

SAN CARLOS APACHE TRIBAL COURT

RULES OF CIVIL PROCEDURE

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RULES OF CIVIL PROCEDURE

Rule 1. Scope of Rules.

These rules, adopted by unanimous vote of the San Carlos Apache Tribal Judges with the approval of the Tribal Council, shall govern the procedure of all Courts of the San Carlos Apache Tribe and shall become effective on _____.

Rule 2. Complaints.

A civil action is commenced by filing a written complaint with the court clerk, setting forth briefly the facts and circumstances giving rise to the action. It may state as many claims as the plaintiff deems he is entitled to and a prayer for relief. It shall give the defendant's address. The last sentence in the complaint shall read: "I have read the above or it has been read to me, and I understand the contents thereof and it is true." The complaint shall be signed by the plaintiff and his counsel (if he has one), and give their addresses and phone numbers. The court clerk must endorse on the complaint the date it is filed.

Rule 3. Service of Process.

The summons shall be issued by the clerk and shall contain the name of the court, the docket number, the names of the parties. it shall be directed to the defendant and shall notify him that in case of his failure to answer the complaint within thirty (30) days of the date of service of process, judgment by default may be entered against him. A copy of the complaint shall be attached to the summons.

The summons and complaint shall be served by the Court Bailiff, law enforcement officer, or any other person authorized by the Court by delivery of a copy to the defendant or someone over the age of sixteen (16) living at the usual residence of the defendant or working at the usual place of business of the defendant. If personal service cannot be effected within five days, notice may be given by registered mail. If service by registered mail cannot be effected, then notice may be given by publication in the Moccasin for three (3) weeks.

No service is necessary if the defendant files a written waiver. After the answer is filed, the Court shall set a trial date and time. Upon proper circumstances, within limits of jurisdiction and due process, the judge may authorize service of process by such other means as he deems appropriate.

The costs of service of the summons and complaint shall be borne by the plaintiff.

Rule 4. Answer.

A defendant shall file his answer with the Court within thirty (30) days of the date of personal service or receipt of the complaint by registered mail. The answer shall admit, admit in part, or deny the statements in the complaint; shall contain a counterclaim if one exists (except for a permissive counterclaim in a case where the Courts of the San Carlos Apache Tribe do not have jurisdiction), and shall be signed by the defendant and his counselor (if he has one) and give their addresses and phone numbers. A copy shall be sent by mail to the plaintiff or his counsel of record, or handed to him personally.

Rule 5. Form of Pleading.

a) **Claims for Relief.** A pleading, which sets forth a claim for relief, whether, an original claim, counterclaim, cross-claim, or third-party claim, shall contain:

(1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it,

(2) a short and plain statement of the claim showing that the pleader is entitled to relief, and

(3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

b) **Defenses: Form of Denials.** A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the affirmations upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an allegation, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the affirmations denied. When a pleader intends in good faith to deny only a part or a qualification of an affirmation, he shall specify so much of it as is true and material and shall deny only the remainder.

Rule 6. Affirmative Defenses.

The following defenses, if they exist, shall be affirmatively plead: Release or settlement, assumption of the risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, no consideration, fraud, illegality, laches, res judicata, statute of limitations, waiver, and any other avoidance or affirmative defense.

Rule 7. Motions.

The plaintiff may file motions with the complaint or any time thereafter and the defendant may file motions with his answer or any time thereafter. A copy of such motions shall be delivered or mailed to the opposing party or his counsel of record within five (5) days of the filing. All motions attacking the jurisdiction of the court, for change of venue, or for change of judge shall be filed at least seven (7) days prior to the trial date.

If the trial date is set for less than seven days from the date the complaint was filed, all motions shall be presented orally or in writing no later than the commencement of the hearing.

If the Court does not rule forthwith, but sets a hearing on the motion before the trial date, the plaintiff and defendant shall be present or represented by their counsel.

The judge may disqualify himself on motion of one of the parties or on his own motion. When a judge disqualifies himself, a copy of the order shall be sent to the Chief Judge who shall name a new judge to hear the case.

All motions shall be answered no later than the date set for a hearing on the motion or the trial, whichever is sooner. All motions and answers to motions shall cite supporting points and authorities.

Untimely motions do not stay any of the time requirements under these rules.

Rule 8. Parties.

Every action shall be prosecuted in the name of the real party in interest; but an executor, administrator, guardian, or trustee may sue in his own name stating in the petition the party for whose benefit the action is brought. A married woman may sue and be sued in all matters the same as though she were single. A partnership or person doing business under an assumed name may sue or be sued in its common name. A corporation may sue and be sued in its corporate name. A father or mother may maintain an action for the injury or death of a child; where one has deserted or refused to sue, the other may maintain the action. Persons having a joint interest shall be made parties and be joined on the same side as plaintiffs or made a defendant, or an involuntary plaintiff. Judgment may be given for one or more of the plaintiffs according to their rights to relief, and against one or more defendants according to their liabilities.

Rule 9. Joinder of Claims.

The plaintiff in his complaint and the defendant in his answer, may join either independent or alternative claims either legal or equitable as he may have against an opposing party.

Rule 10. Death of Party.

If the plaintiff dies, the suit may be continued by his heirs; if defendant dies, the court may order the personal representative served and the suit continued against the defendant's estate. When any public officer is a party to an action in his official capacity and dies, resigns or otherwise ceases to hold office, the action may be continued and maintained by or against his successor. When a substitution is made; the party or officer so affected shall be given notice.

Rule 11. Judgment.

The Court shall within ten (10) days of the conclusion of the case render its judgment in writing and shall direct the entry thereof. When the decision is formally entered a copy shall be mailed to the parties or their counsel. The time for taking an appeal shall begin to run from the date the judgment was signed and entered of record by the Court. Judgment, other than default, shall grant relief needed, even if the party has not demanded such relief in his pleadings.

Rule 12. Judgment by Default.

If the defendant does not answer the complaint within the period of time allowed by Rule 4, the plaintiff, upon proof that proper service was made, may upon motion have judgment against the defendant by default. Within thirty (30) days after the date of notice of the default, the defendant may file a motion to set aside the default judgment, and if such motion alleges sufficient grounds, the Court shall set the matter for hearing. A copy of the default judgment shall be mailed or handed personally to the defendant or his counsel.

A judgment by default shall not exceed the amount prayed for in the complaint.

Rule 13. Costs.

The Court shall order in the judgment the losing party to pay costs, including the filing fee, costs of service, and jury and witness costs. Or, the Court may order each party to pay part of the costs.

Rule 14. Court Sessions.

All sessions of court shall be public, except juvenile hearings, adoptions and other matters involving minors.

Rule 15. Jury Trials.

The authority to prepare juror lists vested in the Chief Judge is hereby delegated to each Judge.

Demand for a jury trial shall be made by the plaintiff at the time the complaint is filed. Demand for a jury trial shall be made by the defendant at the time the answer is filed.

The clerk shall mail juror questionnaires once a month for the purpose of establishing a pool of qualified and available jurors. The mailings shall go only to persons listed on Tribal Elections' Voter Lists as residing within the San Carlos Apache Tribal reservation. No employee of the Judicial Branch shall be called to serve as a juror. The Tribal Judge may develop rules with regard to establishment of a qualified pool of jurors.

Rule 16. Requirements for Temporary Restraining Orders & Injunction.

On 2 days' notice to the same party who obtained the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

^{by} No restraining order or injunction shall issue except upon the giving of security, the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the San Carlos Apache Tribe or of an officer or agency thereof.

Every order granting an injunction and every restraining order shall set forth the reasons for its issuance and shall be specific in terms. It shall describe in reasonable detail, and not be referenced to the complaint or other document, the act or acts sought to be restrained, and it is binding only upon the parties to the action, their officers, agents, servants, employees, and counsel, and upon those persons with them who receive notice of the order by personal service or otherwise.

- 1) Filing fee.
- 2) Affidavit or verified complaint showing specific facts that immediate and irreparable injury, loss or damage will result before opposition can be heard.

3) Certification to Court in writing that effect has been made to notify and reason why notice is not required.

4) Temporary Restraining Order without notice must be endorsed showing date and hour of issuance.

5) The order granting Temporary Restraining Order must show the date and time the Temporary Restraining Order will be heard.

6) No Restraining Order or Injunction must be issued except where security bond has been issued.

7) Temporary Restraining Order must be personally served.

8) Counsel's effort to give notice.

9) The TRO shall expire by its terms within such time after entry, not to exceed fifteen (15) days, the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period or unless the party against whom the order is directed consents that it may be extended for a long period. The reasons for the extension shall be entered of record. When temporary restraining order is granted without notice, a hearing on the merits shall be held, within the time period allowed for such orders and take precedence over all matters except older matters of the same character.

Rule 17. **Discovery.**

Discovery may be had by application of one party to the counsel for the opposing party.

Discovery may be had by one or more of the following methods: 1) Written interrogatories, 2) depositions, 3) production of documents for inspection or copying, and 4) requests for admissions.

Discovery shall not be had as to any counselor's work-product unless the party seeking discovery has shown to the Court that he has substantial need of the materials and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means.

Upon motion by the counselor from whom discovery is sought, and for good cause shown, the Court may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense. These are limitations concerning the scope of discovery.

Upon refusal of discovery by any counsel, the party seeking discovery may apply by motion to the Court for an order compelling such discovery. It shall be granted if the interests of justice require.

No discovery or motion for discovery shall be allowed unless it is filed more than fifteen (15) days prior to the date of the trial.

No deposition may be introduced as evidence except pursuant to the rules of evidence.

The party requesting discovery shall be responsible for the costs of such discovery.

Rule 18. Transcripts.

At the request of either party, the Court may direct that a verbatim record of the proceedings and evidence at the trial or hearing be prepared. This may be by electronic devices, or by a certified court reporter. The party requesting a transcript of the Court's electronically produced record shall bear the cost for the services of the transcriber.

Rule 19. Subpoenas.

If a party desires to have his subpoenas served by the Court Bailiff or law enforcement officers, he shall furnish the clerk at least ten (10) days before trial properly prepared subpoenas which the clerk or deputy clerk shall sign and deliver to the San Carlos Apache Tribal Police for service.

When service has been completed, the court shall forward an executed copy to the party requesting the subpoena.

If a party wishes to have someone other than the court bailiff or law enforcement officer serve the subpoenas, he may present properly prepared subpoenas to the Court for signature no later than the day before trial and shall ensure that they are timely served by someone duly authorized by the Court. The process server shall personally return the executed subpoena to the Court no later than the close of court the day before trial.

If a party does not request subpoenas, he shall not be entitled to a postponement because of absent witnesses. If a subpoena has been issued and a witness fails to appear, the Court may in its discretion postpone the trial.

Rule 20. Contempt.

Disobedience or resistance of any lawful writ, process, order, decree or command of the Court of these rules shall constitute contempt pursuant to Ordinance

87-2 and after a show cause hearing, may be punished by jail or fine. When a contempt is committed in the presence of the court, it may be punished summarily. In such event a written order shall be made reciting the facts constituting the contempt, adjudging the person guilty of contempt and prescribing the punishment therefor. Such order shall be final and conclusive.

Rule 21. Judicial Powers.

The Court shall have the power to order any relief required after the determination of the facts, and law, whether such relief be equitable or legal in nature.

At anytime after the final order or judgment, the Court may in the interest of justice reopen a case in order to correct errors or to consider newly discovered evidence, or for any other reason consistent with justice.

Rule 22. Dismissal of Actions.

The clerk shall regularly report to the Court all civil cases pending in which no order has been entered or record and no other action of record has been taken within the last six months. The clerk shall then give a written notice to the parties and to their counsel as shown by the court record that after thirty (30) days the case will be dismissed for failing to continue with it unless within that time good cause is shown in writing why the case should not be dismissed. Where no cause is shown, the Court shall dismiss all such cases on its own motion.

Rule 23. Failure to Appear for Trial.

When any case is set for trial and neither party appears at the trial date, the case may be stricken from the trial calendar and shall be subject to dismissal with prejudice, without notice to either party.

Rule 24. Withdrawal of Counsel.

Whenever counsel has once appeared either in open court or by motion to represent a party such counsel shall be responsible to the Court for his actions and shall not be allowed to withdraw from the case except by order of the Court upon written motion naming new counsel and stating good cause.

Rule 25. Summary Judgment.

A party seeking to recover upon a claim, counterclaim, cross-claim, or a party against whom a claim, counterclaim or cross-claim is asserted may, at any time after the date the answer is due or filed, move with or without supporting affidavits for a summary judgment in his favor upon all or any part of his claim, counterclaim or cross-claim.

The motion for summary judgment shall be filed and served upon the opposing party or his counsel at least seven (7) days before the date set for trial. The adverse party shall serve opposing affidavits within two (2) days prior to the date of trials.

The judgment shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions, on file, together with the affidavits if any, show there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.

A summary judgment may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

Rule 26. **Masters.**

a) Appointment and compensation. The Tribal Court in which any action is pending may appoint a special master therein. As used in these rules, the word "master" includes a referee, an auditor, an examiner, a commissioner, and an assessor. The compensation to be allowed to a master shall be fixed by the Court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the Court as the Court may direct. The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the Court does not pay it after notice and within the time prescribed by the Court, the master is entitled to a writ of execution against the delinquent party.

b) Powers. The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matter embraced in the reference, including the production of all books, papers, vouchers, documents, and writing applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and reexamine them upon oath.

c) Proceedings. When a reference is made, the clerk shall forthwith furnish the master with a copy of the order of reference. Upon receipt thereof unless the order of reference otherwise provides, the master shall forthwith set a time and place for the first meeting of the parties or their attorneys to be held within 20 days after the date of the order of reference and shall notify the parties or their attorneys. It

is the duty of the master to proceed with all reasonable diligence. Either party, on notice to the parties and master, may apply to the court for an order requiring the master to speed the proceedings and to make his report. If a party fails to appear at the time and place appointed, the master may proceed ex parte or, in his discretion, adjourn the proceedings to a future day, giving notice to the absent party of the adjournment.

d) Report.

(1) Contents and filing. The master shall prepare a report upon the matters submitted to him by the order of reference and, if required to make findings of fact and conclusions of law, he shall set them forth in the report. He shall file the report with the clerk of the court.

(2) In Non-Jury Actions. In an action to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous. Within 10 days after being served with notice of the filing of the report any party may serve written objections thereto upon the other parties. Application to the Court for action upon the report and upon objections thereto shall be by motion and upon notice as prescribed in Rule 7. The Court after hearing may adopt the report or may modify it or may reject it in whole or in part or may receive further evidence or may recommit it with instructions.

(3) In Jury Actions. In an action to be tried by a jury the master shall not be directed to report the evidence. His findings upon the issues submitted to him are admissible as evidence of the matters found and may be read to the jury, subject to the ruling of the court upon any objections in point of law which may be made to the report.

(4) Stipulation as to Findings. The effect of master's report is the same whether or not the parties have consented to the reference; but when the parties stipulate that a master's findings of fact shall be final, only questions of law arising upon the report shall thereafter be considered.

Rule 27. Computation of Time.

In computing any period of time allowed by these rules, by order of the court, or by any applicable law, the day of the act, event or default is not to be included. The last day of the period so computed is to be included, unless it is a Saturday or Sunday or court holiday, in which event the period runs until the end of the next day which is neither a Saturday nor Sunday nor a holiday.

Rule 28. Limitation of Civil Actions.

Civil actions can only be commenced within two years from the time that the cause of action accrues.

Rule 29. Appeals.

All appeals from the San Carlos Apache Tribal Court shall be heard by the San Carlos Apache Tribal Court of Appeals. Any party who is aggrieved by any final order, commitment or judgment of the Tribal Court may appeal in the manner prescribed by this rule. Within 5 days from the entry of the order of judgment appealed from the party taking the appeal must file with the trial court a written notice of appeal specifying the parties to the appeal, the order of judgment appealed from, and a short statement of the reason or grounds for the appeal. The clerk shall file the notice and mail copies, to be provided by the appealing party, to all other parties to the appeal at their last known address.

Rule 30. Change of Judge or Place of Trial.

1. Change of Judge for cause.
 - a. Grounds. In any criminal case prior to the commencement of a hearing or trial the tribe or any defendant shall be entitled to a change of judge if a fair and impartial hearing or trial cannot be had by reason of the interest or prejudice of the assigned judge.
 - b. Procedure. Within 10 days after discovery that grounds exist for change of judge, but not after commencement of a hearing or trial, a party may file a motion verified by affidavit of the moving party and alleging specifically the ground for the change.
 - c. Hearing. Promptly after the filing of the motion, the presiding judge shall provide for a hearing on the matter before a judge other than the judge challenged. The hearing judge shall decide the issues by the preponderance of the evidence and following the hearing, shall return the matter to the presiding judge who shall as quickly as possible and assign the action back to the original judge or make a new assignment, depending on the findings of the hearing judge. If a new assignment is to be made it shall be made in accordance with the provisions of this rule.