

# FALLON PAIUTE-SHOSHONE TRIBE



## LAW AND ORDER CODE

### Title 2

### Rules of Civil Procedure

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# Fallon Paiute-Shoshone Tribe Law & Order Code

## LAW & ORDER CODE TITLE 2 RULES OF CIVIL PROCEDURE

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**FALLON PAIUTE-SHOSHONE TRIBE**  
**Law and Order Code**  
**TITLE 2**  
**RULES OF CIVIL PROCEDURE**

**2-10 GENERAL PROVISIONS**

**2-10-010 Civil Jurisdiction and Statute of Limitations**

These rules shall apply to all non-criminal actions in the Tribal Court. The Court on its own motion or on the motion of a party may amend these rules to a particular case. The jurisdiction and statute of limitations for any civil matter in the Courts of the Fallon Paiute-Shoshone Tribe are as defined in Title 1 of the Law & Order Code of the Fallon Paiute-Shoshone Tribe.

**2-10-020 Commencement of an Action**

There is one form of action called a civil action. It is commenced by filing a complaint or petition with the court clerk and paying the filing fee as required by law. Once an action is properly commenced, a summons shall issue.

**2-10-030 Definitions**

The following words have the meanings given below when used in this Title 2 of the Law and Order Code:

- (a) Attorney: An attorney or Tribal Court Advocate approved to represent parties in the Tribal Court.
- (b) Clerk: Clerk of the Tribal Court;
- (c) Code: The Law and Order Code of the Fallon Paiute-Shoshone Tribe;
- (d) Council: The Fallon Business Council, the governing body of the Fallon Paiute-Shoshone Tribe;
- (e) Days: Calendar days, unless specifically stated to be work days.
- (f) Indian: Any person of Indian descent who is a member or eligible to be a member of any present or previous recognized Indian Tribe presently or previously under Federal jurisdiction;
- (g) Member: Any person who is, or is eligible to be, a member of the Fallon Paiute-Shoshone Tribe;
- (h) Tribe: The Fallon Paiute-Shoshone Tribe;
- (i) Tribal Court: The Fallon Paiute-Shoshone Tribe's Court, and depending on the context includes the Tribe's Court of Appeals;
- (j) Reservation: The territory within the present confines of the Fallon Paiute-Shoshone Reservation and Colony, and within the jurisdiction of the Fallon Paiute-Shoshone Tribe as set forth in the Tribe's Constitution.

**2-20 COMMENCEMENT OF A LAWSUIT; COMPLAINT**

**2-20-010 Complaint Required**

Any person who wishes to commence a civil action in Tribal Court shall first file with the Court Clerk a written complaint verified by the plaintiff/petitioner. An acceptable verification shall state that the plaintiff/petitioner attests or swears under penalty of perjury that the facts stated in the

complaint are true and correct to the best of the plaintiff's/petitioner's knowledge, and is sworn before the Clerk or notary public.

#### **2-20-020 Content**

A complaint, counterclaim, cross-claim, or third party claim shall:

- (a) state the names and any known tribal affiliations of the parties;
- (b) describe the basis for the Court's jurisdiction;
- (c) contain a short and plain statement of the wrong, injury or breach;
- (d) state the legal basis for the wrong, injury, or breach;
- (e) name or describe the person responsible for such wrong, injury, or breach; and
- (f) state the relief or damages requested.

### **2-30 SUMMONS AND SERVICE OF SUMMONS**

#### **2-30-010 Issuance of Summons**

After the plaintiff has filed the complaint, the Clerk shall issue a summons directing the defendant to answer the complaint within twenty (20) days of the time the defendant receives the complaint and summons. The summons shall be on the official form/document of the Tribal Court. The summons must notify the defendant that:

- (a) failure to appear and defend will result in a default judgment being entered against the defendant for the relief demanded in the complaint;
- (b) the title of the cause, a statement that the cause was filed in the Tribal Court, and the names of the parties to the action;
- (c) a direction to the defendant summoning him to file and serve a copy of his response within a time stated in the summons; and
- (d) a notice that, in case of failure to do so, judgment may be rendered against him by default.

#### **2-30-020 By Whom Served**

Service of a summons and a complaint may be made by any person over the age of eighteen (18) years who is competent to be a witness and is not a party to the action.

#### **2-30-030 Personal Service**

A copy of the summons and complaint shall be served together upon the defendant. If service is outside the Tribe's territorial jurisdiction, the special summons requirements of this Title shall apply. Personal service shall be made as follows:

- (a) Upon an individual other than an infant or incompetent person, by delivering a copy of the summons and the complaint to him/her personally or by leaving copies thereof at his/her dwelling house or usual place of abode with some person of suitable age and discretion then residing therein;
- (b) If against a minor or incompetent person, by delivering a copy of the summons and the complaint to either parent, or legal guardian, or if there be none within the jurisdiction, then to any person having the care or control of such minor or incompetent person, or with whom he/she resides. If the minor is over the age of fourteen years, by serving either parent or the legal guardian of the minor, if any, or the person with whom the

- minor resides and by serving the minor personally if the legal guardian cannot be located;
- (c) Upon the Tribe or an agency of the Tribe, by delivering a copy of the summons and the complaint to the Tribal Chairman or Tribal Secretary. If against any Tribal official in his/her official capacity by serving (i) the Tribal official and (ii) the Tribal Chairman or Tribal Secretary;
  - (d) If the suit is against an entity or association to the registered agent thereof or, if the entity or association is (i) a corporation, to any officer thereof; (ii) a general partnership, to any partner thereof; (iii) a limited partnership, to any general partner thereof; (iv) a member-managed limited-liability company, to any member thereof; (v) a manager-managed limited-liability company, to any manager thereof; (vi) a business trust, to any trustee thereof; (vii) or to other organizations to any officer or director thereof.

**2-30-040 Service Outside the Territorial Jurisdiction of the Tribe**

- (a) Generally. If service is outside the Tribe's territorial jurisdiction, it shall be accomplished by personal delivery in the manner prescribed by the law of the place in which the service is made for service in an action in any of its courts of general jurisdiction. The summons served upon a party outside the Tribal Court's territorial jurisdiction shall be in substantially the same form as that required for personal service.
- (b) Effect of Service Outside Territorial Jurisdiction of Tribe. Personal service of the complaint and summons or other process may be made upon any party outside the territorial jurisdiction of the Tribe, in the manner prescribed in this section. If upon a member of the Tribe, or person residing on Tribal lands, or a person or entity who has submitted to the jurisdiction of the Tribal Court by any of the acts specified in Section 1-20-020 of the Law and Order Code, it shall have the same force and effect as personal service within the Tribal Court's territorial jurisdiction. Otherwise, it shall have the force and effect of service by publication.
- (c) Service outside of the Tribe's jurisdiction does not give the Tribal Court in personam jurisdiction over a defendant who is not otherwise subject to the jurisdiction of the Tribal Court, or who has not, either in person or through an agent, submitted him/herself to the jurisdiction of the Tribal Court either by appearance, written consent, or having voluntarily entered into sufficient contacts with the Tribe, its members, or its territory to justify Tribal jurisdiction over him/her in accordance with the principals of due process of law and federal Indian law.

**2-30-050 Service by Publication**

- (a) Generally. When the defendant cannot be found within the territorial jurisdiction of the Court, and upon the filing with the Court of a declaration of the plaintiff, plaintiff's agent, or counsel stating a belief that the defendant cannot be found or has otherwise frustrated or made impossible an attempt to be served according to this Title and that a copy of the summons and complaint has been deposited in the post office, directed to the defendant at his place of residence, unless it is stated in the affidavit that such residence is not known to the affiant, and cannot, after due diligence, be found or otherwise served according to this Title, and stating the existence of one of the cases

hereinafter specified, the service may be made by publication of the summons by the plaintiff or his counsel in any of the following cases:

- (1) when the defendant is a foreign corporation and has property on Tribal lands;
  - (2) when the defendant, being a resident of Tribal lands, has departed therefrom with the intent to defraud his creditors, or to avoid the service of a summons and complaint, or keeps himself concealed therein with like intent;
  - (3) when the defendant is not a resident of Tribal lands, but has property therein and the Court has jurisdiction of the subject of the action;
  - (4) when the subject of the action is real or personal property on Tribal lands, and the defendant has or claims a lien or interest therein, actual or contingent, and the relief demanded consist wholly or partially in excluding the defendant from any interest or lien therein;
  - (5) when the action is for dissolution of marriage in the cases prescribed by law;
  - (6) In an action brought to establish the paternity of a minor child;
  - (7) when the action is to foreclose, satisfy, or redeem from a mortgage or deed of trust, or to enforce a lien of any kind on real estate on Tribal lands, or to satisfy or redeem from the same;
  - (8) when the action is against any corporation, whether private or municipal, organized under the laws of the Tribe or the State of Nevada, and the proper officers on whom to make service do not exist or cannot be found; or
  - (9) when the action is brought by one having in his possession, or under his control, any property or money, or being indebted, where more than one person claims to be the owner of, entitled to, interested in, or to have a lien on such property, money, or indebtedness, or any part thereof.
- (b) Form of Service by Publication. The publication shall be made in a newspaper of general circulation in Churchill County, Nevada once a week for four (4) consecutive weeks; provided, that publication of summons shall not be made until after the filing of the complaint, and the service of the summons shall be deemed complete at the expiration of the time prescribed for publication. The plaintiff shall request permission to publish the summons by motion to the Tribal Court, setting forth with specificity the efforts made to locate and give notice to the Defendant. If the plaintiff's efforts comport with due process, the Court shall enter an order allowing service by publication. The summons must be signed by the plaintiff or his counsel. The summons shall contain the date of the first publication, and shall require the defendant or defendants upon whom service by publication is desired to appear and answer the complaint within sixty (60) days from the date of the first publication of the summons. The summons for publication shall also contain a brief statement of the nature of the action.
- (c) Effect of Service by Publication. Service by publication alone shall not by itself be taken and held to give the Court jurisdiction over the person of the defendant. By such service, the Court only acquires jurisdiction to give a judgment which is effective as to property or debts attached or garnished in connection with the suit or other property, which property forms the basis of jurisdiction of the Court. If the defendant appears in a suit commenced by such service, the Court shall have jurisdiction over his person. The defendant may appear specially and solely to challenge jurisdiction over property or debts attached or garnished or other property within the jurisdiction of the Court.

### **2-30-060 Return of Service**

The person serving the complaint and summons shall make proof of service to the Court promptly, and in any event, within the term during which the person served must respond to the summons. This shall be accomplished by his or her declaration or affidavit of service. In case of service other than by publication, the declaration or affidavit of service must state the time, place, and manner of service. Costs shall not be awarded and a default judgment shall not be rendered unless proof of service is on file with the Court. Proof of service not done through the above methods shall be made in the following manner:

- (a) Service Completed Outside the Territorial Jurisdiction of the Tribe. Proof of service outside the territorial jurisdiction of the Tribal Court may be made by declaration or affidavit of the individual who made the service or in the manner prescribed by the law of the place in which the service is made for an action in any of its courts of general jurisdiction.
- (b) Service Completed by Publication. Proof of service by publication shall be made by the declaration or affidavit of the printer, publisher, foreman, principal clerk, or business manager of the newspaper showing the same, together with a printed copy of the summons as published, together with a declaration by the Plaintiff indicating the date of mailing of the summons and complaint to the last know address of Defendant, if such mailing was made in accordance with Title 20-30-050

### **2-30-070 Amendment of Service Process**

After service of the summons and complaint, at any time in its discretion and upon such terms as it deems just, the Court may allow any process or proof of service thereof to be amended, unless it clearly appears that material prejudice would result to the substantial rights of the party against whom the process issued.

## **2-40 SERVICE FOR ALL OTHER PAPERS AND PLEADINGS**

### **2-40-010 Service Generally**

- (a) Every order required by its terms to be served, every written pleading subsequent to the original complaint, every written motion, and every written notice, appearance, demand, offer of judgment, or other paper shall be served upon all parties, unless otherwise provided in this Law and Order Code or by Court order. No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of a summons and complaint in Chapter 2-30.
- (b) Service by email is allowed if a party and/or a party's attorney agrees in writing to accept service by email. The party or attorney receiving service by email is responsible for maintaining his/her email account. The party or attorney receiving service by email shall respond to each document served with an email stating that the document was received, however the sender's copy of the email sent shall be sufficient to demonstrate proper service. Email service is not acceptable for serving complaints/petitions, summons or subpoenas.

### **2-40-020 Manner of Service**

Whenever service is required or permitted to be made upon a party represented by an counsel, the service shall be made upon a party's counsel unless service upon the party him/herself is ordered by

the Court. Service upon the counsel or upon a party shall be made by delivering a copy to the counsel or party or by mailing it to the counsel or party at the attorney's or party's last known address or, if no address is known, by leaving it with the Clerk of the Court who shall mail a copy thereof to the party's last address of record. Delivery of a copy within this Section means: handing it to the counsel or to the party, or leaving it at an office with his/her clerk, or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed or the person to be served has no office, leaving it at the person's dwelling house or usual place of abode with some person fifteen years of age or older then residing therein. Service by first class United States mail, where allowed under this Title, is complete upon mailing.

#### **2-40-030 Filing**

All papers after the complaint required to be served upon a party together with a certificate of service, shall be filed with the clerk of the Tribal Court within a reasonable time after service. The Court may on motion of a party or on its own initiative order that depositions upon oral examination and interrogatories, requests for documents, requests for admission, and answers and responses thereto not be filed unless on order of the Court or for use in the proceeding.

#### **2-40-040 Service of Subpoenas**

Service of a subpoena shall be made by a Tribal Police officer or other person appointed by the Court for such purposes, or by a competent person who is at least 18 years of age and not a party to the action. As soon as practicable, proof of service of a subpoena shall be filed with the clerk of the Tribal Court indicating the date, time, and place of service, but in no event shall the proof of service be filed more than 30 days after service.

### **2-50 PARTIES**

#### **2-50-010 Real Party in Interest**

Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought.

#### **2-50-020 Reasons for Non-Joinder of Omitted Persons**

In any pleading in which relief is asked, the pleader shall set forth the names, if known to him, or persons who ought to be parties if complete relief is to be accorded between those already parties, but who are not joined, and shall state why they are omitted.

#### **2-50-030 Minors or Incompetent Parties**

- (a) Minors. When a party is a minor, he shall appear by parent or legal guardian, or if he has no parent or legal guardian or in the opinion of the Court the parent or legal guardian is an improper person, the Court shall appoint a guardian ad litem.
- (b) Incompetent Parties. When an incompetent person is a party to an action, he shall appear by guardian. If he has no guardian, or in the opinion of the Court the guardian is an improper person, the Court shall appoint one to act as guardian ad litem. When the incompetent person is plaintiff, a relative or friend shall make the application for a guardian. If no such application is made within the time he is to appear, application may be made by any party to the action.

## **2-60 THIRD PARTY PRACTICE**

### **2-60-010 Joinder of Persons Needed for a Just Adjudication**

- (a) Subject to Joinder. A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if:
- (1) in his absence complete relief cannot be accorded among those already parties, or
  - (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may:
    - a. as a practical matter impair or impede his ability to protect that interest, or
    - b. leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.
- (b) Persons Having Joint Interest. Persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or defendants. When a person who should join as a plaintiff refuses to do so, he may be made a defendant or an involuntary plaintiff.

### **2-60-020 Joinder of Claims and Remedies**

The plaintiff, in his complaint or in reply setting forth a counterclaim, and the defendant in an answer setting forth a counterclaim, may join either as independent or as alternative claims as many claims, either legal or equitable, or both, as he may have against an opposing party. There may be a like joinder of claims when there are multiple parties and/or there may be a like joinder of crossclaims or third party claims if all the requirements of this title are met. Whenever a claim is one recognizable only after another claim has been prosecuted to a conclusion, the two claims may be joined in a single action. The Court, however, shall grant relief in that action only in accordance with the relative substantive rights of the parties.

### **2-60-030 Permissive Joinder**

All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any question of law or fact common to all of them will arise in the action. All persons may be joined in one action as defendants if there is asserted against them jointly, severally, or in the alternative, any right to relief in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences, and if any questions of law or fact common to all of them will arise in the action. Judgment may be given for one or more of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.

### **2-60-040 Joinder Not Feasible**

When persons who are not indispensable, but who ought to be parties if complete relief is to be granted between those already parties, have not been made parties and are subject to the jurisdiction of the Court as to both service of process and venue, the Court shall order them summoned to appear in the action. The Court, in its discretion, may proceed in the action without making such persons

parties if its jurisdiction over them as to either service of process or venue can be acquired only by their consent or voluntary appearance, but the judgment rendered therein does not affect the rights or liabilities of absent persons.

#### **2-60-050 Misjoinder**

Misjoinder of parties is not grounds for dismissal of an action. Parties may be dropped or added by order of the Court on motion of any party, or of the Court's own initiative, at any stage of the action and on such terms as are just. Any claim against a party may be severed and proceeded with separately.

#### **2-60-060 Intervention**

- (a) **General Provisions.** A person desiring to intervene shall serve a motion to intervene upon all parties affected. The motion shall state the grounds for intervention and shall be accompanied by a pleading setting forth the claim or defense for which intervention is sought. The Tribe may intervene in any case where the interpretation of tribal constitution, ordinance, common law, or custom and tradition is a central issue.
- (b) **Intervention of Right.** Upon timely application, anyone shall be permitted to intervene in an action when:
  - (1) an ordinance confers an unconditional right to intervene; or
  - (2) when an applicant claims an interest that may not be adequately protected by the existing parties and the applicant is or may be bound by a judgment in the action; or
  - (3) the applicant is so situated as to be adversely affected by a distribution or other disposition of property which is in the custody or subject to the control or disposition of the Court.
- (c) **Permissive Intervention.** Upon timely application, anyone may be permitted to intervene in an action when:
  - (4) an ordinance confers a conditional right to intervene; or
  - (5) an applicant's claim or defense and the main action share a question of law or fact in common.
- (d) **Court's Discretionary Duties.** In exercising its discretion, the Court shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of the original parties.

### **2-70 SUBSTITUTION OF PARTIES**

#### **2-70-010 Death**

- (a) If a party dies and the claim is not thereby extinguished, the Court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party, and together with the notice of hearing, shall be served on the parties as provided for service of notices, and upon persons not parties, in the manner provided by this Title for the service of a summons and complaint. If substitution is not made within a reasonable time, the action may be dismissed as to the deceased party.
- (b) In the event of the death of one or more of the plaintiffs or one or more of the defendants in an action in which the right sought to be enforced survives only to the surviving plaintiffs or only against the surviving defendants, the action does not abate.

The fact of death shall be noted in the docket, and the action shall proceed in favor of or against the surviving parties.

**2-70-020      Incompetency**

If a party becomes incompetent, the Court, upon motion may allow the action to be continued by or against his representative.

**2-70-030      Transfer of Interest**

In case of any transfer of interest, the action may be continued by or against the original party unless the Court, upon motion, directs the person to whom the interest is transferred to be substituted in the action or joined with the original party.

**2-80      GENERAL RULES OF PLEADING**

**2-80-010      General Provisions**

There shall be a complaint and an answer; a reply to a counterclaim; an answer to a cross-claim, if the answer contains a cross-claim; a third party complaint, if the Court allows a person who was not an original party to be summoned; and a third party answer, if a third party complaint is served. No other pleading shall be allowed.

**2-80-020      Form**

Every pleading submitted to the Court shall be written and shall contain a caption setting forth the name of the Court, the title of the action, and the Court file number for the case if known to the person signing it. In a complaint, the title of the action shall include the names of all the parties, but in other written pleadings it is sufficient to state the name of the first party with an appropriate indication of other parties. When the plaintiff is ignorant of the name of the defendant, it shall be so stated in his pleading, and such defendant may be designated in any pleading or proceeding by any name, and when his true name shall be discovered, the pleading or proceeding may be amended.

**2-80-030      Signature**

All pleadings, motions, and legal memoranda of a party represented by an Attorney or Tribal Court advocate shall be dated and signed by at least one Attorney or Tribal Court advocate of record in his individual name, whose address shall be stated. A party who is not represented by an Attorney or Tribal Court advocate shall date and sign his pleadings, motions, and legal memoranda and state his address. The signature of a party or an Attorney or Tribal Court advocate constitutes a certificate that he has read the pleadings, motions, and legal memoranda and that to the best of his knowledge, information, and good faith belief, there exists grounds to support it.

**2-80-040      Pleading to be Concise and Direct**

Pleadings and motions shall be stated so as to enable a person of common understanding to know what is intended. A party may set forth two or more statements of a claim or defense alternately, either in one count or defense or in separate counts or defense. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or equitable grounds or on both. All pleadings shall be so construed as to do substantial justice.

**2-80-050 Adoption by Reference Exhibits**

Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of any written instrument which is an exhibit to a pleading is a part of that pleading for all purposes.

**2-80-060 Filing with the Court**

The filing of pleadings and other papers shall be made by filing them with the clerk. The filing date shall be noted at the time of filing.

**2-80-070 Time Computation**

The time within which an act is to be done shall be computed by excluding the first day and including the last, unless the last day is a holiday, Saturday or Sunday, and then the last day shall be the next business day. "Holidays" recognized under this rule shall be those officially recognized by the Fallon Paiute-Shoshone Tribe. All references in this Title to "days" shall mean calendar days, unless specifically stated otherwise.

**2-90 RESPONSE**

**2-90-010 General Provisions**

A defendant shall serve his answer on or before the time he is required to answer the complaint as stated in the summons. A party served with a pleading stating a cross-claim against him shall answer on the return date fixed in a notice which shall accompany the pleading. The plaintiff shall reply to a counterclaim not less than twenty (20) days prior to trial.

**2-90-020 Timing of Response**

A summons served within the Tribe's territorial jurisdiction shall require the defendant to respond within twenty (20) days from the date of service. A summons served upon a party outside the Tribe's territorial jurisdiction shall require the defendant to respond within thirty (30) days from the date of service..

**2-90-030 Form of Answer**

Unless a motion enumerated in Section 2-90-040 is made by the defendant, the responsive pleading shall be an answer to the complaint. The answer shall be written and shall either admit or deny each allegation of fact asserted in the complaint, and state all defenses and other objections in any form which will enable a person of common understanding to know what is intended. If the defendant is without knowledge or information sufficient to form a belief as to the truth of a complaint or petition, he shall so state, and this has the effect of a denial.

**2-90-040 Responsive Pleadings Other Than an Answer**

- (a) Every defense, in law or fact, to a claim for relief in any pleading, whether a claim counterclaim, cross-claim, or third party claim, shall be asserted by the answer, except that the following defenses may, at the option of the pleader, be made by motion:
  - (1) lack of jurisdiction over the subject matter;
  - (2) lack of jurisdiction over the person;
  - (3) insufficiency of process;
  - (4) insufficiency of service of process;

- (5) failure to state a claim upon which relief can be granted;
  - (6) failure to join an indispensable party; and
  - (7) motion for a more definite statement.
- (b) A motion making any of these defenses shall be made before pleading is permitted, except that lack of subject matter jurisdiction can be raised by any party or by the Court at any time. The Tribal Court's lack of subject matter jurisdiction may not be waived by the parties or the Tribal Court. No defense or objection is waived by being joined with one or more defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to the claim for relief. If, on a motion asserting failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Section 2-100-050, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion.

#### **2-90-050 Affirmative Defenses**

In a written answer to a complaint or cross-claim and in a written reply to a counterclaim, a party shall set forth affirmatively any of the following which may apply, or any such affirmative defense shall be waived: accord and satisfaction, arbitration and award, assumption or risk, contributory negligence, discharge in bankruptcy, duress, estoppels, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the Court shall treat the pleading as if there had been a proper designation if justice so requires.

#### **2-90-060 Waiver of Defenses**

A party waives all defenses and objections which he does not present in an answer or reply or by motion, except:

- (a) the defense of failure to state a claim upon which relief can be granted, or the defense of failure to join an indispensable party; and
- (b) whenever it appears by suggestion of the parties or otherwise that the Court lacks jurisdiction of the subject matter, the Court shall dismiss the action.

#### **2-90-070 Effect of Failure to Deny**

Any statements in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied by responsive pleading.

### **2-100 MOTIONS**

#### **2-100-010 Form of Motions**

- (a) **General Provision.** An application to the Court for an order shall be by written motion. A motion need not be in any special form, but must be such as to enable a person of common understanding to know what is intended. The general rules of pleading shall apply to all motions.
- (b) **Judicial Copy.** A copy of any motion, response, or supporting documentation filed with the Court and served under this section shall be provided to the presiding judge

by the Clerk of the Court after the matter has been fully briefed, including the opposing party having had an opportunity to respond. The judicial copy shall contain the date and time of the hearing and the judge assigned to the matter.

**2-100-020 Timing**

- (a) A written motion, other than one which may be heard ex parte, and notice of the hearing shall be filed and served not later than seven (14) days before the time specified for the hearing as set by the Court. Any written response shall be filed and served not later than seven (7) days after service of the motion, and a reply may be filed and served not less than three days prior to the date of the hearing, or, if no hearing is set, within seven (7) calendar days of service of the written response, unless a different period is fixed by these rules or by order of the Court. Such an order may, for cause shown, be made on ex parte application. If the Court declines to set a hearing, the movant shall file a request to submit the motion for decision at the same time the reply is filed.
- (b) A party's failure to file a response to a motion may be considered by the Court proper grounds to grant the motion. The Court may deem a motion to which no response is filed as admitted. A party who does not want to contest a motion may file a notice of non-opposition.
- (c) Upon the expiration of the time to file a response, either party may file a request for submission of the motion, which notifies the Tribal Court that the matter is ready for a decision or a hearing.
- (d) An opposing party may grant in writing an extension for filing a response or reply to a motion.

**2-100-030 Motion for More Definite Statement**

If a pleading to which a responsive pleading is permitted (for example, the complaint) is so vague or ambiguous that a person of common understanding cannot know what is intended, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within ten (10) days after the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.

**2-100-040 Motion to Strike**

A party may make a motion to strike any paper or pleading, or any portion thereof, for good cause.

**2-100-050 Motion for Summary Judgment**

- (a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim may, at any time after the expiration of the period within which the defendant is required to appear, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part of the claim, counterclaim, or cross-claim.
- (b) For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part of the claim, counterclaim, or cross-claim.
- (c) Motion and Proceedings. The motion and supporting affidavits, memoranda of law, and any other supporting documentation shall be filed and served at least forty (40)

days before the time fixed for the hearing as set by the Court. Any response and opposing affidavits shall be filed and served no later than twenty-one (21) after service of the motion. Any reply shall be filed and served within ten (10) days after service of any response. The judgment sought shall be rendered if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

- (d) **Case Not Fully Adjudicated on Motion.** If on motion under the rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the Court, at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall then make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the fact so specified shall be deemed established, and the trial shall be conducted accordingly.
- (e) **Form of Affidavits; Further Testimony; Defense Required.** Supporting and opposing affidavit shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated. Sworn or certified copies of all papers or parts referred to in an affidavit shall be attached or served along with the affidavit. The Court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.
- (f) **When Affidavits are Unavailable.** Should it appear from the affidavits of a party opposing the motion that he cannot, for reasons stated, present by affidavit facts essential to justify his opposition, the Court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or deposition to be taken or discovery to be had or may make such other order as is just.
- (g) **Affidavits Made in Bad Faith.** Should it appear to the satisfaction of the Court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the Court shall order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused him to incur, including reasonable attorney's fees, and any offending party or counsel may be adjudged guilty of contempt.
- (h) **Form of Order.** The order granting or denying the motion for summary judgment shall include the grounds for the ruling, including any documents and other evidence called to the attention of the Court before the order on summary judgment was entered.

**2-100-060 Motion for Shortening Time**

- (a) **Requirements.** The time for notice and hearing of a motion may be shortened only for good cause upon written application to the court in conformance with this rule. A

motion for order shortening time may not be incorporated into any other pleading. The court may deny or grant the motion and impose such conditions as the court deems reasonable. All other rules pertaining to confirmation, notice and working papers for the hearing on the motion for which time was shortened remain in effect, except to the extent that they are specifically dispensed with by the court.

- (b) Notice. As soon as the moving party is aware that he or she will be seeking an order shortening time, that party must contact the opposing party to give notice in the form most likely to result in actual notice of the pending motion to shorten time. The declaration in support of the motion must indicate what efforts have been made to notify the other side.
- (c) Timing of Ruling. Except for emergency situations, the court will not rule on a motion to shorten time until the close of the next judicial day following filing of the motion (and service of the motion on the opposing party) to permit the opposing party to file a response. If the moving party asserts that exigent circumstances make it impossible to comply with this requirement, the moving party shall contact the court clerk to arrange for a conference call, so that the opposing party may respond orally and the court can make an immediate decision.
- (d) Proposed Agreed Orders to Shorten Time. If the parties agree to a briefing schedule on motion to be heard on shortened time, the order may be presented by way of a proposed stipulated order, which may be granted, denied or modified at the discretion of the court.

#### **2-100-070 Motion for Reconsideration**

A motion for reconsideration shall be plainly labeled as such. The motion shall be filed within ten (10) judicial days after the order to which it relates is filed. The motion shall describe with specificity the matters which the movant believes were overlooked or misapprehended by the Court, any new matters being brought to the Court's attention for the first time, and the particular modifications being sought to the Court's prior ruling. Failure to comply with this section may be grounds for denial of the motion. The pendency of a motion for reconsideration shall not stay discovery or any other procedure mandated by these rules. A motion for reconsideration does not toll the time period for filing a notice of appeal from a final order or judgment.

### **2-110 CROSS CLAIMS AND COUNTER CLAIMS**

#### **2-110-010 Mandatory**

- (a) A pleading shall state any counterclaim the pleader has against any opposing party at the time of serving the pleading if: 1) it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim, and 2) does not require for its adjudication the presence of third parties of whom the Court can not acquire jurisdiction. The pleader need not state the claim if:
  - (1) at the time the action was commenced, the claim was the subject of another pending action, or
  - (2) the opposing party brought suit upon his claim by attachment or other process by which the Court did not acquire jurisdiction to render a personal judgment on that claim, and the pleader is not stating any counterclaim under this section.

**2-110-020 Permissive**

A pleading may state as a counterclaim any claim against an opposing party not arising out of the transaction or occurrence that is the subject matter of the opposing party's claim.

**2-110-030 Counterclaim Exceeding Opposing Claim**

A counterclaim may or may not diminish or defeat the recovery sought by the opposing party. It may claim relief exceeding in amount or different in kind from that sought in the pleading of the opposing party.

**2-110-040 Counterclaim Maturing or Acquired After Pleading**

A claim which either matured or was acquired by the pleader after serving his pleading may, with the permission of the Court, be presented as a counterclaim by supplemental pleading.

**2-110-050 Omitted Counterclaim**

When a pleader fails to set up a counterclaim through oversight, inadvertence, or excusable neglect, or when justice requires, he may, by leave of Court, set up the counterclaim by amendment.

**2-110-060 Against Co-Party**

- (a) A pleading may state as a cross-claim any claim by one party against a co-party arising out of the transaction or occurrence that is the subject matter either of the original action or of a counterclaim therein or relating to any property that is the subject matter of the original action.
- (b) Such cross-claim may include a claim that the party against whom it is asserted is or may be liable to the cross-claimant for all or part of a claim asserted in the action against the cross-complainant.

**2-120 AMENDED AND SUPPLEMENTAL PLEADINGS**

**2-120-010 Prior to Trial**

A party may amend a complaint, counterclaim, cross-claim, or third party complaint once as a matter of course at any time before a responsive pleading is made, or if the pleading is an answer or a reply to a counterclaim, he may so amend it at any time within twenty (20) days after it is served provided that it is amended prior to trial. Otherwise, a party may amend his pleading only by leave of Court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service or notice of the amended pleading, whichever period may be longer, unless the Court otherwise orders.

**2-120-020 During or After Trial**

- (a) When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure to do so amend does not affect the result of the trial of these issues.
- (b) If the evidence is objected to at the trial on the ground that it is not within the issues made by the pleadings, the Court may allow the pleadings to be amended and shall do

so freely when the presentation of the merits of the action will be advanced thereby and the objecting party fails to satisfy the Court that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The Court may grant a continuance to enable the objecting party to meet such evidence.

**2-120-030 Relating Back**

Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

**2-120-040 Supplemental Pleadings**

Upon motion of a party, the Court may, upon reasonable notice and upon such terms as are just, permit the moving party to serve or make a supplemental pleading setting forth transactions, occurrences, or events which have happened since the date of the pleading sought to be supplemented.

**2-120-050 Correction to Pleadings**

No interlineations, corrections, or deletions shall be made in any paper after it is filed with the court clerk. Any such mark made prior to filing shall be initialed and dated by the Clerk or all persons signing the document.

**2-130 PRELIMINARY INJUNCTIONS AND TEMPORARY RESTRAINING ORDERS**

**2-130-010 General Provisions**

Within the context of any existing civil action, a temporary and/or ex parte order may be issued by the Court upon application by a party if the Court determines that justice so requires.

**2-130-020 Preliminary Injunctions**

- (a) Grounds. Following a motion and opportunity for hearing, either on affidavits or on sworn testimony, the Court may enter a preliminary injunction restraining a party from taking certain action or requiring a party to take certain action, during the pendency of the lawsuit. A preliminary injunction may be entered only after an appropriate motion by a party after notice and an opportunity to be heard by the opposing party or parties. A preliminary injunction will only be issued on a showing that:
- (1) from the specific facts proven, that immediate and irreparable damage, loss, or injury will result to the party requesting the relief during the pendency of the lawsuit;
  - (2) from the specific facts proven, on balance, the party requesting relief will be more likely to suffer a more serious and irreparable harm than the party opposing the injunction; and
  - (3) the party requesting relief has raised serious legal questions and demonstrated a likelihood of prevailing on the merits of his claims.
- (b) Bond. The Court may, in its discretion, require the party seeking preliminary relief to post a bond to protect the party to be restrained, in the event that such relief is ultimately determined to be unjustified. No bond will be required of the Tribe or any its programs/departments, including those incorporated by the Tribe, unless specifically allowed by ordinance or resolution of the Council.

**2-130-030 Temporary Restraining Orders**

- (a) A temporary restraining order may be granted without written or oral notice to the adverse party or his or her counsel only if:
  - (1) it clearly appears from specific facts shown by affidavit or verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or his or her counsel can be heard in opposition, and
  - (2) the applicant or his or her counsel certifies to the Court in writing the efforts, if any, that have been made to give notice or the reasons supporting the claim that notice should not be required.
- (b) Every temporary restraining order granted without notice shall be endorsed with the date and shall expire by its terms within ten (10) days, or as the Court fixes.

**2-130-040 Domestic Violence Restraining Orders**

Domestic violence restraining orders are governed by the provisions of the Tribe's Domestic Violence laws/ordinances if they exist, otherwise by Sections 2-130-010 to 030 of this Title.

**2-140 PRETRIAL PROCEDURES**

**2-140-010 Pretrial Scheduling Conference**

The court on its own motion, or by motion of either party, may call a pretrial scheduling conference after all the pleadings are complete. At that time, the Court may issue orders or set additional hearings to further the expeditious resolution of the case. Any defenses, whether made in a pleading or by motion, shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination be deferred until the trial.

**2-140-020 Discovery**

- (a) **Discovery Defined.** Discovery is the process used among parties to uncover evidence relevant to the action, including the identity of persons having knowledge of facts. Discovery may be used for the purpose of preserving testimony or other evidence which might otherwise be unavailable at the time of trial. Discovery may include written interrogatories, depositions, requests for admissions and requests for the production of documents and things. It is the policy of the Court to favor open discovery of relevant material as a way of fostering full knowledge of the facts relevant to a case by all parties. It is the intent of these rules that reasonable open discovery will encourage settlement, promote fairness and further justice.
- (b) **Required Disclosures.** Except to the extent otherwise stipulated or directed by order, a party shall, without waiting for a discovery request, provide to other parties:
  - (1) The name and, if known, the address and telephone number of each individual likely to have discoverable information relevant to disputed facts alleged with particularity in the pleadings, identifying the subjects of the information;
  - (2) A copy of, or a description by category and location of all documents, data compilations, and tangible things in the possession, custody, or control of the party that are relevant to disputed facts alleged with particularity in the pleadings;

- (3) A computation of any category of damages claimed by the disclosing party, made available for inspection and copying the documents or other evidentiary material, not privileged or protected from disclosure, on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and
  - (4) For inspection and copying any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part of all of a judgment which may be entered in an action or to indemnify or reimburse for payments made to satisfy the judgment.
- (c) Notice; Limitations on Disclosures. Judicial notice shall be taken of and required disclosures shall be made of official documents, public documents, documents subject to public inspection, document and materials of non-executive/closed sessions, governmental minutes and recordings of a Tribal governmental body or its entities. The Tribe or tribal entities may file objections with the Court regarding the disclosure of certain documents that are confidential, are from an executive/closed session, or would hinder/negatively impact the administration of economic interests of the Tribe, or in the best interest of the Tribe as a whole.
- (d) Time of Disclosure. Unless otherwise stipulated or directed by the Court, these disclosures shall be served on all other parties within ten (10) calendar days after the scheduling conference. A party shall make its initial disclosures based on the information then reasonably available to it and is not excused from making its disclosures because it has not fully completed its investigation of the case or because it challenges the sufficiency of another party's disclosures or because another party has not made its disclosures.
- (e) Authority to Compel. The Court shall have sua sponte authority to compel disclosure or production of discoverable documents, records and other materials, and to compel parties to answer or respond upon the Court's own motion.

**2-140-030 Interrogatories**

A party may submit interrogatories (written questions) to other parties. The requesting party must receive the responding party's written answers and objection (if any), under oath, within twenty-five (25) calendar days of receiving them. The responding party must include facts he/she knows, facts available to him/her, and give opinions, if requested. The responding party who makes the answers to interrogatories must sign them under oath.

**2-140-040 Depositions**

(a) A party may take a deposition (testimony, under oath and recorded) of another party after giving at least fifteen (15) calendar days notice of the time and place where the deposition will occur to all parties and the deponent. All parties may ask the deponent questions. Depositions may take place by telephone and be recorded stenographically, by tape recording or by other means if the parties agree or the Court so orders.

(b) A party may take a deposition of a non-party witness no less than fifteen (15) days after service of a subpoena issued by the court, in accordance with Section 2-140-080 of this Title.

**2-140-050 Requests for Documents/Other Materials**

A party may request another party to produce any documents or other materials within his/her possession or control for the purpose of inspection and/or copying. This includes permission to enter

onto land for testing. The responding party must make the documents or things available to the requesting party within twenty-five (25) calendar days of the date of receiving the request.

#### **2-140-055 Requests for Admissions**

A party may serve upon any other party a written request for the admission, for purposes of the pending action only, of the truth of any matters within the scope of allowable discovery set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Copies of documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection and copying. The matter is admitted unless, within 30 days after service of the request, or within such shorter or longer time as the court may allow, or the parties may agree to in writing, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by the party's Attorney. If objection is made, the reasons therefor shall be stated. The answer shall specifically deny the matter or set forth in detail the reasons why the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify an answer or deny only a part of the matter of which an admission is requested, the party shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless the party states that the party has made reasonable inquiry and that the information known or readily obtainable by the party is insufficient to enable the party to admit or deny. The answer shall first set forth each request for admission made, followed by the answer or response of the party. Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission. Any admission made by a party under this rule is for the purpose of the pending action only and is not an admission for any other purpose nor may it be used against the party in any other proceeding.

#### **2-140-060 Ongoing Obligations**

There is an ongoing obligation by any party subject to a discovery request, which continues up to and through the trial, to supplement any response previously answered if new or freshly discovered material previously unavailable is discovered or revealed to them.

#### **2-140-070 Protective Orders**

Upon motion by a party or by a person from whom discovery is sought, and for good cause shown, the Court may make such orders as justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the Court; (6) that a deposition after being sealed be opened only by order of the Court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the Court.

**2-140-080 Compelling Witnesses to Appear; Subpoenas**

- (a) Any party to a lawsuit or other proceeding in Tribal Court shall have the right to compel witnesses to appear in Court (or, in the case of a deposition, to appear at any place within the jurisdiction of the Court which it may order) and testify concerning the matter.
- (b) Upon request of a party, the Court shall issue a subpoena, which is an order which commands a named person to appear in Court and/or to bring certain evidence or documents to court.
- (c) All subpoenas shall be signed by a clerk of the court, except as otherwise provided by court order or tribal law.
- (d) Every subpoena shall be in writing and shall include the name of the Court, the Court's seal, the names of all parties, the time and place that the witness must appear, and a clear and detailed description of any documents or evidence that the witness is required to bring.
- (e) Subpoenas shall be delivered to the witness by a person of the age of eighteen (18) or more years who has no stake in the case. The subpoena must be delivered by giving it to the witness directly.
- (f) A person who delivers a subpoena shall promptly file with the Clerk a copy of the subpoena and a proof of service. The proof of service must be filed prior to the date the person is to appear, and in any event no more than thirty (30) days after the date of service.
- (g) Failure of a witness to obey a subpoena shall be grounds for holding the witness in contempt of Court after a hearing.
- (h) A witness who responds to a civil subpoena shall be entitled to a fee for each day or partial day that he or she must appear in court as set forth by fee schedule adopted by the Court. The judge may, in addition, order that the witness be paid reasonable and necessary travel and living expenses incurred in responding to the subpoena. Witnesses shall be offered full payment of their fees for one day's service at the time they are served with the subpoena. The party requesting the issuance of a subpoena shall tender the fees to the witness upon service of the subpoena.

**2-140-090 Pretrial Offer of Judgment**

At any time more than ten (10) calendar days before trial begins, a party defending against a claim may serve upon the adverse party an offer to allow judgment to be taken against him from the money or property or the effect specified in his offer, with costs then accrued. If within ten (10) calendar days after the service of the offer, the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance, together with proof of service, and the Court shall enter judgment. An offer not accepted shall be deemed withdrawn and evidence of the unaccepted offer is not admissible except in a proceeding to determine costs. If the judgment finally obtained by the offeree is not more favorable than the offer, the offeree must pay the cost and attorney's fees incurred after the making of the offer. The fact that an offer is made but not accepted does not preclude a subsequent offer.

**2-150 TRIAL**

**2-150-010 Trial by Jury**

There shall be no trial by jury in a civil case.

**2-150-020 Consolidation**

When actions involving a common question of law or fact are pending before the Court, it may order a joint hearing or trial on any or all of the matters in issue. The Court, in furtherance of convenience or to avoid prejudice, may order a separate trial of any matter raised by the pleadings.

**2-150-030 Questions of Law and Fact**

Issues of law and fact shall be decided by the judge. Parties may stipulate to factual issues and submit them for acceptance by the Court

**2-150-040 Testimony**

- (a) General Provisions. In all trials, the testimony of witnesses shall be taken orally in court, unless otherwise provided by rule or statute.
- (b) Refusal to Testify.
  - (1) If a party refuses to attend or testify at the trial after proper service of a subpoena, the complaint, answer, or reply of the party may be stricken and judgment taken against the party. The party may also be subject to contempt of court.
  - (2) If a witness refuses to attend or testify at the trial after proper service of a subpoena, a bench warrant may be issued by the court.
- (c) Counsel as Witness. No person shall appear before the Court as both counsel and witness in the same case.
- (d) Witness Fees. Each witness answering a subpoena or appearing voluntarily shall be entitled to fees and mileage as set by resolution of the Court.

**2-150-050 Order of Trial**

- (a) At the trial of a civil case, presentations shall be made in the following order unless otherwise agreed by the parties or determined at the pretrial conference:
  - (1) Motions by either party regarding procedure at trial, evidence to be presented, jurisdiction of the Court, or the sufficiency of claim;
  - (2) Evidence and statements presented by the party (the plaintiff) who filed the original complaint;
  - (3) Evidence, statements or motions presented by the person complained against (the defendant);
  - (4) Motions of either party which are based on events at trial; and
  - (5) Final arguments by both parties.
- (b) The judge may announce a final decision at the close of trial or may take the matter under submission and issue a written decision at a later time. All decisions shall be announced within thirty (30) days after the end of the trial.
- (c) Oaths. Prior to testifying before the Tribal Court, every witness shall first state before the judge, parties and spectators that he or she will testify truthfully. The Court may prescribe an oath for this purpose by the Rules of the Court.

**2-150-060 Burden and Standard of Proof**

- (a) Unless otherwise provided by Tribal law, the burden of providing a civil claim shall be on the party who makes the claim.

- (b) Unless otherwise provided by Tribal law, a party to a civil case shall be considered to have met the burden of proof by a preponderance of the evidence standard. This shall mean the necessary party met the burden of proof by providing superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

**2-150-070 Default**

- (a) **Default Order.** An order of default will enter against the defendant in the event of failure to respond to the summons in the manner or at the time specified by the summons. An order of default will also enter against any party who fails to appear at the time set for trial. If a party fails to respond to a motion filed with the Court and properly served, the motion may be granted.
- (b) **Default Judgment.** Upon proper service and proof satisfactory to the Court, default judgment may be granted upon motion by a party. A judgment by default shall not be different in kind from or exceed in amount that which was prayed for in the demand for judgment. Default judgments may include reasonable attorney's fees and costs if permitted by law or written contract between the parties. The prevailing party shall notify the defendant of the entry of a default judgment by mailing a copy of the order and judgment to the defendant at his last known address within five (5) days after entry of the judgment and filing proof of service.
- (c) **Setting Aside a Default.** For good cause shown and upon such terms as the Court deems just, the Court may set aside an order of default or a default judgment within six (6) months of entry. This section shall not limit the power of the Court to set aside a judgment, at any time, where the Court lacked jurisdiction to enter the judgment.

**2-150-080 Dismissal of Action**

- (a) **General Provisions.** The provisions of this section apply to the dismissal of any original action, counterclaim, set-off, cross-claim, or third party claim.
- (b) **Voluntary Dismissal.**
  - (1) **Mandatory.** An action may be dismissed when all parties who have appeared so stipulate in writing. An action may also be dismissed upon motion of the plaintiff at any time before the plaintiff rests at the conclusion of his or her opening case.
  - (2) **Permissive.** After plaintiff rests following his or her opening case, plaintiff may move for a voluntary dismissal without prejudice upon good cause shown and upon such terms and conditions as the Court deems proper.
  - (3) **Counterclaim.** If a counterclaim has been pleaded by a defendant prior to receiving service of plaintiff's motion for dismissal, the action shall not be dismissed against the defendant's objection unless the counterclaim can remain pending for independent adjudication by the Court.
  - (4) **Effect.** Unless otherwise stated in the order of dismissal, the dismissal is without prejudice.
  - (5) **Costs.** The Court may impose costs, in its discretion.
- (c) **Dismissal on Clerk's Motion.**
  - (1) **Notice.** In all civil cases in which no action of record has occurred during the previous twelve (12) months, the clerk of the Court may notify counsel by mail

that the Court will dismiss the case for want of prosecution unless, within 30 days following the mailing of such notice, a party takes action of record or files a status report with the Court indicating the reason for inactivity and projecting future activity and a case completion date. If the Court does not receive such a status report, it may, on motion of the clerk, dismiss the case without prejudice and without cost to any party.

- (2) Other Grounds for Dismissal and Reinstatement. This rule is not a limitation upon any other power that the Court may have to dismiss or reinstate any action upon motion or otherwise.
- (d) Motion to Dismiss. If the Court determines that the lawsuit was filed frivolously and without good faith, the Court may dismiss the matter and make any other rulings as appropriate.
- (e) Imposition of Costs and Attorney's Fees. When a motion to dismiss is granted based on the frivolous nature of the pleadings, the Court may in its discretion impose costs against the plaintiff. Attorney's fees may be imposed, when provided by contract or other Tribal law, or in the discretion of the Court.

## **2-160 JUDGMENTS**

### **2-160-010 Purpose and Finality**

- (a) Purpose and Timeframe. A judgment is a final order of the Court which disposes of a claim in whole or in part. The Judge may announce a judgment orally at a hearing in open Court before the parties, or in writing, at the time of hearing or after the hearing, but in no case more than thirty (30) days after the end of the trial.
- (b) Finality. A judgment becomes final when it has been signed by the judge and filed with the Court Clerk.
- (c) Requirement. Judgment includes a decree and any final order. Judgments shall be in writing, signed by the Judge presiding in the matter, unless due to unforeseeable circumstance is unable and the Chief Judge of the Tribal Court or the Chief Justice of Appellate Court may sign such order if they have sufficient knowledge of the case to do so.

### **2-160-020 Entry of Judgment**

Upon the verdict of a jury, the judge shall render judgment in accordance with the verdict. Since all civil trials are bench trials, the judge may make findings of fact and conclusions of law and shall enter judgment after the close of trial.

### **2-160-030 Multiple Claims**

When more than one claim for relief is presented in an action, the Court may direct the entry of a final judgment upon one or more, but less than all, of the claims.

### **2-160-040 Cross Claim; Counter Claim**

If an original complaint is dismissed and a counter claim or cross claim has been alleged, trial and judgment may be had on the counter claim or cross claim, even if the original complaint has been dismissed or otherwise disposed of.

### **2-160-050 Stay of Proceeding to Enforce Judgment**

When the Court has ordered a final judgment on some but not all of the claims presented in the action, the Court may stay enforcement of the judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit to the party in whose favor the judgment is entered.

### **2-160-060 Costs and Attorney Fees**

In civil actions costs shall be awarded the prevailing party as part of the final judgment unless the Court otherwise orders. No costs shall be awarded against the Tribe, tribal entities, or against any officer of the Tribe or member of the Council sued in his official capacity. Costs shall include filing fees, reasonable and necessary expenses of involuntary witnesses, and such other proper and reasonable expenses, exclusive of attorney's fees, as the Court may allow. The Court shall not award attorney's fees to the prevailing party in a civil suit unless the Court determines that the case has been prosecuted or defended solely for harassment and without any reasonable expectation of success, or that the apportionment of attorney fees has been fixed by prior agreement of the parties, or that attorney fees are otherwise required to be awarded as provided in the Law and Order Code.

## **2-170 RELIEF FROM JUDGMENT OR ORDER**

### **2-170-010 Clerical Error**

Clerical mistakes in judgments, orders, or other parts of the record and errors arising from oversight or omission may be corrected by the Court at any time of its own initiative or on the motion of any party after such notice as the Court may order.

### **2-170-020 Mistake, Inadvertence, Excusable Neglect, or New Evidence**

- (a) On motion and upon such terms as are just, but no later than six (6) months after the judgment or order at issue has been entered, the Court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
- (1) mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining a judgment or order;
  - (2) erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record; or
  - (3) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial.

### **2-170-030 Void Judgments, Fraud, or Death**

- (a) On motion and upon such terms as are just, and within a reasonable time after the judgment or order at issue has been entered, the Court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:
- (1) the judgment is void;
  - (2) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated;
  - (3) unavoidable casualty or misfortune preventing the party from prosecuting or defending;
  - (4) fraud;
  - (5) death of one of the parties before judgment in the action; or
  - (6) any other reason justifying relief from the operation of the judgment.

## **2-180 FOREIGN JUDGMENTS**

### **2-180-010 Registration Procedure**

Recognition, implementation, and enforcement of orders, judgments and/or decrees from courts other than the Fallon Tribal Court shall be allowed in accordance with this Title. The party shall register the order, judgment and/or decree with the Tribal Court by filing a certified copy with the Tribal Court clerk, and paying any necessary filing fee established by the clerk. The registering party shall issue and serve a twenty (20) day summons. Upon obtaining service on the judgment debtor or non-prevailing party in accordance with the provisions of this Title and after the judgment debtor or non-prevailing party has failed to respond, the recognition, implementation, and enforcement of orders, judgment and/or decree shall be allowed. Enforcement of foreign orders, judgments, and/or decrees, when so ordered by the Tribal Court, shall only be permitted as provided under Tribal law, and if applicable federal law.

### **2-180-020 Hearing**

Any party to such a foreign order, judgment, and/or decree registered with the Tribal Court may, within twenty (20) days of the service of such order, judgment, and/or decree upon the other party, apply for hearing on the order, judgment, and/or decree before the Tribal Court. Upon such application, the Tribal Court shall hold a hearing to determine the validity of such order, judgment, and/or decree, and shall consider issues raised by the other party, including, but not limited to, the jurisdiction of the foreign court and whether such order, judgment, and/or decree is contrary to laws, both written and customary, of the Fallon Paiute-Shoshone Tribe.

### **2-180-030 Immunity**

No provision of this Title shall not be construed to waive the immunity of the Tribe, its Business Council, its agencies, departments/programs, enterprises, chartered organizations, corporations, or entities of any kind, and its officers, employees, agents, contractors and attorneys shall be immune from suit in the performance of their duties; except where the immunity of the Tribe or its officers and employees is expressly, specifically, and unequivocally waived by and in a tribal or federal statute, a duly-executed contract approved by the Business Council, or a duly enacted ordinance or resolution of the Business Council.

## **2-190 ENFORCEMENT OF JUDGMENTS**

### **2-190-010 Purpose**

The general purpose of this chapter is to provide a fair and equitable means of collecting on debts, to protect the rights of creditors and debtors, and to better enable community members to secure credit by providing a process for creditors to collect on debts.

### **2-190-020 Judgment Constitutes a Lien**

A judgment shall constitute a lien on any nonexempt property of the judgment debtor. Notice of this lien may be filed by the judgment creditor in the public records of any county or state where such property is located.

**2-190-030 Execution**

- (a) If any final judgment for money rendered by the Court is not satisfied within sixty (60) days of entry, or such other time fixed by the Court, the judgment creditor may apply to the Court for an order directing the judgment debtor to appear before the Court for purposes of itemizing his/her property.
- (b) After giving the judgment debtor an opportunity for hearing, the Court shall determine what property is available for execution, and shall order tribal law enforcement officers to seize such property as may be necessary to satisfy the judgment. In addition, the judgment may be paid out of any funds on deposit to the credit of the judgment debtor at the appropriate U.S. BIA office, except as exempted under this Section, when such payment is authorized by the Secretary of the Interior, or his/her authorized representative, on such terms and conditions as the Secretary may prescribe.
- (c) Judgments may be executed through a writ of execution on the property of a person against whom the money Judgment is entered. The party requests an execution of the Judgment by filing a Motion and documenting that the judgment has not been fully satisfied. The writ of execution may specify personal property to be seized in satisfaction of any judgment and any property seized may be subject to sale by the Court to satisfy the judgment after ten (10) days notice by posting public notice of such sale. The sale will be conducted by the Clerk and sale will be to the highest bidder for cash, but not less than the appraised value of the property. The proceeds of such sale will be paid by the Clerk as follows:
  - (1) All costs of the sale;
  - (2) All unpaid Court costs;
  - (3) The amount of the unsatisfied judgment;
  - (4) Any balance will be paid to defendant; and
  - (5) Any unpaid amount of the judgment shall remain unsatisfied.

**2-190-040 Procedure**

If, after the time for appeal has run, it is made to appear to the Court that the judgment debtor has not paid the judgment amount in full or is not making payments in a manner agreed to by the parties or required by the Court, the judge shall order the judgment debtor to appear before him and answer under oath regarding his/her personal property, or to produce records or other papers or things which may lead to the discovery of property which may be executed upon. The judge shall then determine what property of the judgment debtor is available for execution and order the police to seize as much of the property as reasonably appears necessary to pay the judgment. Failure of the judgment debtor to appear may be deemed a contempt of court and the judge may proceed without his/her appearance.

**2-190-050 Hearing**

When such a Motion for Execution of a Judgment is filed, the Court shall order the person owing the money to appear and answer under oath describing his/her money, property, and income. Failure to appear may be deemed a contempt of Court and the Court may proceed with the execution of Judgment without the person. Money and property may be seized by the Court and held to satisfy the Judgment. Any money, and property seized shall be held for thirty (30) calendar days before being turned over to the party to whom the money is owed. The Court, in its discretion, may release the money or property in less than thirty (30) days, if the release will not cause harm to either party.

**2-190-060 Life of Judgment; Renewals**

No judgment of the Court for money shall be enforceable after five (5) years from the date of entry, unless application to renew the judgment shall have been filed before the date of expiration. Upon application of the judgment creditor prior to the expiration of five (5) years after the date of the entry of a judgment for money, the Court shall order the judgment renewed and extended for an additional five (5) years.

**2-190-070 Garnishment**

- (a) For the purposes of the Section:
  - (1) Wages means compensation paid or payable for personal services whether denominated as wages, salary, commission, bonus, or otherwise.
  - (2) Disposable Wages means that part of the wages of an individual left after the deduction from those earnings of, if applicable, federal tax withholdings, social security withholdings, and any other amounts required by applicable law to be withheld by the employer.
  - (3) Judgment Creditor means any person or entity which has obtained a final money judgment by a court of competent jurisdiction.
  - (4) Judgment Debtor means any person against whom a final money judgment has been entered by a court of competent jurisdiction.
- (b) The Court may, in a civil action for garnishment filed by a judgment creditor, order garnishment of the unpaid past or future wages of the judgment debtor for satisfaction of the judgment. No garnishment action shall be filed unless the judgment has been unsatisfied for sixty (60) days or more. In any such action the judgment debtor and the judgment debtor's employer shall be named as defendants.
- (c) The maximum amount of wages in any one workweek subject to garnishment is the lesser of:
  - (1) Twenty-five percent (25%) of the judgment debtor's disposable wages for that week or the amount of the wages that exceed forty (40) times the federal minimum hourly wage prescribed by the U.S. Fair Labor Standards Act.
- (d) The garnishment order shall lapse when the judgment is satisfied or when the judgment debtor resigns or is dismissed from his/her employment; provided that if the judgment debtor is reemployed or rehired within ninety (90) days after such resignation or dismissal, the garnishment order shall continue in effect.
- (e) No employer shall discharge an employee for the reason that a judgment creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment.
- (f) Notwithstanding any other provision of law, wages paid by the Tribe to any individual, shall be subject, in like manner and to the same extent as if the Tribe were a private person, to legal process brought for the enforcement against such individual in Tribal Court of his/her legal obligations, including obligations to provide child support, or make alimony payments, or make rental or other payments to the Tribe and/or its departments/programs, entities, and/or chartered corporations. Service of legal process on the Tribe, brought for the enforcement of an individual's obligation to provide such payments shall be accomplished by certified or registered mail with return receipt requested, or by personal service upon the Tribal Treasurer, or in his/her absence, the Comptroller/Chief Finance Officer.

- (g) No Tribal employee shall be subject to any disciplinary action or civil or criminal liability or penalty whatsoever for, or on account of, any order of the Tribal Court pursuant to this Section.
- (h) Where the Tribes (including its entities and instrumentalities), is a garnishee defendant, in no event shall the Tribes be liable for a default judgment, and in no event shall Tribal funds be subject to judgment or execution in an amount that exceeds the amount of nonexempt wages or other funds subject to garnishment that are specifically held for or owing the defendant debtor.
- (i) In accordance with the Tribe's Settlement Plan, any per capita payments from the Tribe to its tribal members provided as a result of Public Law 101-618 shall not be subject to garnishment, provided however the Tribal Court by court order or the Fallon Business Council by way of its financial management policies may issue a garnishment of a Tribal member's annual per capita distribution ONLY to secure or pay an obligation to the Tribe (including its entities and instrumentalities).

**2-190-080 Sale of Property**

- (a) Sale of property seized pursuant to the process stated in Section 2-190-030(c) shall be at public auction conducted or administered by the Tribal Police after giving at least ten days public notice posted in at least three public places on the Reservation and Colony. Property shall be sold in a commercially reasonable manner to the highest bidder. Payment for the property and transfer of title shall take place upon completion of the auction. The Tribal Police shall be entitled to recover from the sale proceeds the costs incurred for the auction. If the sale results in a price higher than the debt plus expenses of sale, the debtor shall be given the surplus. The judgment shall continue in effect in the amount not recovered at the sale, plus expenses of the sale.
- (b) A judgment shall be considered a lawful debt in all procedures to distribute a defendant's estate.
- (c) All auctions conducted under this Section are "as is" without any warranty, and the Tribal Police shall not be liable for any defect in the sale or property sold.

**2-190-090 Exemption from Execution**

The judge shall order seizure and sale of only such property of the judgment debtor as will not impose an immediate and substantial hardship on his/her immediate family. Only property of the judgment debtor himself may be subject to execution and not property of his/her family. Lands under assignment to a judgment debtor are not available for sale as they are Tribally-owned property.

**2-190-100 Property Exempt from Judgments for Money**

- (a) There shall be exempt from the satisfaction or payment of all judgments for money, except judgments for the support of a spouse or children, the following property of the judgment debtor or the debtor's spouse:
  - (1) Provisions and fuel necessary to supply the debtor and his/her immediate family;
  - (2) All wearing apparel, clothing and personal effects.
  - (3) All household furnishings.
  - (4) One (1) dwelling place whether it be a house, cabin, trailer or other structure.
  - (5) One (1) truck or other motor vehicle.

- (6) To a farmer or rancher -- livestock, farm equipment, machinery and seed, grain or vegetables not exceeding in value twenty-five thousand dollars (\$25,000.00).
  - (7) To a mechanic or artisan -- tools or implements necessary to carry on his/her trade.
  - (8) All moneys, benefits, privileges or immunities in any manner growing out of any life insurance on the life of the debtor.
  - (9) All retirement allowances, benefits and pensions.
  - (10) All family pictures.
  - (11) A lot or lots in any burial ground.
  - (12) Real property or other property held in trust by the United States.
- (b) Provided however that such exempt property may be subject to satisfaction and payment of judgments where the judgment debtor has executed a valid and lawful mortgage or security agreement with the judgment creditor, specifically pledging such property as collateral.

## **2-200 EXTRAORDINARY WRIT**

### **2-200-010 Emergency Order**

The Court may enter an emergency order or writ without a hearing or notice to all parties if it appears from the complaint, affidavits and sworn testimony that irreparable harm will result without the order. The order will expire in thirty (30) calendar days unless extended by the Court for good cause. A hearing on the matters contained in the order will be held prior to its expiration. The removal of a child from its residence by the Social Services Department or equivalent agency and the imminent destruction of records or property essential to the case are non-exclusive examples of matters which may require an Emergency Order.



# FALLON PAIUTE-SHOSHONE TRIBE

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Resolution No. 19-F-118

**BE IT RESOLVED BY THE GOVERNING BODY OF THE FALLON PAIUTE-SHOSHONE TRIBE, THE FALLON BUSINESS COUNCIL, THAT:**

**WHEREAS:** the Fallon Business Council ("Council") is the recognized Governing Body of the Fallon Paiute-Shoshone Tribe ("Tribe") and was established to exercise the privileges and powers of self-government, to conserve and develop the Tribe's resources for the social and economic well-being of its members, and to preserve and protect the civil rights of its members; and

**WHEREAS:** the Fallon Paiute-Shoshone Tribe is federally recognized by the United States Government and the Secretary of the Interior as a Native American Tribe, and by the power vested by the Tribal Constitution and Bylaws pursuant to Article VI – Powers & Duties of the Business Council, Section 1(h), the Business Council has the power "to promulgate and enforce ordinances governing the conduct of all people within the territorial boundaries of the Tribe, as provided by Federal Law; and to provide for the maintenance of law and order and establishment of a tribal court"; and

**WHEREAS:** pursuant to this power, the Business Council has created a Law & Order Code and other laws and ordinances to govern the conduct of people within the Tribe's Reservation and Colony; and

**WHEREAS:** the Business Council has recognized the importance of reviewing and updating the Law and Order Code to ensure the Code meets the Tribe's needs and best serves to protect the interests of the Tribe, its members and persons living and working on Tribal lands; and

**WHEREAS:** to meet this goal, the Business Council has reviewed Title 2 of the Law and Order Code titles "Rules of Civil Procedure" and made a number of revisions to it; and

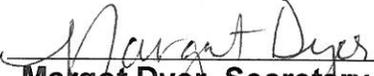
**WHEREAS:** the revised version of Title 2 was posted for at least thirty days to allow for public comment;

**NOW THEREFORE BE IT RESOLVED** by the Fallon Business Council, the governing body of the Fallon Paiute-Shoshone Tribe, hereby adopts the attached version of Title 2 – Rules of Civil Procedure of the Tribe's Law and Order Code in its entirety, which shall supersede and replace all prior versions of Title 2 of the Tribe's the Law and Order Code, and which shall go into effect **August 1, 2019**; and

**BE IT FINALLY RESOLVED** that the Fallon Business Council hereby directs that the Tribal Secretary to make this Title 2 of the Law and Order Code available to those Tribal members and attorneys/advocates who request a copy. The expense for each copy will be at the cost of the requester.

**CERTIFICATION**

At a duly held meeting of the Governing Body of the Fallon Paiute-Shoshone Tribe, consisting of seven members, of which five constitutes a quorum, there were 6 members present on the 9<sup>th</sup> day of July, 2019, who **VOTED 6 FOR, 0 AGAINST, 0 ABSTENTIONS**, in the adoption of the foregoing resolution, according to the powers vested by the Fallon Paiute-Shoshone Tribal Constitution and By-Laws.

  
\_\_\_\_\_  
**Margot Dyer, Secretary**  
**Fallon Business Council**