



# PRE-HEARING JUDICIAL CONFERENCES

PRESENTED BY: HON. DEBRA O'GARA, PRESIDING JUDGE, CCTHITA

DAVID PANEPINTO, STAFF ATTORNEY, ALSC

# WHAT IS IT?

1. A short meeting of the Tribal Court staff,
2. Held after a Petition has been filed seeking the assistance of the Tribal Court,
3. At which the Tribal Court judges determine whether to accept or reject the Petition, and how to proceed.

# PURPOSE

This is the first time that the Tribal Court gets to consider the Petition, and it helps determine how the case will proceed, if at all.

Helps the Court determine:

- What type of case is involved,
- Who the parties to the case are,
- Whether or not the Court has jurisdiction,
- What type of hearing is appropriate,
- Whether there are any conflicts of interest, and
- The selection of judges

# TIMING

Must be held before any formal court proceedings, but how much time can you let pass after you receive the Petition?

Look to your Code first for any required timelines.

If not addressed in the Code, consider what would be reasonable:

- Holding the conference within 10 days after the Petition is received is a good rule.

# PARTICIPANTS

Limited to Judges and the Clerk, should not involve the parties.

Important: only the Judges should make decisions.

Look to your Code:

- How many judges need to be present (quorum) to consider the Petition?
- How do the judges make a decision? (Consensus vs. Vote)

**\*CONFIDENTIAL DOCUMENT\***

IN THE \_\_\_\_\_ TRIBAL COURT  
OF \_\_\_\_\_

\_\_\_\_\_) )  
Petitioner ) )  
                  ) )  
v. ) )  
                  ) )  
\_\_\_\_\_) )  
Respondent ) )  
\_\_\_\_\_) )

CASE NO. \_\_\_\_\_

**INITIAL JUDGE'S CONFERENCE OF THE TRIBAL COURT  
(DOMESTIC RELATIONS CASES)**

**I. PRESENT AT MEETING**

Court clerk: \_\_\_\_\_

The following judges were present at the meeting:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**II. TYPE OF CASE (check one)**

Child custody  
 Adoption  
 Guardianship  
 Other: \_\_\_\_\_

A Petition to Use the Tribal Court was filed on \_\_\_\_\_, 20\_\_.

# DECISIONS: The Type of Case

**Must determine whether or not you can accept the Petition:**

- Can the Tribal Court handle this type of case?
- If the Petition is unclear, you might need to get clarification, possibly through a form letter requesting more documents/information.
- Does the Tribal Court have the resources necessary to assist the family with this type of case?

**Are there any special rules that apply to this type of case?**

- Notice, parties, priority over other types of cases?

# DECISIONS: The Parties

**Who needs to be involved in this case?**

**Is there anyone missing from the Petition?**

**Did the Petitioner provide contact information for all the parties?**

- **Shouldn't be solely the Tribal Court's responsibility to track people down.**

# DECISIONS: Conflicts of Interest

One of the many reasons all potential judges should be present at the pre-hearing conference.

If any judge has a conflict, now is the time for them to step aside, before a decision to accept or reject the case is made.

Important: a judge with a conflict should have no further connection with the case.

# DECISIONS: Jurisdiction

Are the parties all enrolled tribal members?

- If not, are they eligible for membership?

If a party is neither enrolled nor eligible, what is their connection to the Tribe?

Special consideration in children's cases:

- Make sure you know all Tribes to which the child has a connection.

# DECISIONS: Type of Hearing/Structure

Based on the type of case, what type of proceeding is appropriate?

- Emergency orders
- Final hearing
- Circle format
- Court-ordered investigations

Much of this will be answered at a pre-trial hearing, but it's good to start thinking about it early.

# DECISIONS: Selection of Judges

As always, look to your Code first for guidance.

How many judges are required to hear the case?

- If only 1, how do you select from the pool of eligible judges?
- If more than 1, how do you select a Presiding Judge?



# NOTICE

**You've accepted the case, now what?**

**The Clerk needs to schedule a hearing/pre-trial hearing date.**

- **Look to your Code to determine how much notice the parties are entitled to.**

**Don't schedule the first hearing until the clerk has had enough time to serve sufficient notice, per your Code.**

# NOTICE

Each notice must meet the basic requirements of due process.

## At a minimum:

1. Who are the parties,
2. What is the case about,
3. What is the purpose of the hearing,
4. When and where it will take place, and
5. How the parties can participate.

May 22, 2019

John Smith  
PO Box 1  
Emmonak, AK 99559

RE: Matter of *Johnson, Jane v. Smith, John*

You are the Respondent in Tribal Court Case No. 001, *Johnson v. Smith*. A petition has been filed in that case by the Petitioner, seeking a domestic violence protective order against you.

A hearing will be held on Friday, June 07, 2019, at the Tribal Court, located on the 3<sup>rd</sup> floor of the IRA building on Front Street. If you cannot attend in person, you can call (907) 555-5555 to participate over the telephone.

At that hearing, you have the right to testify under oath, to call witnesses on your behalf, to question any witnesses against you, and to present other evidence relevant to this case.

If you do not attend, the Tribal Court can proceed with the hearing without you, and it may issue any orders it sees fit, based on the evidence submitted by the Petitioner, the same as if you were present and had participated.

Enclosed is a copy of the petition. You do not have to respond in writing, but if you choose to do so, please mail or deliver your written response and any documents directly to the tribal court.

Best Regards,  
Clerk of Court

**QUESTIONS?**

