



**SHINGLE SPRINGS BAND OF MIWOK INDIANS
TRIBAL COURT
RULES OF COURT**

APPROVED 10/9/2015

**SHINGLE SPRINGS BAND
OF MIWOK INDIANS**

Shingle Springs Rancheria
(Verona Tract), California
5168 Honpie Road
Placerville, CA 95667
Phone: 530-676-8010
shinglespringsrancheria.com

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TITLE 1. GENERAL RULES – ALL CASE TYPES

This Title shall apply generally, to the disposition of all matters in the Shingle Springs Band of Miwok Indians Tribal Court (“Tribal Court”).

RULE 1.1 AUTHORIZATION, PURPOSE AND SCOPE

These Rules of Tribal Court are promulgated pursuant to the authority delegated to the Chief Judge in the Shingle Springs Band of Miwok Indians Tribal Court Ordinance and are intended to be effective on the date approved. They are not intended as rules of law that govern conduct outside the court. Unless expressly stated in Tribal Law, all decisions of the Tribal Court are final.

RULE 1.2 CONSTRUCTION

- A. Liberal Construction: These Rules of Tribal Court (“Rules”) shall be liberally construed in order that justice might be served and cases resolved as promptly and reasonably as possible.
- B. Broad Application: These Rules govern all actions in the Shingle Springs Band of Miwok Indians Tribal Court (Tribal Court) unless otherwise specified by Shingle Springs Band of Miwok Indians tribal law, code, ordinance, resolution or policy.
- C. Weight of Decisions: Great weight will be given to relevant prior decisions of the Tribal Court. Where such decisions do not exist, the Tribal Court will look first to the notions of fairness inherent in the Tribe’s culture, then other tribal court decisions.
- D. Calculating Days: All references to “days” in these Rules shall be calendar days. When calculating a deadline, the first day counted shall be the day after filing. If the last day of a deadline falls on a holiday or weekend the deadline shall move to the next day.
- E. Tribal Court Jurisdiction: These Rules shall not be construed to extend or limit the jurisdiction of the Tribal Court.

RULE 1.3 AMENDMENTS TO THE RULES

These Rules may be amended by the Tribal Court at the discretion of the Chief Judge; however, changes in these Rules shall not be applied so as to prejudice the rights of any party.

RULE 1.4 LOCATION AND HOURS OF THE TRIBAL COURT

- A. Location: The Tribal Court’s location shall be at 5281 Honpie Road, Placerville, California 95667, unless another location is specified by the Tribal Court.

- B. Business Hours: The Tribal Court shall be open for business from 8:00 to 5:00pm Monday – Friday unless otherwise posted.
- C. Filing Hours: All papers and documents filed with the Tribal Court must be received by the Clerk of the Tribal Court by 4:00pm. Papers and documents received after 4:00pm will be considered received the following business day.

RULE 1.5 TRIBAL COURT RECORDS

- A. Storage and Access: Records of all proceedings before the Tribal Court shall be kept at the Tribal Court offices under the supervision and control of the Clerk of the Tribal Court. Unless sealed by court order, all files and records of the Tribal Court shall be considered public records and open to inspection by Tribal members and parties.
- B. Recordings: All hearings or other proceedings before a judge shall be recorded. If directed by the judge or if requested by a party or the attorney for a party, the Clerk of the Tribal Court shall provide an audio copy of the recording of the proceeding. A fee may apply for copies of recordings.
- C. Exceptions: Records for cases involving juveniles and participants with a court ordered wellness plan shall be considered confidential, maintained in a locked file cabinet and open to inspection only by court order.

RULE 1.6 DUTY TO COMPLY WITH TRIBAL LAW

All persons appearing before the court, with representing themselves or someone else, must familiarize themselves with these Rules, and all relevant laws, codes, ordinances and policies of the Shingle Springs Band of Miwok Indians in order to competently present their case to the Tribal Court.

RULE 1.7 FEES & FORMS

- A. Fees: The Tribal Court shall establish fees for court services including but not limited to filing fees and copying fees.
- B. Use of Forms: The Tribal Court may from time to time approve forms to that are required to be used, so that users of the Tribal Court do not have to create their own papers. Forms may be obtained from the Tribal Court offices.

RULE 1.8 SERVICE OF PAPERS

- A. Serving the Tribe: If the Tribe, Tribal Entities, or Tribal Employees are the Respondent, service of all papers in an action must follow the Tribe's Service of Process Policy.

- B. All other Parties: For all other Respondent's the following rules apply for serving papers in an action.
- C. Petition: The petition or citation, 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 served by an individual who is over the age of 18 and who is not a party to the case by:
 - 1. Hand delivering to the person being served; or
 - 2. Leaving a copy at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
 - 3. Delivering a copy to an agent authorized by appointment or by law to receive service of process.
- D. Subsequent Papers: After the first paper is served on all parties, other papers may be served by first class mail, or email as agreed to in writing or on the record by the parties.
- E. Substituted Service: Where personal service cannot be made after two (2) attempts, the party bringing the action may apply to the Tribal Court in writing or on the record requesting an order for substituted service by some other means, such as by mail, posting or publication in a newspaper. The application should describe the attempts of the party to make personal service. If the Tribal Court orders substituted service, it shall specifically state the process and timelines for such substituted service consistent with due process.
- F. Proof of Service: The person serving any papers in an action must then sign a sworn statement, known as a proof of service, as to the specific time and place of the service, the name of the person served, the method of service (personal or mail) and the title of all papers served on the form provided by the Tribal Court. This proof of service must then be filed with the Tribal Court.

RULE 1.9 MOTIONS

- A. Motions Explained: Motions are requests to the Tribal Court to enter a specific order. Some examples of reasons Motions may be filed are (but not limited to) the following: to add or eliminate parties, to amend proceedings, to request a continuance (more time), to transfer or dismiss a case, to request reconsideration of a court decision, to request a stay of court proceedings (to stop or slow proceedings), to request an injunction (to stop or delay an action), motion for a contempt order, or to prepare or simplify a case for trial.
- B. Form of Motions: Motions should be made in writing. Like other papers, Motions must be filed with the Tribal 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 Tribal Court hearing or trial, where the circumstances would not allow for the motion to have been made in writing.

C. Time for Motions:

1. Motions: Written motions should, whenever possible, be filed and served with the blank response form at least ten (10) days before the next hearing in the case. Where no hearing has been scheduled, the Tribal Court shall set a hearing no sooner than ten (10) days and no more than twenty (20) days from the date the motion was served.
2. Responses: Written responses to written motions should, whenever possible, be filed and served within seven (7) days of receipt of the motion, and not later than twenty-four (24) hours before any scheduled hearing.
3. Exceptions: The Tribal Court will enforce the above time limits on motions unless there is good cause for an exception to be made.

RULE 1.10 GENERAL REQUIREMENTS FOR PAPERS

- A. General: All papers filed with the Tribal Court must:
1. Be typed, printed, or neatly and legibly handwritten. Where handwritten, permanent ink, black or blue, and not pencil, must be used.
 2. Use no smaller than 12 point font.
 3. Use no less than 1.15 inch line spacing.
 4. Be on 8-1/2" x 11" paper.
 5. Include the name of the Tribal Court "Shingle Springs Band of Miwok Indians Tribal Court".
 6. Include, immediately below the name of the Tribal Court the name or style of the case, for example, Party One v. Party Two or The Guardianship of Minor One.
 7. Be signed and dated by the party with the party's name legibly written or printed below the signature.
- B. Page Limits: Except with permission of the judge, no papers shall exceed twenty (20) pages in length, exclusive of pages containing a table of authorities or a table of contents. Any papers exceeding twelve (12) pages shall contain:
1. A table of contents with page references and
 2. A table of cases (arranged alphabetically), statutes and other authorities cited, with references to the pages where they are cited. Cases cited shall be attached in full to the citing paper.
- C. Copies: All papers presented in person for filing must be in triplicate (original plus two copies). This does not apply to papers filed by email.
- D. Refuse to File: The Tribal Court in its discretion may reject any papers that do not comply with these requirements.

RULE 1.11 EVIDENCE

- A. Relevant Evidence: The Tribal 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. Federal Rules: The Tribal Court may rely on any federal rules of evidence, procedure or practice after five (5) days written notice is given to the parties.

RULE 1.12 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 production of papers, documents, audio, visual, or computer generated information, and the identity of witnesses.
- C. Court Order Compelling Discovery (Subpoenas): Orders requiring the attendance of a witness or production of documents or things, often referred to as “subpoenas,” shall be completed by the party requesting the discovery and shall clearly state the information sought. Orders compelling discovery may be signed by the Clerk of the Tribal Court or an attorney who is representing a party in the case.
- D. Order to Produce Documents; Business Entity: When an order to produce documents is served upon the custodian of records or other qualified witness from a business, hospital or other health care facility in an action in which the business, hospital or facility is not a party, the custodian or other officer of the business, hospital or facility must deliver, by registered mail or by hand, a true and correct copy of all records described in the subpoena to the Tribal Court. The records must be accompanied by the sworn declaration of the custodian or other qualified witness, stating in substance each of the following:
 - 1. That the person signing is the duly authorized custodian of the records and has authority to certify the records.
 - 2. That the copy is a true copy of all records described in the subpoena.
 - 3. That the records were prepared by the personnel of the business, hospital or facility, staff physicians, or persons acting under the control of either in the ordinary course of the business, hospital or facility at or near the time of the act, condition, or event.

4. If the business, hospital or facility has none of the records described, or only part thereof, the custodian shall so state in the declaration.
- E. Failure to Comply with Discovery Orders: Disobedience of orders compelling discovery may be punished as contempt by the Tribal Court.

RULE 1.13 TRIBAL COURT PROCEEDINGS

- A. Motion Hearings: A motion hearing takes place when a party has asked the Tribal Court to order that something be done in connection with a pending case and the court needs to hear from the parties about the motion before making a decision to grant or deny the motion.
- B. Conference Hearings: Conference hearings may be scheduled on a written request of one or more parties, or on the Tribal 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 Tribal Court's discretion, on request of a party or on the Tribal 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: Generally, proceedings shall be open to the public. Proceedings involving minors and the welfare of minors shall be closed to all persons, except the parties, their representatives, including spokespersons and advocates, if any, and such witnesses as may be allowed by the Tribal Court. For good cause shown, the Tribal Court may direct that other proceedings also be closed to persons other than parties, representatives, and witnesses.
- E. Witnesses: All witnesses, and potential witnesses, prior to their testimony may be administered an oath by the Clerk of the Tribal Court, the Judge or the Bailiff as follows: *“Do you solemnly swear (or affirm) that the testimony you will give will be the truth and will include all necessary, helpful, and relevant facts such that the Court may make a proper, informed, and just decision.”*
- F. 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 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 Tribal 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.

- G. 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 Tribal Court may impose sanctions. 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.
- H. Objections: An objection is a statement opposing something happening in court. If a party in a case verbally objects to something happening in court the judge will rule on the objection immediately. The judge will uphold the objection and stop what is happening in court or overrule the objection and let what is happening in court continue.

RULE 1.14 COURTROOM CONDUCT AND DRESS

- A. Respect: All persons appearing in the Tribal Court shall treat the court, and each other, respectfully. The Tribal Court will treat all persons appearing with respect. Respect is appropriate because the Tribal Court is an expression of the sovereignty of the Tribe. Respect is also necessary, so that the business of the Tribal Court can be conducted in an orderly fashion. In hearings, Parties should address the judge, rather than talking to each other.
- B. Dress: All persons appearing before the Tribal Court shall dress appropriately. Suits and ties are not required, but very informal clothing, such as beach attire, is inappropriate. Hats and dark glasses (unless medically required) should be removed on entering the courtroom.
- C. Other Conduct: Parties shall conduct themselves in a manner consistent with doing the business of the Tribal Court. Use of a cellular phone, chewing gum, profanity, arguing with the judge or court staff after a ruling, insults or threats, are all examples of inappropriate behavior and are prohibited.
- D. Sanctions: Any person violating these standards of respect shall be found in contempt of court and punished pursuant to these Rules governing contempt of court.

RULE 1.15 CONTEMPT OF COURT

- A. Contempt of Court: Anyone engaging in conduct that defies the authority or dignity of the Tribal Court or interferes with the administration of justice may be found to be in contempt of court. Contemptuous conduct includes but is not limited to: perjury, disorderly or abusive behavior towards the judge or court employees, disobedience of

a court order or summons disobedience of these Rules including rules governing court room conduct and dress.

- B. Direct Contempt: If contempt is committed in the presence of the judge in open court the judge may issue sanctions immediately.
- C. Indirect Contempt: If contempt is committed outside the court the court or Party seeking the contempt finding will file a Motion for Contempt Proceeding pursuant to these Rules governing motions.
- D. Sanctions: If the court finds a person in contempt, either direct or indirect, the Tribal Court may impose any appropriate sanctions including: a verbal or written warning, exclusion from the court, a fine, community service or any other sanction available to the court.

RULE 1.16 RECUSAL OF JUDGES

A judge shall recuse himself or herself upon their own motion or upon any party in the proceeding filing a written motion setting forth facts establishing that recusal is required under the Tribal Court Ordinance or other law of the Shingle Springs Band of Miwok Indians. Such motion shall be filed as soon as grounds for recusal are discovered but no later than one (1) day after the first day of trial.

RULE 1.17 TRIBAL CUSTOM

- A. Tribal Custom: Where any doubt arises as to the customs of the Tribe, the Tribal Court may request the advice of elders or other credible individuals familiar with those customs. Requests for the advice of elders shall be directed to the Legal Department or Elders Committee directly when the Legal Department is representing a party in the case. Advice shall be returned to the Tribal Court in writing and served by the Tribal Court on all parties.
- B. Tribal Youth Council: The court may utilize the Tribal Youth Council for sentencing recommendations.

TITLE 2. JUDGMENTS

This Title shall apply to the enforcement of judgments in Tribal Court.

RULE 2.1 GENERALLY

- A. Definition: In all civil cases, judgment shall consist of an order of the Tribal Court awarding money damages to be paid to the injured party, or directing the surrender of certain property to the injured person, or the performance or prohibition of some other act, including community service.

- B. Compensation: The judgment shall fairly compensate the injured person for the loss suffered or shall follow any rules of compensation set out in any ordinance or law pursuant to which the action is brought.
- C. Decedents' Estates: A judgment shall be considered a lawful debt in all proceedings held by the Department of the Interior or by the Tribal Court to distribute decedents' estates.
- D. Satisfaction of Judgment: A judgment of the Tribal Court shall be valid until satisfied in full, including interest upon the judgment. The Tribal Court shall issue a satisfaction of judgment once the judgment has been paid in full.

RULE 2.2 CHILD SUPPORT

- A. *[TO BE ADDED]*

RULE 2.3 EXECUTION OF TRIBAL COURT JUDGMENTS

- A. Petition for Order to Appear: If, after 30 days, or the otherwise specified time to pay the judgment, has run, the party ordered to pay the judgment 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 Tribal Court, the party to whom the judgment is owed may Petition the Tribal Court to issue an Order to Appear.
- B. Order to Appear: Upon receipt of the application, the judge shall order the party owing the judgment to appear before the Tribal Court and answer under oath regarding his personal property.
- C. Seizure of Property: The judge shall then determine what property of the party owing the judgment 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 party owing the judgment to appear may be deemed a contempt of court and the judge may proceed without the party's appearance.
- D. Sale of Property: Sale of the seized property shall be at public auction giving at least ten (10) 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 party owing the judgment shall be given the surplus. The judgment shall continue in effect in the amount not recovered at the sale, plus expenses of the sale. Potential purchasers will be made aware of the auction procedures including the redemption process described below.
- E. Exemption from Execution: The judge shall order seizure and sale of only such property of the party owing the judgment that will not impose an immediate and

substantial hardship on the party's immediate family. Only the personal property of the party owing the judgment, not property of family members, may be subject to execution of judgment.

- F. Redemption: At any time within fourteen (14) days after the sale above, the party owing the judgment 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 party owing the judgment and the purchaser shall be notified that the property has been redeemed.
- G. Per Capita Payment Distributions: Unless otherwise provided by the Tribe, per capita distributions are available for execution of judgment, as authorized by 25 U.S.C.A. §117b. The Tribal Court has the authority to order the appropriate tribal department or entity to withhold/garnish per capita distributions in order to pay a court judgment.
- H. Temporary Restraining Order. The creditor may seek a temporary restraining order enjoining the debtor from damaging, removing or disposing of the property in order to preserve the rights of the parties and the status of the property. Such a request must be accompanied by an affidavit containing specific facts showing there is reasonable cause to believe the property may be lost, damaged, or moved off the Rancheria prior to a regularly scheduled hearing. The Court shall immediately review such a request and may order the property to be picked up and held pending a hearing in the matter. In such a case. The Court shall expedite the hearing, provided at least three (3) days notice is given the debtor. The creditor shall pay all costs incurred in picking up and holding the property.

RULE 2.4 JUDGMENTS OF OTHER COURTS

- A. Application: Any person may apply to the Tribal Court by written application for an order accepting a civil judgment from a tribal state or federal court as a judgment of the court.
- B. Review by Tribal Court: The judge shall review the application within five (5) 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 Tribe and the parties.
- C. 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.

TITLE 3. SHINGLE SPRINGS BAND OF MIWOK INDIANS TRIBAL COURT BAR

This Title shall apply to the Tribal Bar Membership in Tribal Court.

RULE 3.1 ADMISSION REQUIRED

- A. Admission Mandatory for Representation: Any person who offers legal advice or analysis to another or represents another in a court proceeding within the exterior boundaries of the Shingle Springs Band of Miwok Indians Rancheria, must be a member of the Shingle Springs Band of Miwok Indians Tribal Bar.
- B. Exception: An individual may represent an immediate family member including a parent, grandparent, sibling, and child over the age of 18 and does not have to be admitted to the Shingle Springs Band of Miwok Indians Tribal Court Bar.

RULE 3.2 TYPES OF MEMBERSHIP

- A. Attorneys and Lay Advocates: A person may be admitted to the Shingle Springs Band of Miwok Indians Tribal Court Bar as an attorney or a lay advocate.
- B. Attorney Members: Anyone licensed to practice law in any of the fifty states of the United State of America shall be admitted as an attorney, provided s/he has satisfied the admission requirements.
- C. Lay Advocate members: Anyone who is not licensed to practice law in any of the fifty states shall be admitted to the bar as a lay advocate, provided she/he has satisfied the admission requirements.

RULE 3.3 APPLICATION PROCEDURE

Any person may apply to become a member of the Bar of the Shingle Springs Tribal Court by submitting an Application for Admission to the Tribal Court. The Application must contain the applicant's sworn statement that the applicant has reviewed the Tribe's statutory laws and Court rules, that the applicant consents to the jurisdiction of the Tribe for all matters related to the application for admission and all other conduct by the applicant, whether before or after admission and whether by appearance, written submission, or otherwise, in the Tribal Court.

RULE 3.4 Application Fee

- A. Application Fee: A non-refundable application fee must accompany every application for admission.
- B. Application Fee Exemptions:
 - 1. Shingle Springs Tribal Attorneys and Tribal members are exempt from the application fee.
 - 2. Any individual taking a pro bono case in the Shingle Springs Tribal Court is exempt from the application fee. Individuals must prove they are taking on a

pro bono case by having the individual they are representing sign a statement reflecting the arrangement of his or her representation.

RULE 3.5 BAR EXAM

Any person applying for admission to the Shingle Springs Band of Miwok Indians Tribal Court Bar as an attorney or a lay advocate must take the bar exam and pass with a score of 80 percent or higher. The exam is a take home test, and the applicant may refer to all relevant and helpful materials while taking the exam.

RULE 3.6 ADMISSION

- A. Action on Application: After the application, fee and completed exam have been submitted to the Clerk of the Tribal Court, the Tribal Court Judge shall act on the application.
- B. Change in Status: Following admission, it is the attorney's duty to notify the Tribal Court of any change in status regarding admission in any other jurisdiction.
- C. Denial of Application:
 - 1. Any Person denied admission must be notified in writing of the reasons for the denial.
 - 2. If denial is based on failing the bar exam, the person shall be allowed to review their exam and retake the test once without paying any additional fees.
 - 3. If a person fails the bar exam a second time they may continue to retake the exam but must pay the application fee to retake the exam.

RULE 3.7 OATH

After admission, and prior to taking any action in any matter, applicant must subscribe to the following oath or affirmation:

"I, _____ do solemnly swear [or affirm] that I will conduct myself as an [attorney or lay advocate] of the Court of the Shingle Springs Band of Miwok Indians, uprightly and according to law, and that in every proceeding I will comply with my duty to ensure that all necessary, helpful, and relevant facts are discovered such that the Court can determine the truth and make a proper, informed, and just decision, and that I will uphold and support the Articles of Association of the Shingle Springs Band of Miwok Indians and the laws of the Tribe."

RULE 3.8 BAR DUES

- A. Annual Dues: All members of the Shingle Springs Band of Miwok Indians Tribal Court Bar shall pay annual dues, to be determined by the court, by February 1 each year after admission.

- B. Tribal Attorney and Tribal Member Exemption: Shingle Springs Tribal Attorneys and Tribal members are exempt from bar dues.
- C. Pro Bono Exemption:
 - 1. Any individual taking at least one pro bono case in the Shingle Springs Tribal Court in the year bar dues are payable is exempt from the application fee.
 - 2. Individuals must prove they are taking on a pro bono case by having the individual they are representing sign a statement reflecting the arrangement of his or her representation.
 - 3. If the individual has already paid dues for the current year a credit shall be applied for the following year.

RULE 3.9 BAR ROSTER

- A. Active Roster: The Clerk of the Tribal Court shall maintain a roster for all tribal bar members admitted to practice before the Tribal Court, which shall be available to the public.
- B. Removal from Roster: Anyone who fails to timely pay their bar dues but is otherwise in good standing with the court shall be removed from the bar roster and will be required to reapply for membership in order to re-join the Shingle Springs Band of Miwok Indians Tribal Bar.

RULE 3.10 DISBARMENT

- A. Grounds for Disbarment: Any member who violates their oath, any of these rules, or who fails to diligently or competently represent their party's interests, shall be subject to disbarment.
- B. Process for Disbarment: Petitions for disbarment shall be governed by the rules applying to civil petitions.

TITLE 4. CIVIL DISPUTES

This Title shall apply to the disposition of all civil disputes in Tribal Court.

RULE 4.1 PARTIES

The person filing the first paper in a case is called the "Petitioner." The person served with the first paper is called the "Respondent."

RULE 4.2 PETITION

- A. Beginning a Civil Case: The first paper filed in a civil case is called a Petition. A civil case begins in the Tribal Court by filing the Petition, paying the filing fee and serving the Petition on the respondent by personal service.
- B. Contents of the Petition:
 - 1. Statement of Claims: The Petition must include a brief, but complete statement of the Petitioner's claims. The following questions must be answered in order for the Tribal Court to consider the Petition:
 - a. How was (or will) tribal law (written or customary) be violated?
 - b. What facts or evidence support how tribal law was or will be violated?
 - c. What does the Petitioner want the Tribal Court to do or order?
 - 2. Failure to state a Claim: Failing to clearly and completely state a claim for the opposing party and the court to consider is grounds for denying the Petition.
- C. Amending the Petition: A petitioner may, without permission from the Tribal Court, amend its petition once at any time before being served by a Response. Otherwise, a Petitioner may amend his/her papers only by permission from the Tribal Court or by consent of the adverse party. Filing an amended Petition will extend the time the party has to respond by an additional 20 days.

RULE 4.3 SUMMONS TO APPEAR

After the filing of the first paper and proof of personal service, the Tribal Court shall issue a Summons notifying the Respondent that the Petitioner has filed a law suit against the Respondent and the process for responding to the Petition. The Summons must be served by mail by the Clerk of the Tribal Court with the Response Form as required below.

RULE 4.4 RESPONSE

The Respondent may, but is not required to, file a Response. A Response, should address/answer the claims in the first paper, either admitting or denying each claim. The Response must be filed and served within twenty (20) days of the date of service of the Petition. If a Response is not filed within twenty (20) days, the Tribal Court may rule on the Petition without a hearing or trial.

RULE 4.5 TRIAL SETTING

After the Response is received by the Clerk of the Tribal Court, the Tribal Court shall set a trial date. The Court may set a conference hearing to determine a schedule for trial including, time for discovery, and a trial date. If no Response is received the Tribal Court may rule on the Petition without a hearing or trial.

TITLE 5. GUARDIANSHIPS

This Title shall apply to the disposition of all Petitions for Guardianships in Tribal Court.

RULE 5.1 PETITION

- A. Beginning a Guardianship Case: A guardianship case begins in the Tribal Court by filing the Petition.
- B. Contents of the Petition: A Petition for guardianship shall include the following information, if available:
 - 1. The name, date of birth, residence, and Indian status of the minor;
 - 2. The name, date of birth, residence, and Indian status of potential guardians;
 - 3. The names, dates of birth, residence, and Indian status of the minor's parent(s);
 - 4. A statement of the specific facts that form the basis for the petition and the Court's jurisdiction; and
 - 5. A description of any previous Court hearings concerning the youth, if known.

RULE 5.2 REQUEST FOR REPORTS

- A. Initial Home Assessment: After receipt of the petition, the Clerk of the Tribal Court shall serve the Petition on the Tribal Services Director with a request to prepare and file a Request for an Initial Home Assessment.
- B. Guardianship Report: After receipt of the petition, the Clerk of the Tribal Court shall serve the Petition on the Tribal Health and Wellness Center Director with a request to prepare and file a Guardianship Report with the Tribal Court.

RULE 5.3 HEARING ON THE PETITION

- A. Best Interest Determination: The Tribal Court shall hold a hearing to determine if a guardianship is in the best interest of the minor, and who is best suited to be the guardian of the minor.
- B. Closed Hearings: Guardianship hearings are closed hearings except to those individuals allowed by tribal law.
- C. Time for Hearing:
 - 1. Temporary Guardianship – Initial Hearing: Within 7 days after receiving the Initial Home Assessment, the Court shall schedule an initial hearing on the matter. After receiving the Petition and the Guardianship Report the Court shall schedule an initial hearing on the matter.

2. General Guardianship - Trial on the Petition: After receiving the Guardianship report, the court shall schedule a trial on the petition.
- D. Serving Notice: The Court shall, with the assistance of the Tribal Police as needed, serve notice of the hearing, a copy of the Petition, and the Guardianship Report at least five (5) days before the date of the trial on the Petition to the following people;
1. Minor's parents,
 2. Current guardian,
 3. Prospective guardians,
 4. Tribe's General Counsel,
 5. Tribal Services Department,
 6. Other persons as the Court deems appropriate.
- E. Emergency Guardianship: If it is demonstrated in the petition that an immediate need exists for the appointment of a guardian, the Court may order an emergency guardianship without holding a hearing.
1. An emergency guardianship order shall last no longer than seven (7) days.
 2. Immediate need exists if the child has been abandoned or is in imminent danger as a result of abuse or neglect.

RULE 5.4 MODIFICATION OF GUARDIANSHIP ORDER

- A. Petition to Modify: Thirty (30) days after the Court enters an order appointing a guardian for the minor, any of the individuals allowed by Tribal Law may petition the Court to modify the decision.
- B. Process to Modify: All modifications shall be initiated by filing a petition with the Tribal Court. The notice, reports and hearing for modifications shall be conducted in accordance with Title 4 of these Rules and relevant Tribal Law.
- C. Burden of Proof: The burden shall be on the petitioner to establish that, since the appointment of a guardian, there has been a sufficient change in circumstances such that it would be in the best interest of the minor to terminate or modify the guardianship.

TITLE 6. CIVIL HARASSMENT RESTRAINING ORDERS

This Title shall apply to the disposition of all Petitions for Civil Harassment Restraining Orders in Tribal Court.

RULE 6.1 CIVIL HARASSMENT PREVENTION

Any person believing themselves to be the victim of Civil Harassment may request a Civil Harassment Restraining Order from the Tribal Court.

RULE 6.2 PETITION

- A. Beginning the Case: The individual seeking protection shall file a Civil Harassment Restraining Order Petition with the Tribal Court.
- B. Contents of the Petition: The Petition must show to the satisfaction of the court, by declaration, reasonable proof of harassment of the petitioner by the respondent, and that great or irreparable harm would result to the petitioner unless the Petition is granted. The Petitioner should include as much detail in the Petition as possible including if relevant:
 - 1. Dates of recent harassment,
 - 2. Where harassment took place,
 - 3. Damage to personal property if any,
 - 4. Physical injury if any,
 - 5. Anything else that demonstrates the threat of irreparable harm to the Petitioner.

RULE 6.3 RESPONSE

The respondent, if given notice of petition, may file a response that explains, excuses, justifies, or denies the alleged harassment or may file a cross-petition under this section.

RULE 6.4 HEARINGS

- A. Telephonic Hearings: Reviews may be effectuated telephonically.
- B. Ex Parte Hearings: Hearings under this section may be held ex parte.

RULE 6.5 ISSUING ORDERS

- A. Timing of Orders: The Tribal Court shall issue the Order granting or denying the Petition the same day. Petitions filed after 4:00pm shall be considered the next day of judicial business.
- B. Serving the Order: If the Petition is granted the Tribal Court shall serve the Petitioner and Respondent with notice of the Civil Harassment Restraining Order, with the assistance of Tribal Police as needed.
- C. Expiration of Order: A Civil Harassment Restraining Order shall expire on the date indicated on the order and shall not exceed 14 days. At the end of this time, if still fearing harassment, petitioners may request an order from a county court.

TITLE 7. CITATIONS FOR VIOLATIONS OF TRIBAL LAW

This Title shall apply to the disposition of all citations for violations of Tribal Law in Tribal Court.

RULE 7.1 BEGINNING A GOVERNMENT CODE VIOLATION CASE

- A. Beginning the Case: The Tribal Council may begin cases by filing a petition for alleged violations of tribal law. The Petition and proof of service must be filed with Tribal Court and served on the Respondent with a response form.
- B. Contents of the Petition: Petition must include a citation or report from Tribal Police and specific citation to the relevant law.

RULE 7.2 RESPONSE

The Respondent has 20 days from the date of service of the Petition to comply with the penalty on the Petition or respond and request a hearing in the Tribal Court. If the Respondent does not respond, the Judge shall enter a judgment against the Respondent.

RULE 7.3 FIRST HEARING

- A. Admit or Deny Charges: At the first hearing on the Petition, the Respondent will have the opportunity to admit to or deny some or all of the charges against him or her.
- B. Penalty and Alternative Sentencing: The Respondent may also admit to the charges in the Petition but object to the proposed penalty and request alternative sentencing.
- C. Continuance Needed: If more information is required to determine the merits of the Petition or appropriate judgment, the court may continue case to allow time for the parties to gather and present more information.
- D. Automatic Judgment: If the Respondent does not appear in court, the Judge shall enter a judgment against the Respondent.

TITLE 8. APPEAL OF A TRIBAL DECISION OR ACTION

This Title shall apply to the disposition of all appeals from a decision made by the Shingle Springs Band of Miwok Indians, and any of its entities in Tribal Court, with the exception of contract disputes.

RULE 8.1 SOVEREIGN IMMUNITY

The Shingle Springs Band of Miwok Indians, and any of its government or business entities (“Tribal Entity”), may only be named as a party in a case when the Tribe has specifically waived its sovereign immunity to suit. These causes of action include those stated in the Tribal Court Ordinance. Any other types of claims must demonstrate that the Tribe specifically waived sovereign immunity to suit.

RULE 8.2 STANDARD OF REVIEW

In all Appeals of a Tribal Decision or Action, the judge looks only at the administrative record of the Tribal Entity and, therefore, takes no evidence. The judge does not have to resolve disputes between experts. If the record supports the decision, the judge must affirm the decision of the Tribal Entity. An Appeal can only be heard after the final decision is issued by the Tribal Entity.

RULE 8.3 PROCEDURE FOR APPEALING A TRIBAL DECISION OR ACTION

- A. Beginning an Appeal Case: The first paper filed in an appeal case is called the Appeal. An appeal case begins in the Tribal Court by filing the Appeal, paying the filing fee, if applicable, and serving the Appeal on the respondent by personal service.
- B. Contents of the Appeal: The Petitioner's Appeal of a Tribal Decision or Action must specifically explain why the Petitioner believes the Tribal Entity decision or action is incorrect, in accordance with the relevant law.
- C. Summons to Appear and/or Produce Administrative Record:
 - 1. Within 7 days after filing the appeal and proof of service on the Respondent, the Clerk of the Tribal Court shall issue a Summons notifying the Respondent that the Petitioner has filed an Appeal of a decision made by the Respondent.
 - 2. The summons shall request that Respondent file the complete "Administrative Record" with a Response.
 - 3. The Summons must be served by mail by the Clerk of the Tribal Court.
- D. Administrative Record: The Administrative Record consists of all documents and materials directly or indirectly considered by the Tribal Entity decision maker in making the final decision. It includes all documents relevant to the merits and decision making process of the Tribal Entity's decision.
- E. Response: The Respondent must file and serve a Response along with the Administrative Record within thirty (30) days of the date of service of the Petition. A Response, should address/answer the claims in the Petition. If a Response is not filed within thirty (30) days, then all of the allegations of the Petition will be deemed admitted by the Tribal Court.
- F. Amended Papers: A petitioner may, without permission from the Tribal Court, amend its petition once at any time before being served with a Response. Otherwise, a Petitioner may amend his/her papers only by permission from the Tribal Court or by consent of the adverse party. Filing an amended Petition will extend the time the party has to respond by an additional 30 days.

RULE 8.4 DETERMINATION OF CASE OR ORAL ARGUMENT AND WITNESSES

- A. Final Decision or Oral Argument Required: After time for response is over the Court will make a final determination denying upholding the appeal or determine that oral argument on the appeal is needed to reach a decision.
- B. Notice of argument: After time for response is over the Clerk of the Tribal Court must send a notice of the time and place of oral argument to all parties at least 20 days before the argument date.

RULE 8.5 CONDUCT OF ARGUMENT

- A. Opening and Closing: The Petitioner has the right to open and close. If there are two or more such parties, the court must set the sequence of argument.
- B. Time Limit: Each side is allowed 30 minutes for argument. If multiple parties are represented by separate counsel, the court may apportion or expand the time.
- C. Number of Representatives or Advocates: Only one representative or advocate may argue for each separately represented party.

RULE 8.6 FINAL DECISION

The court will consider the matter and issue a decision within 60 days of the conclusion of oral argument or after the response has been filed if no oral argument was required. Unless expressly stated in Tribal Law, all decisions of the Tribal Court are final.

Certification

Christine Williams, Chief Judge

Date: 10/9/2015