

CHAPTER 3. RULES OF COURT AND CIVIL PROCEDURE

RULE 1: AUTHORIZATION, PURPOSE AND SCOPE

These Rules of Court and Civil Procedure are promulgated pursuant to the authority delegated to the Judge of the Tribal Court in the Tribal Court Ordinance, Section V (B), Jurisdiction and Powers and are intended to be effective on vote and signature by the Tribal Council and attestation by the Tribal Court Judge. They are intended to apply to all actions in the Smith River Rancheria Tribal Court. They are not intended as rules of law that govern conduct outside the Court.

RULE 2: CONSTRUCTION

These Rules shall be liberally construed in order that justice might be served and cases resolved as promptly as reasonably possible.

RULE 3: AMENDMENTS TO THE RULES

These Rules may be amended by the Tribal Council from time to time, with or without notice. However, changes in the Rules shall not be applied so as to prejudice the rights of any party.

RULE 4: LOCATION OF THE COURT

The Court's location, and all proceedings before the Court, shall be at the 110 First Street, Suite B in Smith River, California, 95567-9525, unless another location is specified by the Tribal Council or the Court.

RULE 5: COURT RECORDS

- A. Records of all proceedings before the Court shall be kept at the Tribal offices under the supervision and control of the Clerk of the Court. Unless sealed by Court Order, all files and records of the Tribal Court shall be considered public records and open to inspection by anyone, except juvenile records, which shall be considered confidential, maintained in a locked file cabinet and open to inspection only by Order of the Smith River Rancheria Tribal Court.
- B. All hearings or other proceedings before a judge shall be recorded.
- C. If directed by the judge or if requested by a party or the spokesperson for a party, the official Court reporter or other authorized transcriber shall prepare a transcript of the proceedings within such reasonable time after the hearing as the judge shall designate and shall certify that the proceedings have been correctly reported and transcribed. If directed by

the judge, the official Court reporter or authorized transcriber shall file the transcript with the clerk of the Court. The costs for transcription shall be set out in the Fee Schedule, attached to this Rules of Court.

RULE 6: BRINGING A CASE INTO COURT

- A. Original Action - When a case starts in the Smith River Rancheria Tribal Court, it is begun by the filing of the first papers, by the party bringing the case.
- 1 Petition - The Tribal Council may by legislation provide that the case is to be started with a petition. See, for example, Smith River Rancheria Children's Code, Section 6. In that case, the contents of the petition will be as set forth in the relevant law. The person bringing the case is then called the "Petitioner."
 - 2 Complaint - In all other cases, the first paper is called a "Complaint." Where the action is begun by a complaint, the complaint must include a brief, but complete statement of the facts of the case, a statement of the way in which the rights of the person bringing the complaint were violated, and a statement of the relief the party is seeking (that is, what the party starting the case wants the Court to do). The person filing the complaint is called the "Plaintiff".
 - 3 Transfer Cases - In some cases, a case in the Tribal Court may begin with the transfer of a case from another jurisdiction. See, for example, Children's Code Sections 3B and 3C.

RULE 7: SERVICE OF PAPERS

- A. Complaint or Petition

The complaint or petition, being the first paper in an action, must be served on the other party or parties to the action by personal service. This means that the papers must be delivered personally to the person being served by an individual who is over the age of 18 and not a party to the case, who then files a sworn statement as to the more specific time and place of the service, the name of the person served, and the title of all papers served, with the Court.

- B. Subsequent Papers

After the first paper is served on all parties, other papers may be served by first class mail, together with a proof of service.

C. Substituted Service

Where personal service cannot be made, the party bringing the action may apply in writing for an Order of the Court for substituted service by some other means, such as publication in a newspaper. The application should state the good faith attempt of the party to make personal service. If the Court orders substituted service, it shall specifically state the process and timelines for such substituted service consistent with due process.

RULE 8: ANSWERS AND RESPONSES, AMENDMENTS AND FORMS

A. Answers

The person who is served with a complaint is called the "Defendant". The Defendant may, but is not required to, file a written Answer within thirty (30) business days of service. The Answer should clearly and concisely respond to the facts and claims in the Complaint. If an Answer is not filed within thirty (30) business days, then all of the allegations of the Complaint will be deemed denied by the Court.

B. Response

Where the first paper in the action is a petition, the person served is called the "Respondent", and may, but is not required to, file a Response. A Response, like an Answer, is directed to the claims in the first paper. The Response should be filed and served, with proof of service, within thirty (30) days of service. If a Response is not filed within thirty (30) business days, then all of the allegations of the Petition will be deemed denied by the Court.

C. A party may without leave of the Court amend its pleadings once at any time before being served by a response or answer. Otherwise, a party may amend his/her pleadings only by leave of Court or by written consent of the adverse party.

D. Use of Forms

The Court may from time to time approve forms to be used, so that users of the Court do not have to create their own pleadings. As forms are approved, they shall be added to and become part of these Rules of Court.

RULE 9: MOTIONS

"Motions" are requests to the Court to enter a specific order. Motions should be made in writing. Like other papers, Motions must be filed with the Court and served on all of the parties in the case, with written proof of service attached. Oral, or spoken, motions may be made during a Court hearing or trial, where the circumstances would not allow for the motion to have been made in writing.

RULE 10: GENERAL REQUIREMENTS FOR PAPERS

- A. All papers filed with the Court are to be typed, printed, or neatly and legibly handwritten, on 8-1/2" x 11" paper. Where handwritten, permanent ink, black or blue, and not pencil, must be used. The Court or Court Clerk in its discretion may reject any papers that do not comply with these requirements.
- B. Written motions should, whenever possible, be filed and served at least three (3) business days before the next hearing in the case. Where no hearing has been scheduled, the party making the written motion may ask the Court to grant the motion without a hearing, or may ask the Court to set a hearing.
- C. Written responses to written motions should, whenever possible, be filed and served in three (3) business days of receipt of the motion, and not later than twenty-four (24) business hours before any scheduled hearing.
- D. The Court will enforce the above time limits on motions unless there is good cause as to why an exception should be made.

RULE 11: DISCOVERY

- A. Definition of and Right to Discovery

"Discovery" means the obtaining of information by a party to a legal action from another party, other person, or organization. All parties have the right to have information produced by other parties, and witnesses, unless the information is privileged by law. All parties have the duty to reasonably cooperate with other parties in providing discovery.

- B. Information Subject to Discovery

Any information not privileged by law may be subject to discovery including the identity of witnesses, papers and documents, audio, visual, or computer generated information, etc.

C. Court Order for Discovery

If a party has made reasonable efforts to get relevant information, that is, information that bears on the case, and a party or witness will not cooperate, the party seeking discovery may apply to the Court in writing for an Order requiring discovery. The application shall clearly state the information sought, the reason or reasons why it is relevant to the case and needed, and the efforts that have been made to obtain the information. In exceptional cases where a party reasonably fears the destruction or disappearance of information, that party may apply to the Court for a discovery order without first having tried to obtain it by other means.

RULE 12: COURT PROCEEDINGS

A. Motion Hearings

A motion hearing is a pretrial proceeding and takes place when a party has asked the Court to order that something be done in connection with a pending case. Hearings on motions are not automatic. Motions may be filed to add or eliminate parties, to amend proceedings, or to prepare or simplify a case for trial.

B. Conference Hearings

Conference hearings may be scheduled on a written request of one or more parties, or on the Court's own initiative. The purpose of the conference hearing is to simplify the resolution of the case, to discourage wasteful pretrial activities, and to improve the quality of the trial through preparation by discussing such things as settlement prospects, facts and issues not in dispute, evidence to be presented, and appropriate witnesses. To encourage honest discussion, nothing said at a conference hearing shall be admitted into evidence. Conference hearings may, in the exercise of the Court's discretion, on request of a party or on the Court's own motion, be held off the record.

C. Trial

A trial is the hearing of the case on its merits, and is held after the parties have had a reasonable time to prepare their cases. Generally, trials will be set on a written request from one or more parties, or at a conference hearing. Trials shall be set for hearing as soon as reasonably possible after receipt of a request for trial, consistent with the rights of all parties to have time to prepare their cases.

D. Proceedings in Open Court and Exceptions

Proceedings involving minors and the welfare of minors shall be closed to all persons, except the parties, their representatives, including spokespersons and Court Appointed Special Advocates (“CASAs”), if any, and such witnesses as may be allowed by the Court. For good cause shown, the Court may direct that other proceedings also be closed to persons other than parties, representatives, and witnesses. In other cases, proceedings shall be open to the public.

E. Continuances of Hearings and Trials

Continuances of hearings and trials are disfavored and will be granted only on a showing of good cause, and on a request, preferably in writing, made in as far in advance of the hearing as reasonably possible. Copies of any such requests shall be served on all other parties. In determining whether or not there is good cause to grant a request for a continuance, the Court may consider, among other things, the reason claimed, the timing of the request, the relative importance of having the hearing or trial at the scheduled time, and whether or not the requesting party has requested previous continuances. This list is not exclusive.

F. Failure to Appear at Hearing or Trial; Sanctions

If a party or parties fail(s) to appear at a properly scheduled and noticed hearing or trial, the Court may impose sanctions provided it has issued an Order to Show Cause and given the party the opportunity to be heard regarding why such sanctions should not be imposed. The sanctions may, depending on the circumstances, include entering a ruling in favor of the appearing party or parties, or a continuance of the hearing or trial with sanctions, such as a fine, being imposed.

RULE 13: EVIDENCE AND TRIBAL CUSTOM

A. Evidence

The Court shall not be bound by common law rules of evidence, but shall use its own discretion as to what evidence it deems necessary, reliable and relevant to the action.

B. Tribal Custom

Where any doubt arises as to the customs of the Tribe the Court may request the advice of elders or other credible individuals familiar with those customs.

RULE 14: COURTROOM CONDUCT AND DRESS

A. Respect

All persons appearing in the Tribal Court of the Smith River Rancheria shall treat the Court, and each other, respectfully. The Court will treat all persons appearing with respect. Respect is appropriate because the Court is an expression of the sovereignty of the Smith River Rancheria. Respect is also necessary, so that the business of the Court can be conducted in an orderly fashion. Parties should address the Court, rather than talking to each other.

B. Dress

All persons appearing before the Smith River Rancheria Tribal Court shall dress appropriately. Suits and ties are not required, but very informal clothing, such as beach attire, is inappropriate. Hats should be removed on entering the courtroom.

C. Other Conduct

Parties shall conduct themselves in a manner consistent with doing the business of the Court. Chewing gum, profanity, arguing with the Court after a ruling, insults or threats, are all examples of inappropriate behavior.

D. Sanctions

Any spokesperson violating these standards of respect shall be found in contempt of court and punished by the immediate imposition of a fine up to \$100.00. Any other person failing in his or her obligation of respect shall first be warned. If there are further violations, such person may be excluded from the courtroom.

RULE 15: JUDGMENTS

A. Judgments – Generally

In all civil cases, judgment shall consist of an order of the Court awarding money damages to be paid to the injured person, or directing the surrender of certain property to the injured person, or the performance or prohibition of some other act.

B. Judgments – Compensation

The judgment shall fairly compensate the injured person for the loss he has suffered or shall follow any rules of compensation set out in any ordinance or section of this Code pursuant to which the action is brought.

C. Punitive Damages

If an injury is adjudged deliberately inflicted, the judgment may award punitive damages to the prevailing person.

D. Costs in Civil Actions

The judge may assess the accruing costs of the case against the person against whom judgment is given. Such costs shall include the expenses of voluntary witnesses for which either party may be responsible under this Code, and the fees of jurors in jury cases, and any further incidental expenses or fees connected with the procedure required by this Code as the judge may direct.

E. Judgments and Decedents' Estates

A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the Court to distribute decedents' estates.

F. Judgments - Duration and Interest

A judgment of the Tribal Court shall be valid until satisfied in full, including interest upon the judgment.

G. Interest on judgments shall accrue as follows:

1 Judgments founded on written contracts, providing for the payment of interest until paid at a specified rate, shall bear interest at the rate specified in the contracts: Provided, that said interest rate is set forth in the judgment.

2 Except as provided under subsection (1) of this section, judgments shall bear interest from the date of entry at the maximum rate of ten percent (10%) per annum on the date of entry thereof: Provided, that in any case where a judgment entered on verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

H. Execution of Judgments - Procedure

If, after the time for appeal has run, it is made to appear to the Court that the judgment debtor has not paid the judgment amount in full or is not making payments in a manner agreed to by the parties or required by the Court, the judge shall order the judgment debtor to appear before him and answer under oath regarding his personal property. The judge shall then determine what property of the judgment debtor is available for execution and order the police to seize as much of the property as reasonably appears necessary to pay the judgment. Failure of the judgment debtor to appear may be deemed a contempt of court and the judge may proceed without his appearance.

I. Sale of Property

Sale of the seized property shall be at public auction giving at least ten (10) business days public notice posted in at least three (3) public places on the Rancheria. Property shall be sold in a commercially reasonable manner to the highest bidder. Payment for the property and transfer of title shall take place after the retention period has expired, as described below. If the sale results in a price higher than the debt plus expenses of sale, the debtor shall be given the surplus. The judgment shall continue in effect in the amount not recovered at the sale, plus expenses of the sale. Subject to Redemption (K) below.

J. Exemption from Execution

The judge shall order seizure and sale of only such property of the judgment debtor as will not impose an immediate and substantial hardship on his immediate family. Only the property of the judgment debtor him or herself, and not property of his or her family, may be subject to execution of judgment.

K. Redemption

At any time within fourteen (14) business days after the sale above, the judgment debtor may redeem the sold property by paying the judgment amount in full, plus expenses of the sale. Upon such payment, the property shall be returned to the judgment debtor and the purchaser shall be notified that the property has been redeemed.

L. Per Capita Payments/Dividends

Unless otherwise provided by the Tribal Council, the Tribal Court and all the judges thereof shall have the authority and power to order that all per

capita payments/dividends of judgment debtors, as authorized by 25 U.S.C.A. §117b, be available for execution of judgment and to order appropriate tribal or federal officials to seize and all per capita payments/dividends of judgment debtors which may arise in the present or future, as much of said payments/dividends as appears necessary to satisfy any judgment of the Tribal Court where the Smith River Rancheria, as party plaintiff, was awarded money damages or money judgment for payment of contracted obligations, contracted indebtedness, or otherwise.

M. Judgments of Other Courts - Application

Any person may apply to the Court by written application for an order accepting a civil judgment from another tribal court or a state or federal court as a judgment of the Court.

N. Review by Court

The judge shall review the application within three (3) business days of its filing. The judge shall then decide whether to enter the judgment of the other court as a Tribal Court judgment. Unless otherwise provided by the Tribal Council, the judge shall have full and total discretion regarding this matter and shall be guided by the best interests of the Tribes and the parties.

O. Payment of Judgment

Upon the entry of the order declaring the other court's judgment to be a judgment of the Tribal Court, all provisions of these Rules regarding judgments and execution shall be applicable. The Court shall issue a satisfaction of judgment once the judgment has been paid in full.

RULE 16: CHILDREN'S COURT PROCEEDINGS

A. Unless there is a contested issue of fact or law, the proceedings shall be conducted in a nonadversarial atmosphere.

B. A child may testify in chambers and outside the presence of the child's parent, guardian, custodian or other adult relative if the parent, guardian, custodian or other adult relative is represented by counsel who is present, and the Court determines that any of the following circumstances exist:

1. Testimony in chambers is necessary to ensure truthful testimony;
2. The child is likely to be intimidated by a formal Courtroom setting;
or
3. The child is afraid to testify in front of the parent, guardian,

custodian or other adult relative. In determining whether there is a basis for the child's in-chambers testimony, the Court may consider the petitioner's report or other offers of proof. The parent, guardian, custodian or other adult relative may elect to have the Court reporter read back the child's testimony.

- C. After completion of the petitioner's case, and the presentation of evidence by the child, the Court may, on motion of any party or on the Court's own motion, order whatever action the law requires if the Court, based on all the evidence then before it, finds that the burden of proof is not met. If the motion is denied, the child, the parent, guardian, custodian or other adult relative may offer evidence.
- D. Upon a sufficient showing the Court may recognize the child's present or previous custodians as de facto parents and grant standing to participate as parties in initial hearings and any hearing thereafter at which the status of the child is at issue. The de facto parent may:
 - 1. Be present at the hearing;
 - 2. Be represented by retained counsel or, at the discretion of the Court, by appointed counsel; and
 - 3. Present evidence.

Informal disclosures shall be favored, subject to the right of a party to show privilege or other good cause not to disclose specific material or information. Petitioner shall disclose any evidence or information within petitioner's possession or control favorable to the child, parent, guardian or custodian.

LEGISLATIVE HISTORY

This Chapter was adopted by the Tribal Council on June 26, 2007 (Resolution 07-23) as the Smith River Rancheria Rules of Court and Civil Procedure. These Rules of Court and Civil Procedure replace the Interim Rules of Court amended October 8, 2001, and has not been rescinded or amended in any way. Amended May 8, 2012.

TRIBAL COURT FEE SCHEDULE

General Processing Fees:

Complaint or Petition	\$75.00
Respondent or Defendant's Answer or Response to Petition-Complaint	\$40.00
Motions	25.00
Domestic Violence Protection Order and Child Welfare Petitions	No Fee
Transfer of ICWA Case to Tribal Court	No Fee
Marriage License	\$35.00
Complex Case Designation <i>if the Court determines that a case is complex and will require extraordinary time of the Tribal Court a complex case fee will be required of both Petitioner and Respondent per party.</i>	\$350.00 per party

Copying and Certification Fees:

Copy Per Page	20 cents per page
Certified Copy of any Filed Paper	\$5.00
Certified Copy of Judgment of Dissolution	\$10.00
Certificate For Which a Fee is Not Otherwise Fixed	\$5.00
Notary Services	\$10.00

Miscellaneous Fees:

Search Records or Files	\$25.00 minimum
Transcripts (Costs to be determined, as reasonable)	\$25.00 minimum

Additional Fee Schedules policies may be created as necessary