

# **BISHOP PAIUTE TRIBE**

## **RULES OF THE COURT**

### **Rule 1 - Scope of Rules**

These rules shall govern all proceedings brought in the Bishop Paiute Tribal Court or any division thereof. They shall be applied and interpreted to assure justice to all parties who come before the court. The Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure, as applicable, shall be used insofar as they do not conflict with these local rules. The Trial Court however, has the discretion to limit the application of any Federal rule in a specific case, if it is determined that such limitation is in the best interest of justice.

#### **1.1 Priority of Rules Included in Specific Ordinances**

Rules for service of process and other procedural rules included in any Ordinance enacted by the Bishop Paiute Tribe shall govern proceedings under that Ordinance. If any conflict exists between these Tribal Court Rules and the rules set forth in an Ordinance, the rules described in the Ordinance shall be followed. These Tribal Court Rules may be used as a guide for matter not specifically included in the Ordinance.

### **Rule 2 - Amendment of Rules**

Court Rules shall be promulgated by the Tribal Judge and may be amended from time to time by Order of the Court.

### **Rule 3 - Commencement of Action**

A court case is commenced by the filing of a complaint, petition, or application with the court and by paying all applicable fees. The Court will not take up a case that has not been properly filed in writing or where the required filing fee has not been paid or waived by Order of the Court.

### **Rule 4 - Filing Fee**

Any party, either plaintiff or defendant, who chooses to invoke the powers of the court or to defend any cause shall pay a filing fee unless the court waives the filing fee for good cause shown. The Court shall maintain a separate Filing Fee Schedule that shall be posted in the Court and that shall remain in effect until amended by the Tribal Council.

#### **4.1 Waiver of Filing Fee**

A person who can demonstrate indigency or other good cause may apply for a waiver of required filing fees. A waiver shall be granted by Order of the Court in writing and shall be filed in the case file.

#### **4.2 Schedule of Fees**

The Clerk of the Court shall set forth and maintain a schedule of filing fees and other fees required for services from the Court. The fees shall be set by the Tribal Council in consultation with the Chief Tribal Judge. The Schedule of Fees shall be posted in the Court for viewing by the public.

### **Rule 5- Representation**

Any person, including a professional attorney, who undertakes to represent another person in Court shall pay a licensing fee. A relative or personal friend of the party, who is not compensated for his service, does not have to comply with this requirement.

#### **5.1 Self-representation**

Any adult who has not been adjudged incompetent who wishes to commence an action in Court, or, who has been named as a party to a proceeding, may represent himself/herself before the Court. A party may choose to be represented by a relative or close personal friend under this rule, which will be regarded as a way of representing himself/herself.

#### **5.2 Attorney Representation**

A party may be represented before the Court by any person who is a member in good standing of the Bar of any federal or state court or who is a graduate of an accredited law school and who has been admitted to practice before the Bishop Paiute Tribal Court. All costs of representation by a private attorney shall be paid by the party who chooses to be represented by the attorney. A Notice of Appearance or Representation shall be filed before the attorney may be given access to the case file.

a. An attorney who seeks admission to practice before this Court shall file with the Clerk an application for admission which shall set forth his or her qualifications. (Each applicant shall sign a certification that he or she has read the Bishop Paiute Tribal Court Ordinance and the Rules of Court, that he or she is familiar with them, and will uphold and apply them in practice before the

court. The application shall be accompanied by an admission fee of \$50.00, which shall be paid annually by January 31st in order to retain good standing to practice before the court. The Clerk of the Court shall maintain a list of individuals who have been admitted to practice in this jurisdiction. The list shall be updated annually by January 31st.

b. The court may deny admission or disbar an attorney after admission if evidence comes to the attention of the court that the attorney has engaged in false swearing, conduct unbecoming an officer of the court, or other good cause.

### **5.3 Representation by a Private Tribal Court Advocate**

a. A party may elect to be represented in any proceeding conducted in the Tribal Court by a private Tribal Court Advocate who shall speak for him and represent him in the court proceedings. The Tribal Court Advocate shall file a Notice of Appearance or Notice of Representation with the court before the case file may be made available to the advocate.

b. A Tribal Court Advocate may be any person over the age of eighteen years who submits written certification to the court that he or she is familiar with the Bishop Paiute Tribal Court Ordinance and the Rules of Court. Each Advocate shall pay an annual fee of \$25.00. The fee shall be paid by January 31st of each year, except that Court-appointed Advocates shall be exempt from this fee requirement. The Clerk of the Court shall maintain a list of individuals who provide advocacy services for a fee. All costs of representation by a private advocate shall be paid by the party who chooses to be represented by a private advocate.

c. The court may deny admission or disbar an advocate after admission if evidence comes to the attention of the court that the advocate has engaged in false swearing, conduct unbecoming an officer of the court, or other good cause.

### **5.4 Duties of Parties**

A Party to a case, whether represented or not, shall be under the duty to maintain contact with his representative or with the Court in order to remain informed of the status of his case and of dates when he is required to appear before the Court. A party will not be excused for failure to file a response, failure to appear, or any other act of default based on his assertion that his representative did not notify him.

## **Rule 6 - Assignment of Judge**

All cases shall be assigned to the Chief Tribal Judge, who may elect to assign the case to an Associate Judge. A judge may recuse himself/herself for good cause. If the Chief Tribal Judge determines that the interests of justice would be best served by the appointment of a visiting judge, a Judge Pro Tern, the Chief Tribal Judge may substitute such a judge to preside in any case. Once assigned, and unless recused, excused, or disqualified, the assigned judge will preside over all proceedings in a case. Once a case is assigned to a judge, the parties and their attorneys, advocates, or representatives shall have no ex parte communications with the judge regarding the matter presented, except that the judge may consider any necessary scheduling matters. A judge may perform any act or duty authorized to be performed by the Clerk of the Court.

## **Rule 7 - Disqualification of the Judge**

A judge may be disqualified only for cause by the filing of a motion for disqualification. A judge shall disqualify himself/herself for cause shown. The judge's decision on a motion for disqualification shall be a final order of the court.

## **Rule 8 - Issuance of Summons**

The Clerk of the Court shall assign each newly filed case a case number and shall issue a Summons or other appropriate notice to the parties to the case. In civil cases, a copy of the Summons must accompany the complaint when it is served on the Defendant.

## **Rule 9 - Service of Process**

### **9.1 Personal Service**

a. Personal Service: Personal service of any court document is accomplished by delivery of a copy of the document to the named individual/person or entity subject to service at any place he/she/it may be found by any person age 18 or over who is not a party to the proceeding.

b. Substituted Service: In the event that personal service is not completed, substituted service may be completed by leaving copies of the documents at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least 18 years of age, who was informed of the general nature of the papers, and thereafter mailing by first class mail, postage prepaid, copies to the person served at the place where the copies were left.

## **9.2. Service of Documents issued by another Jurisdiction**

When the document is issued by any court other than the Bishop Paiute Tribal Court, whether the service is to be made on an Indian or a non-Indian, the following procedures shall be observed:

- a. The person or party who wishes to accomplish service must present the document to the Tribal Court Clerk for review who will affix the "Approved for Service" stamp to the front of the document.
- b. The "Approved for Service," stamp must be dated and signed by the judge. If a document has not been so stamped and signed, it cannot be lawfully served within Bishop Paiute Tribal Territory.
- c. Any delivery of a document issued by a court other than the Bishop Paiute Tribal Court to a person within the territorial jurisdiction of the tribe without observing these requirements shall be deemed to be defective service.

## **9.3 Service by Mail**

As to the parties that have formally appeared before the court by either filing a complaint, petition, application, answer or other responsive pleading as provided under rules 3 and 14, those parties may serve other parties to the action by mail provided that a Declaration of Service of Mailing is attached to each document that states that the document was mailed by first class mail, states the date on which the document was mailed, certifies that adequate postage was affixed to the envelope, and states the name of the party and the address to which the document was mailed.

A party may choose to serve court documents by certified or registered mail, in which case the return receipt shall be deemed proof of service. Service by mail shall be deemed completed on the third day after the Declaration of Mailing or Service is signed.

## **9.4 Service by Inter-office Delivery**

Service may be made on persons who hold a position within the Bishop Paiute Tribal government by inter-office delivery in accordance with the tribe's normal delivery procedures as long as a Declaration of Service is attached that indicates the manner of service.

## **9.5 Service by Publication or by Public Notice**

- a. If the whereabouts of a party are not immediately known, that party may be served with process by publishing the

complaint, petition, application or notice in a newspaper or newsletter of general circulation in the vicinity of the last known address of the party. The legal notice shall be published for a reasonable length of time. Service shall be deemed completed on the date of the last publication.

b. If the party avoids service after reasonable steps have been taken to serve that person with any Court document, the party may be served by Public Notice. The Clerk is required to document at least two attempts to serve the party personally or by mail. Thereafter, the Clerk or his/her designee may affix the legal notice to the residence of the party in a conspicuous place. The Clerk must also post legal notice naming the party and notifying him that legal action is pending in at least three other public places that are open to the members of the Bishop Paiute Tribe. This service shall be deemed constructive notice to the party that he is required to appear at the time stated and that further information is available by contacting the Clerk of the Court. The exact nature of the court action shall not be declared in the public notice.

#### **Rule 10 - Return of Service**

When a document is served by any person other than the Clerk of the Court, proof of service shall be in writing and shall specify the manner of service and the date and place of service and shall be signed by the person completing the service. The return of service shall list and identify all documents served and the name and address of those persons on whom the documents were served or the manner in which the service was accomplished. The person serving the document may request the signature of the person being served as acknowledgement that he/she received the document, but such signature is not required for the service to be completed.

#### **Rule 11 - Required Service**

Every document filed with the court shall be served on all parties to the case except those motions which may be heard ex parte and those filed against parties who are in default by reason of that party's failure to answer or appear.

#### **Rule 12 - Certificate of Mailing or Service**

Every document filed with the court shall bear either a Return of Service or a Certificate of Mailing or Service. The Certificate of Mailing or Service shall name the document; shall include the name of the person who is certifying to the court that the service took place; the method of service; the date of service; and the name and address of each person or party on whom the document was served. The

Certificate of Mailing or Service shall be signed by the person who is certifying the service.

### **Rule 13 – Filing**

Before a document may become an official part of the Court record, it must first be file-stamped by the Clerk of the Court. The file-stamp shall be dated and signed. The Clerk shall keep original documents in the Court's file. Documents such as briefs, letters, and memos shall not be file stamped, but shall be stamped "Received" and dated and placed on the left side of the file. All documents in the case file shall be maintained in chronological order, with the latest documents appearing on top.

### **Rule 14 - Filing an Answer or Responsive Pleading**

A person who is made a party to a court case shall file an Answer or other responsive pleading within twenty (20) days of receipt of Service of Process or may be subject to judgment by default.

### **Rule 15 - Time Computation**

The time permitted for any action or response shall be counted from the day after the act, event, or completed service which sets the time period in motion. If the final day for filing a response or taking other appropriate action falls on a non-business day or holiday, the time period will extend to the next regular day of business. Every calendar day shall be counted in computing the permitted time periods for all time limits of five days or more. Periods of time of less than five days shall exclude weekends and holidays from the count.

A party may make a motion for an extension of time by motion and for good cause.

### **Rule 16 - Filing of Motions**

An application to the court for an order shall be made by motion and shall state the relief sought and the rule, statute, or reasoning on which the motion is based. The reasoning may be in the form of a written brief by the party or by the party's representative, including points and authorities, or may be a declaration signed under penalty of perjury by the party. The opposing party may file a written response within fifteen (15) days after completion of service of the written motion. A reply to the opposing party's response may be filed within five (5) business days prior to the scheduled hearing on the motion. See Rule 20 for scheduling of hearing dates. Thereafter, the Court may rule on the motion based on the written submittals or may require that the hearing be held as scheduled to hear oral argument. Failure to file a written response may be deemed to be submittal of the motion to the Court for a ruling without a hearing.

## **Rule 17 - Signing of Documents**

Every document filed with the court must be signed by the party filing it or by his or her attorney or representative.

## **Rule 18 - Counterclaims or Crossclaims**

Defendants shall include any counterclaims or crossclaims which arise from the same set of facts complained of by the plaintiff. A crossclaim is a claim against a codefendant.

## **Rule 19 - Amendments to Pleadings**

A party may amend a pleading prior to the filing of an answer or other response by the opposing party. If a response has already been filed, the party seeking to amend a pleading may do so only by order of the court after notice and an opportunity to be heard by the party opposing the amendment.

## **Rule 20 - Hearings**

Prior to filing a motion, the party filing the motion is to confirm with the clerk of the court what date is to be set for the hearing. The hearing date must be set so as to allow for the filing of a response and reply. See Rule 16 above.

## **Rule 21 - Scheduling Orders**

In order to maintain an orderly flow of matters to come before the Court, the judge presiding in a case where a responsive pleading has been filed, shall issue a Scheduling Order as soon as practical to govern the proceedings. The Scheduling Order shall include, but not be limited to, an Order governing the extent of discovery that will be permitted.

## **Rule 22 - Continuances**

A party may request a continuance or a postponement of any proceeding or any required action by filing a motion for continuance with the Court. The motion must be timely made and shall state the reason why the continuance is needed. Granting a continuance shall be within the discretion of the Court and shall assure that it shall not result in unfairness to the opposing party.

## **Rule 23 - Setting Cases for Hearing or for Trial**

The Clerk of the Court shall be responsible for setting matters for hearing or trial either at the direction of the judge or by his/her own authority in order to maintain the orderly flow of cases to come before the Court.

The Plaintiff in a civil case may file a Request for Trial. The request shall state the approximate length of time required for the trial and shall state the issues of law and the issues of fact which shall be tried. It shall state whether the party elects to have a trial by jury or by the court. The request shall also disclose the names of the witnesses to be called and shall include a list of exhibits to be presented. The responding party shall include the same information in a written response. The court shall set the matter for trial at a time convenient to the parties and to the court.

### **Rule 24 - Discovery**

The parties to an action may conduct discovery only in accordance with an Order issued by the Court. A party wishing to conduct discovery, shall submit to the court by way of a noticed motion, a proposed schedule of discovery.

### **Rule 25 - Subpoena**

The Clerk of the Court may issue subpoenas that may be served at any time for the attendance of witnesses at court, at depositions, or hearings, or for any other legitimate use in connection with court proceedings, including the production of documents. A subpoena may be served in any manner consistent with these rules for the service of process except for time limitations. If a subpoena is served and the court date is changed for any reason, a new subpoena shall be issued and served setting forth the new time and date for the person to appear.

A person who has been properly served with a subpoena and fails to appear or fails to produce the things named in the subpoena may be found in contempt of court and fined.

### **Rule 26 - Dismissal of Inactive Cases**

If a party fails to prosecute a civil complaint by failing to act on it within a period of six months, the court may dismiss the case. Before a case will be dismissed for inactivity, the Clerk will notify the Plaintiff that he/she has 30 days to take some appropriate action. If nothing is filed, the case may be dismissed.

### **Rule 27 - Judgments and Orders**

The court shall enter a judgment or order in writing in each matter presented, which shall be date stamped and filed by the Clerk. All judgments issued after trial of a matter shall include findings of fact and conclusions of law. A final judgment of the court or any final order may be appealed in accordance with the Bishop Paiute Court of Appeals Appellate Rules.

## **Rule 28 - Default Judgment**

If a party fails to plead or otherwise respond, the complaining party may file a motion for judgment by default which shall be accompanied by a declaration confirming adequate service of process. The court may set the matter for a default hearing and may enter judgment against the party who is in default. The judgment shall not be set aside except by the showing of good cause for the failure to plead.

## **Rule 29 - Attorney Fees and Costs**

If a party includes a prayer for costs in his initial pleading in civil matters, the court may in its discretion award such costs as the court deems reasonable, but only upon the filing of a Memorandum of and Costs by the party seeking them. Attorney fees should only be awarded in contract cases where the contract provides that the prevailing party is entitled to attorney fees or as provided within any Tribal Ordinance and the prevailing party has filed a Memorandum of Fees Request.

## **Rule 30 - Stay of Execution**

A party may file a motion for a stay of execution of a judgment pending an appeal. The court may require the party to post a bond in the amount of the judgment for the security of the party prevailing at trial. If the tribal court denies the motion for stay, the party may file a motion for stay with the Bishop Paiute Court of Appeals in accordance with the Bishop Paiute Appellate Rules.

## **Rule 31 - Appeals**

Appeals shall be filed within 30 days of the judgment as determined by the date as served by the Clerk of the Court. Appeals can only be made from final orders as defined by the Federal Rules of Civil Procedure and final judgments of the Court.

## **Rule 32 - Court Records**

a. Court records consist of all papers or documents filed with the Clerk of the Court and the minutes or transcripts of any trial or hearing and any materials admitted into evidence. Court records are available for inspection by parties and authorized representatives and enrolled members of the Bishop Paiute Tribe. No original record may be removed from the immediate supervision of the Clerk. The court shall establish from time to time the fee to be charged for provided copies of court records.

b. For the purpose of an appeal, the official "Record" consists

only of those documents as set out in Rule 20 of the Bishop Paiute Appellate Rules.

c. Records and files in juvenile matters are confidential. Only those persons authorized by the Court may have access to these records.

d. Copies of court records or of recorded hearings are available to authorized persons upon payment of the applicable fees.

## **Rule 33 - Ex Parte Matters**

### **33.1 Ex Parte Motions**

A party may file an ex parte motion and the Court may grant such motion based on its equitable powers, only when the motion intends to maintain law and order, to provide necessary emergency relief, or to preserve the status quo. Such motion shall be made in writing and shall include a declaration under penalty of perjury that states the reason why the relief requested should be granted. All parties are to be given at least 24 hours notice of the hearings on the Ex Parte Motion. The moving party by declaration is to state what notice was given. If no notice was given, then the reason for no notice must be stated in the declaration accompanying the Ex Parte Motion.

### **33.2 Orders resulting from Ex Parte Motions**

The Order granting the relief sought in an ex parte motion shall be served on all parties to the proceeding.

### **33.3 Temporary Restraining Order**

An ex parte temporary restraining order may be granted for ten (10) days by the court without written or oral notice to the adverse party if it appears from the specific facts shown in the application and declaration that an immediate threat of injury or loss may be suffered by the applicant for the TRO. Such an ex parte order shall state the conditions of the order, including the date of its expiration and shall be personally served on the individual who is the subject of the TRO. A hearing shall be set within ten (10) days of the issuance of the TRO to give the party so restrained an opportunity to oppose a future injunction. All TRO's must be issued within the jurisdiction of a Tribal Ordinance incorporated into the Tribal Court jurisdiction.

## **Rule 34 - Certified Copies of Court Documents**

The Clerk of the Court is authorized to issue copies of court documents that the Clerk certifies to be an exact duplicate of any

document on file with the Court. The certification must be stamped on the document and dated and signed by the Clerk.

### **Rule 35 - Trials**

All cases shall be tried before a judge. The judge shall conduct the trial in accordance with the procedures set forth in the Judge's Benchbook. The Clerk of the Court shall administer all oaths and shall maintain a complete audio record of the trial.

### **Rule 36 - Sanctions**

The Court may impose any appropriate sanction against a party or a representative for a violation of an Order of the Court, these rules, or any act that constitutes contempt as determined by the Court. The sanction may include but is not limited to: a fine or community service.

### **Rule 37 - Settlement**

Nothing in these rules shall prohibit the parties to agree to a mutually acceptable settlement of their dispute. The parties shall file a Stipulation for Settlement signed by all parties and their counsel, if applicable. The stipulation does not need to set forth the exact terms of the settlement, but must state sufficient information to support entry of a final Order by the Court.

### **Rule 38 - Mediation and Arbitration**

#### **38.1 Alternative Dispute Resolution Program**

The Justice System provides a program for persons or entities who have a dispute and who wish to settle it by means other than court action and litigation. The Tribal Court shall assist persons and organizations who elect to resolve their disputes by mediation or arbitration.

#### **38.2 Mediation and Arbitration Assistance**

The clerk of the court shall prepare an application form for use by persons wishing to apply for mediation or arbitration, shall receive and file the applications in the justice center office and shall assist the parties in the process of application and selection of a mediator or arbitrator. If the parties do not request a specific mediator or arbitrator, the clerk shall assist them by providing a name or names on a rotating basis, from the list of persons who are willing to serve as mediators and arbitrators.

#### **38.3 Mediation by Court Order**

The Court may order persons who are in litigation before the

Court to participate in mediation. If the parties wish, they may select a mediator or if the parties do not select a mediator, the Court may appoint a mediator known to the Court to be qualified. In all other respects, court ordered mediation shall be governed by the provisions of the Alternative Dispute Resolution Ordinance. All costs of court ordered mediation shall be paid by the parties to the dispute in equal shares.

#### **38.4 Confidentiality**

All mediation proceedings and all arguments and evidence presented are confidential and may not be referred to or entered into evidence in any judicial proceeding, including but not limited to, the proceeding from which a mediation order was entered.

#### **38.5 Notice of Completion**

The arbitrator shall file a notice of completion of the arbitration process with the Clerk of the Court.

#### **38.6 Enforcement of Arbitration Awards or Decisions**

An arbitration award may be enforced by the Tribal Court by the filing of a suit to enforce the arbitration award if the Tribal Court has both personal and subject matter jurisdiction.

#### **38.7 Review of Arbitration Awards or Decisions**

An arbitration decision or award may be reviewed by the Tribal Court upon the filing of a petition for review of arbitration decision or award, which petition must allege with specificity the facts supporting the petition for review.

