

COURT GENERAL PROCEDURES and OPERATIONS

Practice Tips and Recommendations

RICK A. GARCIA, ESQUIRE | DIRECTOR



2019 TJD Master Series Training – Part II

DUE PROCESS BEST PRACTICES

1. **Keep good records**
2. Follow your court rules
3. Explain your decision
4. Protect confidentiality



WRITTEN RECORDS

WHY DO WE NEED WRITTEN RECORDS?

1. Written records/documents/notes help create a record of all hearings
2. Also can utilize handwritten, audio taped, or video taped records
3. Helpful for review purposes when drafting written orders
4. Appellate court needs a record to review
5. Needed if a review of your court order/proceedings occur by State or other agencies



WRITTEN RECORDS

WHAT IS CONSIDERED A WRITTEN RECORD?

Send **ALL PARTIES** in a case copies of:

1. All petitions, letters from parties, and other correspondence from parties
(Petitioner/Plaintiff and Respondent/Defendant)
2. Court Notice of Hearings and Orders
3. Make a note in the file of what was sent, to whom, and the date sent (on docket sheet)



WRITTEN RECORDS

WHERE DO I SEND THESE RECORDS?

Send (personally deliver) written records to:

1. All parties to their **current address**
2. If their current address is not known, send to their **last known address**
3. Contact relatives for recent address or for message contact



PETITIONS COMPLAINTS

HOW DO I BEGIN A TRIBAL COURT CASE?

1. Petitions to Use Tribal Court
2. Complaints
3. Referrals or Transfers from other Court (Intertribal Court)



1. PETITION TO USE TRIBAL COURT

PETITION TO USE TRIBAL COURT:

1. Name of the Petitioner (Plaintiff)
2. Name of the Respondent
(Defendant – whom the complaint
is filed against)
3. Describe the circumstances
involving their petition request and
why they are requesting Tribal
Court involvement



1. PETITION TO USE TRIBAL COURT

PETITION TO USE TRIBAL COURT:

(Name of the tribe) TRIBAL COURT
(Name of Village), Alaska

_____)	
Petitioner)	
v.)	Case No. _____
_____)	
Respondent)	Tribal Court Phone Number:
	<u>(907)</u> _____

PETITION TO USE THE TRIBAL COURT

I, _____, wish to use the Tribal Court for the following problem, dispute or service. (Please give any details you can in the spaces provided on this form and on another sheet if necessary.):

I certify that the foregoing is true and correct to the best of my knowledge and belief.

(Signature of Petitioner applying to use the Tribal Court) (Date Petition was signed)

(Print or type name of Petitioner) (Address of Petitioner)

(Phone Number of Petitioner) (Address of Petitioner)



2. COMPLAINT

COMPLAINT:

Complaints for violation(s) of ordinances are filed by the VPSO, VPO, TPO, or by others as allowed by ordinance. Complaints are filed with the clerk and should include same information contained in petition:

1. Name of Petitioner;
2. Name of Respondent; and
3. Description of violation



3. REFERRALS/ TRANSFERS & INTER- TRIBAL COURT

REFERRALS/TRANSFERS & INTER-TRIBAL COURT:

Cases from another Court through referrals/transfers/inter-tribal court. For some (inter-tribal), expectations through resolutions/MOA's should be discussed/executed prior to case transfer



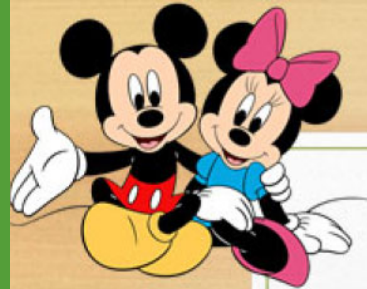
WHAT PARTIES SHOULD BE INVOLVED

1. Petitioner(s) (Victim)
2. Respondent(s) (Offender)



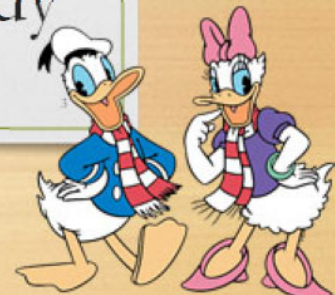
Witnesses (or testimony by affidavits) can be called for hearings/trials and will be summoned by the Court to appear. They are **NOT REQUIRED** to be parties to the case initially...

WHAT PARTIES SHOULD BE INVOLVED



Inter-Tribal Courts

Hypothetical Case Study



CASE NUMBERS

Case numbers help to identify the identity of a case, without compromising confidential information

PRIVATE & CONFIDENTIAL



CASE NUMBERS

Case numbers should be formatted to assist the Clerk and the Court in identifying certain basic information about the case....including:

1. Year case filed
2. Type of case
3. Unique identifier of case



CASE NUMBERS

Format of Case Numbers is up to
YOU...however, some examples of case
numbering....

EXAMPLE #1:

YEAR-MONTH-# OF CASE FILED THAT MONTH-CASE TYPE

ex: 2019-05-04-CIV



CASE NUMBERS

Format of Case Numbers is up to
YOU...however, some examples of case
numbering....

EXAMPLE #2:

MONTH-YEAR-# OF CASE FILED THAT MONTH-CASE TYPE

ex: 05-2019-01-CIV



CASE NUMBERS

Format of Case Numbers is up to YOU...however, some examples of case numbering....

EXAMPLE #3:

CASE TYPE-YEAR-MONTH-# OF CASE FILED THAT MONTH

ex: CIV-2019-05-03



CASE NUMBERS

Format of Case Numbers is up to
YOU...however, some examples of case
numbering....

EXAMPLE #4:

YEAR-# OF CASE FILED-CASE TYPE

ex: 2019-22-DR



WHAT HAPPENS NOW?

When a petition/complaint is filed with Tribal Court, the Tribal Court Clerk will schedule a meeting of the Tribal Court Judges to review the petition and decide on whether to take that case

1. If “YES” – Clerk will schedule hearing and provide Notice of Hearing
2. If “NO” – Clerk will send Notice of Declination (Denial) to Petitioner

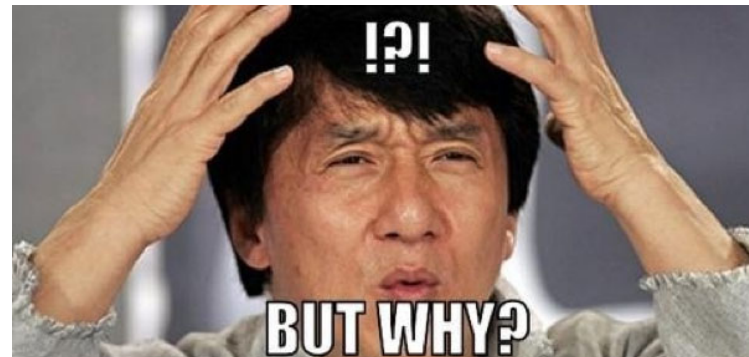


NOTICE OF HEARING

Notice of hearing provides parties to the case information about a Court scheduled hearing

At a minimum, Notices of Hearing **MUST** include:

1. Notice that there is a hearing and what that hearing will be about
2. The date, time, and place of hearing



NOTICE OF HEARING

DUE PROCESS **MUST** BE GIVEN

Remember, due process **REQUIRES**:

1. NOTICE
2. OPPORTUNITY TO BE HEARD
3. FAIR AND IMPARTIAL HEARING



NOTICE OF HEARING

Additional helpful information to include:

1. Include Rights of parties – right to respond; right to be present; right to give evidence/testimony
2. Telephonic hearings?
3. Consequences of failure to attend – hearing will continue; rights may be determined in your absence



NOTICE OF HEARING

(Name of Tribe) TRIBAL COURT
(Name of Village), Alaska

_____))
Petitioner/ Plaintiff)
v.) Case No. _____
_____))
Respondent/ Defendant)
(907) _____
Tribal Court Phone Number:

NOTICE OF HEARING

To: _____, Respondent/Defendant.

YOU ARE HEREBY NOTIFIED:

The Plaintiff/ Petitioner has filed a Complaint/Petition and requested that the Tribal Court hear the following matter:

1. Notice of a hearing –
what that hearing is about

A hearing will be held on this matter at: _____ (place), on _____ (date) at _____ (time).

2. Where/When/Time

YOU HAVE THE RIGHT TO RESPOND TO THE PETITION BOTH IN WRITING AND IN PERSON. YOU HAVE THE RIGHT TO BE PRESENT AT THE PROCEEDINGS, TO HAVE A FAIR HEARING, TO GIVE WRITTEN AND ORAL EVIDENCE TO THE COURT. TO HAVE WITNESSES TESTIFY ON YOUR BEHALF, AND TO QUESTION WITNESSES WHO TESTIFY AGAINST YOU.

YOU ARE HEREBY ORDERED TO APPEAR IN THE TRIBAL COURT, IF YOU FAIL TO APPEAR IN COURT, THE COURT MAY ENTER A JUDGEMENT AGAINST YOU ON THIS MATTER. YOU MAY REQUEST PERMISSION OF THE TRIBAL COURT TO APPEAR BY TELEPHONE. THIS REQUEST MUST BE MADE TO THE COURT AT LEAST 3 DAYS PRIOR TO THE HEARING, SO THAT THE TELECONFERENCE CAN BE ARRANGED.

All paperwork and any evidence that you wish the Court to consider may be sent to the Court at the following address:

_____ Tribal Court



NOTICE OF HEARING

Time Requirements:

“Reasonable” notice should be given
for all Tribal Court hearings



NOTICE OF HEARING



Time Requirements – What is considered “Reasonable”?

1. Provide enough time for Parties to clear schedules and make arrangements to attend Tribal Court
2. 14-20 days notice time is best practice
3. Judicial code should define what is considered reasonable



TIMELINESS OF ORDERS and PETITIONS

TIMELINESS OF SENDING DOCUMENTS TO ALL PARTIES

It's important and necessary that all documents are **timely** sent to all parties.

ORDERS should be signed by the Judge, mailed by the Clerk, and Certificate of Mailing signed as close to the hearing date as possible



SERVICE OF PROCESS/ CERTIFICATE OF MAILINGS

WHAT IS SERVICE OF PROCESS?

“the term for the delivery of a summons, writ or subpoena to the opposing party in a law suit.”

- Blacks Law Dictionary

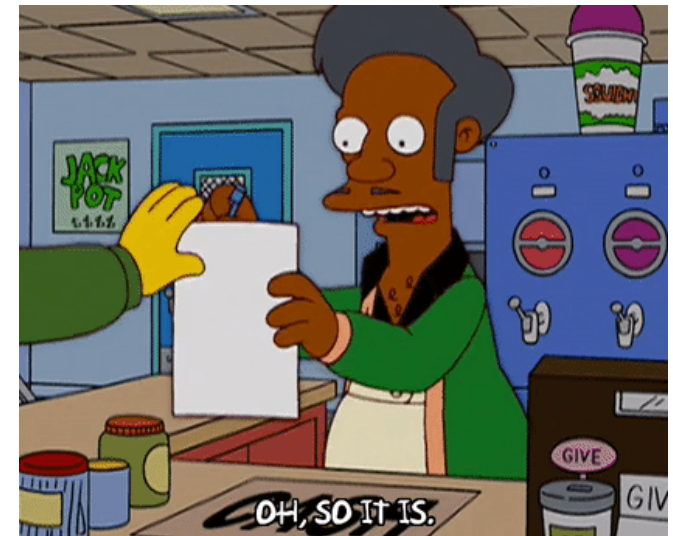
A way of providing NOTICE to parties



SERVICE OF PROCESS/ CERTIFICATE OF MAILINGS

HOW DO I COMPLY/PERFORM SERVICE?

- Personal service
- Mail
- Phone
- Published notice



SERVICE OF PROCESS/ CERTIFICATE OF MAILINGS

HOW DO I DOCUMENT THAT SERVICE WAS COMPLETED?

- Personal service/Published Notice/Mail/Phone – Person who performed service completes and files with the Tribal Court Clerk a “Statement of Personal Service” document
- That document becomes part of the Court Record



SERVICE OF PROCESS/ CERTIFICATE OF MAILINGS

HOW DO I DOCUMENT THAT SERVICE WAS COMPLETED?

(Name of Tribe) TRIBAL COURT
(Name of Village), Alaska

_____))
Petitioner/ Plaintiff))
 v.)) **Case No.** _____)
 _____))
Respondent/defendant)) **Tribal Court Phone Number:**
 _____) **(907)** _____

STATEMENT OF PERSONAL SERVICE

I, _____, state that on the _____ day of
 _____ (name), I personally give a true and correct copy of (documents
 given to person):

 at approximately _____ (time), to (name of person documents given to)
 _____, at (address where person was given the documents
 including community and state): _____

DATED THIS _____ day of _____,
 _____.

 (Signature)

 (Print name)

30



SERVICE OF PROCESS/ CERTIFICATE OF MAILINGS

HOW DOES THE CLERK DOCUMENT THAT SERVICE WAS COMPLETED?

- Court Documents – including documents filed by parties, court documents, NOH's, and orders – are sent to the parties by the Tribal Court Clerk
- The Clerk certifies that this was completed through a “Statement of Mailing” document that is filed with the Court and becomes part of the Court Record



SERVICE OF PROCESS/ CERTIFICATE OF MAILINGS

HOW DOES THE CLERK DOCUMENT THAT SERVICE WAS COMPLETED?

(Name of Tribe) TRIBAL COURT
(Name of Village), Alaska

_____))
Petitioner/ Plaintiff)
v.)
_____))
Respondent / Defendant)

Case No. _____

Tribal Court Phone Number:
(907) _____

STATEMENT OF MAILING

I, _____ (name), state that on the _____ day of _____, _____, I mailed a true and correct copy of (documents given to person): _____ to (name of person documents given to): _____ at approximately (time documents given) _____, at (address where person was mailed the documents including community and state): _____ by placing a copy in an envelope with proper postage affixed and by placing the envelope in the ¹U.S. Mail, ¹certified mail, ¹restricted delivery, ¹return receipt requested.

DATED THIS _____ day of _____, _____.

(Signature)



CLEARLY WRITTEN ORDERS

Do's/Don't(s)

DO'S:

1. DO include all significant facts and information
2. DO include who participated, how related
3. DO write in plain English and clearly so everyone understands



CLEARLY WRITTEN ORDERS

Do's/Don't(s)

DON'T(s):

1. DO NOT use legalese (HERETO, WHERE TO, IN REM, etc...)
2. DO NOT use slang language
3. DO NOT insert personal feelings and thoughts



CASE MANAGEMENT

WHAT IS CASE MANAGEMENT?

1. Organization and protection of court records and court file
2. Documentation of what was filed, when it was filed, and by whom
3. Written record provided as part of Court File that provides summary of court records (a.k.a Court Docket)
4. Way of preserving and protecting court records



CASE MANAGEMENT — CASE FILES

CASE FILES – CONTENTS

1. Docket sheet
2. Court filings (Petitioner/Respondent)
3. Court documents (NOH's, Orders)
4. Clerk notes



CASE MANAGEMENT — BEST PRACTICES

BEST PRACTICES

1. ORGANIZATION and STRUCTURE
2. DATE STAMP
3. JUDICIAL CODE to outline timelines/standards
4. NO LOOSE PAPERS
5. SAFEGUARDING/CONFIDENTIALITY



CONFIDENTIALITY

CONFIDENTIALITY

Protections for the confidentiality of the Tribal Court, Parties to the Case, hearings, and records should be implemented

Judicial code should define “**confidentiality**” with regards to hearings, records, and who can access both.



FULL FAITH AND CREDIT and COMITY

FULL FAITH AND CREDIT And COMITY

In Alaska, there are different standards for how State Courts recognize different types of Tribal Court orders



FULL FAITH AND CREDIT and COMITY

Full Faith and Credit – refers to the **mandatory** adoption of another court’s order, unless a party objects and can prove deficiencies

Comity – refers to the respect, **voluntary adoption**, that one sovereign gives to another, treating court orders as their own, unless a party can prove fundamental unfairness with the court process



FULL FAITH AND CREDIT and COMITY

INDIAN CHILD WELFARE ACT

1. ICWA – requires state courts to give full faith and credit to tribal court orders for:
 - a. Child Protection
 - b. Adoption
 - c. Guardianship
 - d. Some juvenile cases



FULL FAITH AND CREDIT and COMITY

VIOLENCE AGAINST WOMENS ACT

2. VAWA – requires state courts to give full faith and credit to tribal domestic violence orders



FULL FAITH AND CREDIT and COMITY

UNIFORM INTERSTATE FAMILY SUPPORT ACT (UIFSA)

3. UIFSA – **requires** state courts to give **full faith and credit** to child support orders and paternity orders



FULL FAITH AND CREDIT and COMITY

STATE OF ALASKA – *John v. Baker*

4. *John v. Baker* – **voluntarily** gives comity recognition to certain types of cases – unless it is shown that there was some type of fundamental unfairness with the court process



FULL FAITH AND CREDIT and COMITY

TYPE OF CASE	GOVERNED BY	RECOGNITION STANDARD
Adoption	ICWA	Full faith and credit
Child Protection	ICWA	Full faith and credit
Other ICWA-defined cases: guardianship of minor, third-party custody, certain juvenile cases	ICWA	Full faith and credit
Domestic Violence	VAWA	Full faith and credit
Child Support	Full Faith and Credit for Child Support Orders Act/Uniform Interstate Family Support Act (UIFSA)	Full faith and credit/comity
Paternity	UIFSA	Full faith and credit/comity
Parent vs. parent child custody	<i>John v. Baker</i>	Comity
Divorce	<i>John v. Baker</i>	Comity
Marriage	<i>John v. Baker</i>	Comity

Alaskatribes.org – Chart of Tribal Order Recognition 2018



QUESTIONS?
COMMENTS?
CONCERNS?



QUYANA!!

