

INTRODUCTION

The Tribal procedural system flows from five (5) major sources of law:

- 1) U.S. Constitution and the Te-Moak Constitution;
- 2) Tribal Rules of Civil, Criminal, Evidentiary and Appellate Procedure;
- 3) Te-Moak Law and Order Code, other Ordinances or tribal custom; and
- 4) Case decisions applying and interpreting these three bodies of law.

To comport with due process requirements the Tribe may not deprive life, liberty or property without minimum guarantees of fairness. Thus, presence of a party plus proper notice equals jurisdiction.

The Tribal rules of appellate, civil and criminal procedure govern the conduct in tribal courts. Superior authority to promulgate these rules comes from the Constitution of the Te-Moak Tribe of Western Shoshone Indians of Nevada, by way of the Separation of Powers. From this the Executive and Legislative powers vests in the Tribal Council, and the Court's authority vests in the Judicial Branch. These are coordinate or cooperating branches of government with separate and distinct power. The Council has the power to legislate through Ordinance, Resolution, Motion that includes the Law and Order Code, so long as the enactments do not intrude into the power reserved to the Judicial Branch. From the Constitution and the Law and Order Code the rules of the courts are not a product of direct congressional legislation. Council enacted, and the United States approved, 87-ORD-TM-03, 1-3-16(D), (rules enabling law), which grants the Supreme Court Judge the power to administer, manage and conduct the "business" for the Tribal Court. These rules are subject to the approval of "the Te-Moak Tribal Council." See 87-ORD-TM-03, 1-3-20.

The Constitution reveals several limits on the ways the court conducts its business. Generally, jurisdiction is the power or authority "to declare the law," and the term is also used to refer to territory or the power of a court to render a judgment recognized by other courts and government agencies. Principles of jurisdiction in courts are basically broken into two main parts: 1) Personal and 2) Subject Matter Jurisdiction, and both must exist as necessary ingredients for any court to issue a binding, valid decision.

Personal jurisdiction is the power of the court to issue a judgment that applies to any individual or person with a connection to tribal land, business etc., and by way of the tribe's extraterritorial jurisdiction that person may not have ever stepped onto tribal land, yet because of the degree or number of connection or dealings with the tribe, is subject to the authority of the court. These types of personal jurisdiction are based on Minimal Contacts, In Rem or Quasi In Rem (*jurisdiction over property, status or thing*) and Implied Consent (*where a person implies to the jurisdiction of the tribe after deriving benefits and protections of tribal law*).

Subject Matter Jurisdiction is the authority of the tribal court to decide certain types of cases, and this requires judicial restraint and discretion because subject matter jurisdiction must be present throughout a case or the court loses its power to continue.

The next piece of the initial puzzle is Venue or "place of trial." In conjunction with jurisdiction, courts need to ask, (*from the perspective of the Defendant*), what court is the most convenient, and what court is the fairest court to hold trial based on the residency of each defendant, including corporations, or where a substantial part of events or property involved in case are located. Venue is usually set by constitution or ordinance establishing the right place to proceed with a case. Failure to challenge venue in the first filing results in a waiver.

Tribal Rules of Civil Procedure

Rule 1. Scope

(a) Unless otherwise ordered or stated herein, the Tribal Rules of Civil Procedure shall govern and apply in all civil actions and proceedings in the Te-Moak Tribal Courts. These rules shall be applied and interpreted by the court and its judges to secure a just, speedy and inexpensive result in every instance. Citation to these rules as T.R.C.P. shall be acceptable.

(b) A paper copy of these rules shall be available from the Clerk of the Court for a reasonable fee during regular business hours or as otherwise provided by the Tribal Council or Office of Court Administrator. An electronic copy shall be made available on the court's or tribe's website.

(c) The Court shall encourage members of the tribe, public and the bar to provide public comment on any proposed rule submitted to the Te-Moak Tribal Council by the Court for approval by public

posting describing in the notice the period of time to submit written comments, which shall not exceed thirty days. Unless otherwise provided by a court order, once approved, the T.R.C.P. shall remain in effect and shall not be subject to amendment for a period of time no less than four (4) years after the date of final approval by the Te-Moak Tribal Council. This will ensure continuity, fairness and stability in the court.

(d) On a party's motion or on the court's initiative, the court may impose sanctions against an attorney, advocate, a party or both the party and their legal representative for violating these rules. Sanctions may include costs, reasonable legal fees, a fine, a combination of these, or any other sanction the court deems just and fair, including, but not limited to, dismissal of the case, striking a pleading or motion, or entering judgment. Any sanction that involves a dismissal or judgment shall be reserved for extraordinary cases.

(e) The words "shall" and "will" are mandatory directives. The words "may" or "can" are discretionary terms. The civil rules shall be liberally construed to secure the just, speedy and inexpensive determination of every civil judicial proceeding. Some tribal laws have their own procedures, and unless specifically in conflict with rules herein, the provisions of those laws shall remain superior.

(f) At any stage the court may permit a mistake, omission, defect or irregularity to be corrected, upon such terms as may be just, or, if a substantial right of a party is not prejudiced, the mistake, omission, defect or irregularity shall be disregarded.

Rule 2. Beginning a Civil Case

(a) There is one form of action, a civil action. A civil action begins or commences with the filing of a Complaint or Petition seeking extraordinary relief in the court as evidenced by the assignment of a civil case number generated and maintained by the Clerk of the Court.

(b) If a civil cover sheet is required by either the Clerk of the Court or the Court Administrator, at their discretion, that document must be submitted at the time of the initial filing and payment of fees. Any civil cover sheet submitted shall have no legal effect because this document is solely for administrative purposes.

(c) Electronic filing may be permitted by order of and subject to the conditions set forth by the Te-Moak Supreme Court.

(d) There shall be a presumption that all cases, hearings and proceedings are open to the public. Unless restricted by law or court order, the sealing of civil cases and closing hearings is highly discouraged and only permissible in extraordinary circumstances. Each request to seal a case shall require the affirmation and concurrence of the Supreme Court Judge prior to the sealing of any case by the trial court.

Rule 3. Pleadings and Motions

(a) Only the following shall be accepted by the Court and the Clerk of the Court as a civil pleading:

- i. Complaint or Petition for extraordinary relief;
- ii. Answer, including an Answer designated as a Counterclaim;
- iii. Answer to Counterclaim, including a Crossclaim;
- iv. Answer to a Crossclaim;
- v. Third Party Complaint;
- vi. Answer to Third Party Complaint;
- vii. Reply to Answer, if allowed or ordered by the Court.

(b) No pleading shall contain or include a motion. Any such motion must be prepared and filed as a separate document, such as a motion for injunctive relief.

(c) A request for court action or a request for a court order must be made by a motion, either orally or in writing, and must:

- i. State with particularity the grounds or basis for the request; and
- ii. State the relief or action requested from the court.

(d) The rules governing captions and objective form in pleadings apply equally to motions, proposed orders and other papers.

(e) At any time a judge may screen any action assigned to that judge and may recommend dismissal or may order dismissal if:

- i. The court lacks jurisdiction;
- ii. The claims presented are frivolous, defined as lacking merit in law or fact, or without good faith basis for the extension of the law;
- iii. The action fails to state a claim that the court can grant the requested relief; or

- iv. The action seeks monetary relief against a party who is immune.

(f) The Clerk of the Court shall collect all fees and costs authorized by law or the court, and the clerk is authorized to require advanced payment as set forth in the Schedule of Fees.

- i. The court's Schedule of Fees shall be published the beginning of each year and within five (5) business days after any change to the Schedule of Fees. Publication shall consist of a public posting at the Tribal Administration Office, the Band Council Offices at each Band and on the website for the court.
- ii. **Waiver of Fee.** Any party shall be allowed to request that the court waive or reduce the filing fee and the cost of service of process by submitting a written motion to the Clerk of the Court at the time of filing, signed under penalty of perjury.
 - a. To qualify for a fee waiver a requesting party must submit proof of income, identifying all assets and their market value, listed all monthly expenditures and identify any debt owed to the requesting party, the amount and specifically identify the debtor, as well as the state whether the requesting party receives or has received within the three months any subsidized income, benefit or gift.
 - b. Until a judge reviews the information submitted seeking a fee waiver the Clerk of the Court shall not assign a case number. If the request involves an emergency matter, the Clerk shall contact the judge as soon as possible, and if the trial court judge is unavailable for an emergency determination, and only in this instance, the Clerk shall contact the Supreme Court Judge or in his/her absence the Court Administrator who shall have the discretionary authority to grant or deny a waiver of the filing fee.

- c. At any time during the pendency of the proceedings, if a judge determines that an affidavit of indigence is untrue, a judge may dismiss the case, award sanctions or stay the proceedings until payment is made.
 - d. If a waiver of the entire filing fee is granted based on an affidavit of indigence, any security or bond for injunctive relief may be waived if permitted.
 - iii. ***Partial Payment or Payment Plan.*** If the court grants a party either a reduced partial payment or a payment plan due to a party who otherwise has sufficient income amount exceeding 200% of the U.S. Poverty amount, except that the monthly obligation amount for that party would impose a hardship, the Clerk shall accept no less than 20% of the filing fee initially or accept the minimum monthly amount required under a court approved payment plan, and assign a case number to the action. The Clerk will not issue Summons or Writs under this subpart until directed by the court.
 - iv. The Clerk of the Court will file a civil action under this rule as of the date that a waiver is granted, on the payment of the entire filing fee or as directed by the rules or the court upon receipt of the first payment of the reduced or conditional filing fee.

(g) Filing Time Periods.

- i. ***Filing Deadline.*** For the purposes of periods of limitation and repose, the deadline for personal injury actions to file shall be the Discovery Rule or the period to file a civil action begins on the date that any one plaintiff should have reasonably discovered or actually discovered an injury in fact. The period of limitation and repose in contract cases shall begin at the date of execution or date sold, or if an installment contract, when each installment accrues.

- ii. When theories of laches, undue delay and similar theory are asserted, they operate, at the discretion of the court, in addition to any other computation of time under this section.
- iii. When a filing deadline is not specified in any law, rule or court order, a document related to a court proceeding must be filed a minimum of 2 business days before any scheduled hearing or proceeding.
- iv. Whenever the Tribal Council repeals an existing period of time or revives an expired period of time, and the passage of time results in the vesting of an interest in property, revival is a violation of due process and is barred in that instance. If legislative action shortens an existing time period, the party adversely affected must be given a reasonable period of time to file a civil action, measured from the date of enactment shortening the time period.
- v. Agreements between parties to shorten the period of time to file a lawsuit up to the date of discovery or accrual. Agreements to lengthen the period of time are invalid, unless provided by law.
- vi. ***Tolling***. If commencement of an action is stayed by court order or tribal law, (*not stays entered into by agreement or contract*), then the limitation period does not run during the period of the stay.
- vii. When a civil action is timely filed and the court subsequently terminates that action on a procedural basis, not on the merits, and the claim survives, the plaintiff is granted an additional six months to refile, unless otherwise ordered by the court, even if the original limitation period expired, if and only if the second lawsuit arises out of the same transactions or occurrence as the first lawsuit. This six (6) month rule does not apply to Voluntary Dismissals, and Dismissals for a Lack of Personal Jurisdiction or Failure to Prosecute.