to the members of the appellate panel.
- (c) Whenever possible, appeals shall be decided on the record of the case, including the decision for and any recording of the proceedings, in order to eliminate unnecessary travel and delay. The Court of Appeals may require a hearing or oral argument if it considers that they would be necessary or helpful.
- (d) After the decision by the Court of Appeals, a Judge thereof shall fill out a decision for stating the result and reason for the result on appeal. A copy of the completed decision form shall be sent to each party for the appeal by certified mail. The original shall be filed in the case file and remain a part of the record of the case in any further proceedings.
- (e) The Court of Appeals shall decide each appeal within one year of the filing of the notice of appeal. If the appeal is not decided within ninety days, the party aggrieved may pursue his next remedy, if any exist.

### **1-90-030 Scope of Appeal**

The Court of Appeals shall determine:

- (a) Whether the Tribal Court correctly applied the relevant law; and
- (b) Whether the Tribal Court decisions of fact are supported by substantial evidence
- (c) If the Tribal Court record is not sufficient to decide the appeal on the record and oral arguments, then the appeal shall be decided on a new trial before the appellate panel
- (d) At the time of the appeal hearing, all parties shall be prepared to proceed with evidence unless they have been earlier informed by the Clerk or the appellate panel or someone on the panel's behalf that the case will be decided on the record alone.