

PRAIRIE BAND POTAWATOMI NATION DISTRICT COURT

Prairie Band Potawatomi Nation Reservation
11444 158th Road, Mayetta, Kansas 66509

FILED
IN THE DISTRICT COURT
2018 DEC -7 PM 4:02
OF THE PRAIRIE BAND
POTAWATOMI NATION

ADMINISTRATIVE ORDER

2018-06

PURSUANT TO §2-2-6(B)(1) of the Prairie Band Potawatomi Nation Law and Order Codes vesting authority in the Tribal District Court to “Be responsible for creating and maintaining the regulations and rules of the Court, not conflicting with the Tribal Law and Order Codes for the orderly and efficient administration of justice. Such rules must be filed in the office of the Court Clerk before becoming effective.”

WHEREAS, Rules of Practice in the Prairie Band Potawatomi Nation Tribal Court will effectuate that purpose.

NOW THEREFORE, the Administrative Judge adopts the attached Rules of Practice to go into effect on January 1, 2019. These Rules will remain in effect until otherwise directed by further rules of the District Court or until amended by the Prairie Band Potawatomi Law and Order Codes.



Honorable Theresa L. Barr
Administrative Judge of the District Court

RULES OF PRACTICE IN THE PRAIRIE BAND POTAWATOMI NATION TRIBAL DISTRICT COURT

Prefatory Rule

Rules Adopted. The following rules of the Prairie Band Potawatomi Nation Tribal District Court are hereby adopted pursuant to Prairie Band Potawatomi Nation Law and Order Code § 2-2-16. These rules and any amendments thereto shall be effective beginning January 1, 2019, and will remain in effect until modified by the Court. The rules shall be made available on the Judicial Center website.

Application of Rules. These rules shall apply to all matters pending before the Nation's Tribal District Court unless specifically superseded by Tribal Council Resolution or special rule governing proceedings in specialized divisions of this court. In all cases, conflict between these rules and the Prairie Band Potawatomi Nation Law and Order Code will be resolved in favor of the Nation's Law and Order Code.

Modification of Rules. These rules are adopted to aid in the administration of the affairs of the court. They are procedural in nature and attempt to provide predictable uniformity in the treatment and handling of all cases and of other matters addressed within these rules that are within the jurisdiction of this court. To the extent deemed necessary by an assigned judge, application of the rules to a particular case or other matter may be modified or waived in any action as that judge shall deem necessary to meet emergencies or to avoid injustice or great hardship.

These rules shall be known as the Tribal Court Rules of the Prairie Band Potawatomi Nation. They may be cited as PBP Rule (Rule number).

Rule 1 Pleadings and Motions

1.1 Form. Standard size paper (8 ½ x 11 inches) shall be used for pleadings, briefs, and other papers filed with the Court. Other than the caption, pleadings shall be double spaced using Times New Roman size 12 font. All caption headings shall appear as follows:

**IN THE PRAIRIE BAND POTAWATOMI NATION DISTRICT COURT
PRAIRIE BAND POTAWATOMI RESERVATION
MAYETTA, KANSAS**

1.2 Construing Pleadings. Pleadings shall be construed so as to do justice.

1.3 Form and Filing. All motions, unless made during a hearing or at trial, shall be accompanied by the appropriate filing fee and shall 1) be in writing; 2) state the grounds; 3) set forth the relief or order sought; 4) state with specificity the evidence on which the motion is based; and 5) be filed with the clerk. Motions must be signed by the party, attorney, or advocate of record. An original shall be filed and may be accompanied by a brief or memorandum suggesting the reasons and authorities in support.

1.4 Responses and Replies to Motions. A party opposing a motion, other than one to dismiss or

for summary judgment shall, within fourteen (14) days after service of the motion upon the party, file an original with the clerk and serve upon all other parties a written response to the motion containing a short, concise statement of his opposition to the motion, and if appropriate, a brief or memorandum in support thereof. A party shall have twenty-one (21) days to respond to a motion to dismiss or for summary judgment.

1.5 Time Computation. The provisions of PBP Law & Order Code Section 4-3-10 shall govern the computation of the time periods set forth in this rule.

Rule 2 ***Ex Parte Matters***

2.1. Motions. The Court may hear an *ex parte* motion before the other party has an opportunity to be heard on a request in emergency situations. The *ex parte* motion must include a sworn statement of the allegations supporting the request as to why an emergency exists.

2.2 Orders. The Court may grant or deny the relief requested without a hearing. If an *ex parte* motion is granted, it may be granted without appearing before the judge as to certain matters only on an emergency basis, with the remaining issues to be scheduled as soon as the court's schedule allows.

2.3. *Ex Parte* Motion Granted. If the Court grants an *ex parte* motion, a hearing shall be scheduled within ten (10) days, unless the opposing party requests in writing that a hearing be scheduled sooner.

2.4 *Ex Parte* Motion Denied. If the court decides the content of the motion is not an emergency, the immediate relief will be denied. A hearing will then be scheduled with notice to all parties.

2.5. Notice. Whether granting or denying the request, the *ex parte* motion, the order on the *ex parte* motion, and the court's notice will be served on the opposing party. The court's notice will contain the hearing date for both parties to present to the court evidence on the issues set forth in the motion.

2.6 Communication with Judges. Unless permitted by PBP Tribal Code or Court Rule, no one other than court personnel shall have *ex parte* communication with judges of the PBP Tribal Court regarding a matter pending before the Court until final resolution of the case. Communication means any type of communication, oral, written, by telephone or electronic device, or otherwise. This rule does not limit communication on administrative matters, such as scheduling of cases.

Rule 3 **Continuances**

3.1 Good Cause. Continuances may be granted only for good cause shown and upon the filing with the court and serving opposing counsel or party, at least three (3) days prior to the trial or hearing date unless otherwise permitted by order of the judge assigned the case, a written motion for continuance stating the cause for such request. Filing a request does not guarantee the request will be granted. A party is not excused from an appearance until he or she has received an order of continuance signed by the presiding judge.

3.2 Stipulations. Stipulations for continuances are subject to the approval of the Court.

Rule 4 Hearings

4.1 Docket Times. All parties on the docket are required to be present at that time. Failure to be in the courtroom at the time the docket is called may result in contempt of court, in the dismissal of a case, or in a warrant for the person's arrest. The Court may continue the case to the end of the docket in the interests of justice; however, this is discretionary and not required. Attorneys and Lay Advocates who fail to appear on scheduled dockets without prior notice to the court clerk's office may be subjected to disciplinary action.

4.2 Appearance by Telephone. In some situations, a party may be permitted to participate in a hearing by telephone rather than by personally appearing in court based on the following criteria:

- A) the party lives out of state;
- B) the party has a medical condition preventing travel;
- C) the party is in treatment or is incarcerated; or
- D) any other reason as deemed appropriate by the Court.

A party requesting to participate by telephone must make the request in writing. The opposing party may object to such appearance. The requesting party shall provide a number where the Court Clerk can call when the Court is ready to hear the case. Those participating by telephone will not receive priority; therefore, the requesting party shall be available at the stated number for at least one hour past the set hearing time.

4.3 Open Hearings. Generally, courtroom proceedings are open to the public. Public hearings help to ensure that the proceedings are conducted fairly.

4.4 Closed Hearings. Members of the general public are excluded from the courtroom in the following cases: 1) Child in Need of Care and Juvenile Offender; 2) Guardianship and Conservatorship; and 3) Adoption. The Court may exclude members of the general public in other cases if the presiding judge determines that such exclusion is warranted. Requests to close the courtroom to the public may be granted if there is a compelling reason to justify the closure.

4.5 Decorum. When appearing in Court, all parties shall abide by the following:

- 4.5.1** Parties shall stand when addressing, or being addressed by the Court, unless otherwise stated by the Court.
- 4.5.2** Parties will have adequate opportunity to speak. However, parties will speak one at a time. If a party hears something he or she disagrees with, it should be written down so it can be addressed when it is that party's turn to speak.
- 4.5.3** All remarks shall be addressed to the Court, not to opposing party or parties.
- 4.5.4** Avoid disparaging personal remarks or acrimony toward opposing party or parties.
- 4.5.5** Profanity is never permitted, unless testimony requires specific descriptions.
- 4.5.6** All parties shall refrain from interrupting or talking over one another. The hearing is being recorded. Both the recording and the Judge must be able to hear what each party states.
- 4.5.7** The parties shall refrain from attempting to make a re-argument after the ruling.

4.6 Electronic Equipment. Except for official court recordings no recording device, camera or video equipment is permitted in the courtroom without approval of the Judge. Phones are to be turned off or silenced. Should electronic equipment disturb the dignity and decorum of the court, the court may confiscate it until court is concluded, and may subject the owner to contempt.

4.7 Alcohol and Drugs Prohibited. No person in the courtroom may possess or be under the influence of alcohol or drugs. Any person in the courtroom may be subjected to a drug test should the court deem it necessary, and anyone found to be under the influence of drugs or alcohol may be held in contempt of court.

Rule 5 Courtroom Safety

5.1 Weapons Prohibited. No guns, bladed weapons, clubs, electrical weapons, chemical weapons, or other dangerous weapons, shall be permitted in the Judicial Center at any time, except by law enforcement officers. Any person found having any of the articles or devices mentioned in this rule is subject to having such articles or devices seized by law enforcement officers, bailiffs on court order, or as otherwise directed by the Court. Any person in possession of such weapons may be removed from the courtroom and shall be subject to contempt of court proceedings. **A license to carry a concealed weapon does not allow any of the items listed in this rule to be brought into the courthouse.**

5.2 Searches. Any person entering the Judicial Center is subject to a search of their person or possessions at the discretion of the Court or any officer or bailiff for the security of court personnel or others in the Judicial Center.

5.3 Restraints. All persons who are in custody of the Nation shall be in restraints while in the Courthouse, and shall be separated from the general public at all times. An officer of the Prairie Band Potawatomi Nation Tribal Police shall be with persons in custody at all times.

Rule 6 Alternative Dispute Resolution for Civil Cases

6.1 Purpose. Alternative dispute resolution promotes reconciliation. Mandatory alternative dispute resolution of civil actions is to affect this purpose, and to also provide a simplified procedure for obtaining the prompt and equitable resolution of disputes.

6.2 Matter Subject to Alternative Dispute Resolution. The Court shall order alternative dispute resolution for domestic matters, to include, but not limited to, parenting plans, modification of parenting plans, and custody matters. The Court may order alternative dispute resolution in all other cases.

6.3 Alternative Dispute Resolution Providers. If the Court orders alternative dispute resolution, the parties may decide to voluntarily participate through Peacemakers Court. Otherwise, the parties shall participate in alternative dispute resolution with a provider approved by the Court.

Rule 7 Inspection of Court Records

7.1 Purpose. The purpose of this rule is to guide the access of public records under control of the courts, to protect court records from damage and disorganization, to prevent excessive disruption of court functions, and to provide guidelines for requesting and obtaining information.

7.2 General Court Files. Except as otherwise provided and as set forth above, court files are generally open to the public. A request form shall be submitted to the Clerk's office. Records of a case which are not otherwise confidential may be inspected during normal business hours and in the presence of the Clerk or Judicial Administrator to insure the integrity of Court records. The requested records shall be furnished by the close of two business days following the receipt of the request form, absent extenuating circumstances.

7.3 Confidential Records. The Court seeks to protect the public interest in privacy and security without compromising the spirit and letter of open records laws. Certain court records are confidential and are excepted from public examination and disclosure. Except as otherwise ordered by the court, a record designated as "confidential" shall not be examined by or disclosed to anyone other than the parties' attorneys of record. The disclosure of these records is specifically prohibited or restricted by tribal law.

Confidential records include, but may not be limited, to the following:

7.3.1 All medical records regarding an identifiable patient (HIPAA).

7.3.2 All Healing to Wellness Court Records. The Healing to Wellness Court is classified as a substance abuse program; therefore, records are alcohol and/or drug abuse related records.

7.3.3 All mental illness and alcohol and/or drug abuse records.

7.3.4 Inspection of Court records under Chapter 6, Juvenile Procedure, shall be pursuant to PBPN Law & Order Code §§ 6-1-15 and 6-1-16.

7.3.5 Inspection of Court records under Chapter 27, Juvenile Offender Code, shall be pursuant to PBPN Law & Order Code §§ 27-3-4 and 27-3-5.

7.3.6 Court proceeding records in adoption and relinquishments are confidential and not open to inspection, except by Court Order.

7.3.7 Social Services records and all other reports of social and clinical studies are not open to inspection, except by Court order.

7.3.8 A final order in a proceeding to adjudicate parentage under Title 26, Child Support, is available for public inspection. Other records, reports and papers are available only with the consent of the parties or an order of the court for good cause.

7.3.9 Personally identifiable information included in a document not otherwise confidential shall be redacted prior to public review. This information may include, but is not limited to, social security

numbers, taxpayer identification numbers, the name of an individual known to be a minor, and addresses.

7.4 Costs. A copy of any document contained in court files may be obtained from the Clerk for a reasonable copy fee.

7.5 Removal of Files. Under no circumstances shall anyone take a file from the Clerk's office. No one, other than the Clerk, Judicial Administrator, or Judge, shall disassemble a court record or make any markings on any document therein.

7.6 Photographing Files. Under no circumstances shall anyone photograph documents contained in court files.

Rule 8

Financial Affidavits, Refunding Court Costs

8.1. Financial Affidavit. Parties seeking a filing fee waiver must complete a Financial Affidavit supplied by the clerk's office. A waiver qualification shall be determined based upon the current year poverty guidelines updated periodically in the *Federal Register* by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. 9902(2). Providing false information on a Financial Affidavit may result in contempt proceedings.

8.2 Persons Receiving Public Assistance. If a party shows by sworn affidavit or otherwise that he or she is receiving any form of public assistance, such as welfare, food stamps, SSI, etc. the payment of fees and costs as to that party shall be waived.

8.3 Refunding Court Costs. If a party who was granted a fee waiver is later determined to be financially eligible to pay, the party may be ordered to pay the fee to the court and failure to do so may result in dismissal of the case. In no event shall a party receive a refund of court costs.

Rule 9

Standards for Attorneys and Lay Advocates

9.1 Professional Conduct. Members of the PBP Tribal Bar, including Lay Advocates, must comply with the Kansas Rules of Professional Conduct.

9.2 Violations. Disciplinary proceedings for a violation of the professional conduct rules may include, but are not necessarily limited to, disbarment from the PBP Tribal Bar and for attorneys, a complaint filed with the Kansas Disciplinary Administrator's Office.

9.3 Presence in Court Required. Attorneys and Lay Advocates are expected to be present at all hearings for which they have a case on the docket. Attorneys/Lay Advocates are expected to know when they have cases on the docket and they may not rely upon a copy of the docket, which Court staff may provide to them as a courtesy. An attorney's appearance may be waived when circumstances beyond his or her control arise. In the event of a scheduling conflict, the attorney must notify the Court as soon as the conflict arises and request a different hearing date.