

PRAIRIE BAND POTAWATOMI NATION DISTRICT COURT

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

FILED
IN THE DISTRICT COURT

2024 APR 29 P 3:21

OF THE PRAIRIE BAND
POTAWATOMI NATION

ADMINISTRATIVE ORDER 2024-003

Approving Updated Employment Disputes Tribunal Hearing Procedures

Pursuant to Section 2-2-2 of the Prairie Band Potawatomi Nation Law and Order Code “Procedures governing the actions of the District and Court of Appeals, Employment Disputes Tribunal, and Peacemaker Circle shall be subject to procedure as defined in this Code and as provided by the District Court.”

The Tribal District Court, in accordance with Section 2-2-2, finds that the Employment Disputes Tribunal has proposed new language for Section 107 of the Employment Disputes Tribunal Hearing Procedures, as attached hereto, and has waived any filing fee for any appeals to the Tribunal. The Tribal District Court adopts and approves the most recent version, as attached hereto, effective on this date.

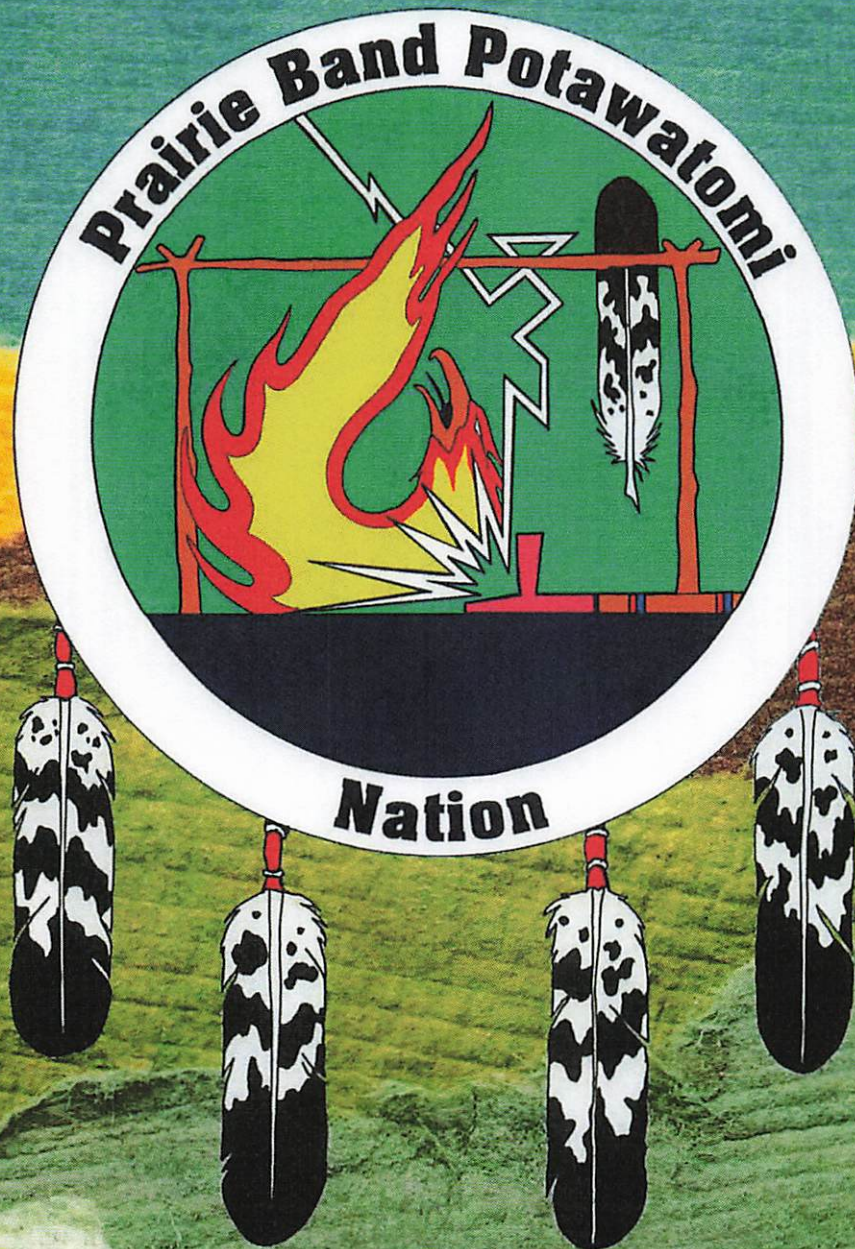
This will remain in effect until otherwise directed by further rules of the District Court or until amended by the Prairie Band Potawatomi Law and Order Codes.

Approved this April 29, 2024.



Honorable Jessica R. Bear
Administrative District Court Judge

**PRAIRIE BAND POTAWATOMI NATION
EMPLOYMENT DISPUTES TRIBUNAL
HEARING PROCEDURES**



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Employment Disputes Tribunal Hearing Procedures

101. Applicability

The Employment Disputes Tribunal's authority is defined by Title 22 of the Prairie Band Potawatomi Nation's Code. These hearing procedures supplement the procedures in Title 22-4-7 and the standards defined by Title 22.

These rules for hearings before the Employment Disputes Tribunal (the "Tribunal") shall be used by persons and entities in preparing for and participating in hearings before the Tribunal. These rules shall be interpreted in a manner which promotes fairness to the persons and entities appearing as a party at a hearing before the Tribunal.

For hearings before the Tribunal, the Tribunal shall be a quorum of the Magistrates. A quorum requires the participation of at least three Magistrates. Parties appearing before the Tribunal may include the employer which made the employment decision and the employee appealing the employer decision. These persons and entities shall be referred to as the Party or Parties.

These hearing procedures shall govern hearings in connection with Government Employment-Related Disputes which are defined as terminations, suspensions, or demotions. Employers subject to jurisdiction under Title 22 Tribunal hearings are the Tribal Government, Gaming Commission and Judicial Council.

102. Filing a Complaint

To seek a hearing before the Tribunal, employees or former employees who have been terminated, suspended or demoted must file a written complaint with the Prairie Band Potawatomi Nation Tribal District Court at the Nation's Judicial Center:

**11444 185th Road
Mayetta, KS 66509**

Employees or former employees have **10 business days** of receiving written notice of the termination, suspension, or demotion to file the complaint with the District Court. The day the employee receives notice is not counted in calculating the 10-day deadline. The first day counted in the 10-day deadline is the next business day following the day written notice was received by the employee.

Forms are available at the District Court for completing a complaint. The Tribunal suggests, but does not require, the use of the available form.

103. District Court

Upon receipt of a written complaint, the District Court Clerk shall file stamp the complaint with the date the Clerk received the complaint. The Clerk shall assign a file number to the complaint. The Clerk shall send a copy of the complaint to the Tribunal Chairperson by email.

The Clerk shall send a copy of the complaint to the employer. There is a presumption that the employer has received a copy of the complaint when the Clerk sends the complaint by email to the employer's known human resources representative. The human resources representative has the responsibility to distribute the complaint to the employer representatives with a need to know about the complaint.

The complaint must include, at a minimum, the following information:

1. The employment related dispute to be reviewed. The employee must disclose whether the employee seeks review of a termination, suspension, demotion or a combination of a termination, suspension, or demotion.
2. The reason the termination, suspension or demotion was incorrect and how it should be changed.
3. How the employee was adversely affected by the termination, suspension, or demotion.
4. What remedy, if any, the employee seeks from the Tribunal. Remedies are limited to a request for back pay, reinstatement, rehire, return of accrued leave or other accrued benefit, or any other personnel action not in conflict with existing applicable employer policies or Nation laws.
5. The complaint shall include the employee's first and last name, address, telephone number and email address. If the complaint is from a former employee, the former email shall provide a personal email address. By providing a personal email address the employee or former employee consents to receiving notices and other hearing related documents by email.

There is no fee to file a complaint.

The Tribunal Chairperson or the Chairperson's designee is responsible for receipt and retention of all correspondence including requests for review (complaints), notices of

hearings, notices declining jurisdiction, meeting minutes and all other related Tribunal correspondence. To preserve the record and the integrity of the process, the Chairperson may request that the documents referenced in the last sentence and the documents and decision generated by the hearing be retained by the Clerk of Court. If the Clerk of Court accepts the Chairperson's request, the documents referenced herein shall be retained by the Clerk. Any personnel files used in a hearing shall remain with the employer's human resources department or representative.

104. Tribunal Threshold Determination

A quorum of the Tribunal shall, within 10 business days of the Clerk's date stamp on the complaint, meet and determine if the complaint is within the Tribunal's jurisdiction. To evaluate the Tribunal jurisdiction, there shall be a review of (1) whether the complaint was filed within 10 days of a termination, suspension, or demotion; (2) whether the employer is the Tribal government, Gaming Commission or Judicial Council and (3) the complaining employee has exhausted all available administrative procedures.

A complaint which lacks all the required information listed in Rule 105 below is not grounds to deny jurisdiction at the matter's initial stage but may be grounds for later dismissing the complaint if the employee fails to provide additional information to the Tribunal to cure the alleged deficiency.

The Tribunal shall issue a notice to the parties (employer and employee or former employee) communicating either (1) the Tribunal lacks jurisdiction over the alleged dispute or (2) the Tribunal appears to have jurisdiction and the date, time, and location of a hearing.

Prior to participating in an EDT matter, Magistrates shall review the dispute and recuse themselves if the Magistrate determines that a conflict of interest precludes their participation.

Magistrates will not serve in a case where an immediate relative is the appealing party or when an immediate relative made the adverse employment decision that generated the appeal to the EDT. Immediate relative is defined as: spouse, parents, in-laws (mother, father, sister, brother), children, siblings, grandparents, grandchildren, step/foster family members and persons living in the same residence.

105. Contents of the Notice

If a hearing is warranted, the Tribunal shall prepare or cause to be prepared a notice of hearing which, at a minimum, will include the following:

- Names of the parties: employer and employee Date of the hearing

- Start time of the hearing Location of the hearing
- Availability of a copy of Title 22 and these hearing procedures
- The parties shall be prepared to proceed on the date and time in the notice
- The parties are responsible for bringing their witnesses to the hearing
- The parties are responsible for bringing three copies of their exhibits to the hearing
- The employer shall pre-mark its exhibits starting with 1 and mark them sequentially (1, 2, 3, etc.)
- The employee shall pre-mark their exhibits starting with 101 and mark them sequentially (101, 102, 103, etc.)

106. Service of Notice and Setting the Hearing Date Notices and other hearing documents shall be served by the Tribunal and the Parties by mail or email. The notice or other hearing document shall include a reference to the person or persons served and the address where they were served. The parties may file documents by sending them to the Court at: tribalcourt@pbpnation.org.

107. Documents, Witnesses & Discovery

The Tribunal's objective is to give both the employer and complaining employee or former employee a fair opportunity to tell their side of the story and discovery of the other side's case partially fulfills that goal. In the spirit of achieving that goal, the Tribunal uses these rules of discovery to guide its decisions.

During the period of discovery, the complaining employee or former employee is entitled to see the case against them for the purpose of preparing their case. The parties will schedule a mutually agreed upon time and location for the complaining employee or former employee to view the documents and witness list to be presented at the hearing. The Chair of the Employment Disputes Tribunal will set a time and location if the parties cannot agree.

While the complaining employee or former employee is allowed to view all documents to be used in evidence by the employer, those documents considered privileged or confidential by the employer will not be copied or removed from the employer's possession.

If the complaining employee or former employee disagrees that these documents are privileged or confidential, they may request the Tribunal Chair to review those documents and rule on their status.

The contents of the employee's or former employee's personnel file is presumably relevant for the employee's use in preparing their case.

If the complaining employee or former employee believes other documents or information not in evidence by the employer are needed to prove their case, they may request specific information and the employer must make a good faith effort to fulfill that request.

As part of the discovery process, the complaining employee or former employee must allow the employer to view the case prepared by the complaining employee or former employee so that they may prepare rebuttal.

The complaining employee or former employee can request in writing to the Tribunal to direct an employee to appear at the hearing to testify as a witness. The Tribunal will transmit the request to the employer.

Unless the employer has a good faith objection to the employee appearing at the hearing, the employer shall cause the employee to appear. The Tribunal, primarily through the Chairperson may, sequester witnesses.

Any disputes regarding the production of witnesses or documents can be directed to the Tribunal through the Tribunal Chair by writing a letter to the Tribunal via the court's email address and simultaneously sending a copy of the letter to the other party. Either party has the right to appeal to the full Tribunal decisions rendered by the Tribunal Chair.

108. Prohibition of Ex Parte Communication

A member of the Tribunal shall not communicate, directly or indirectly in connection with any issue of fact, policy or law related to a proceeding before the Tribunal with any Party or their representative except upon notice and opportunity to all Parties to participate;

This section shall not preclude Court staff or the Tribunal's lawyer from having contact with Parties to discuss procedural matters.

Any member of the Tribunal who receives an ex parte communication shall immediately report such communication to the Tribunal's legal counsel.

109. Delegation to Chairperson

The Chairperson, or his/her designee, of the Tribunal may issue rulings on discovery

matters, scheduling matters, protective orders, continuances, the admissibility of evidence and other procedural or pre-hearing matters that are not dispositive of the case or any portion thereof. The Chairperson's rulings are subject to consideration by a quorum of the Tribunal upon the request of any Magistrate or upon the request of a party.

110. Conduct of Hearings

The Chairperson of the Tribunal shall preside over hearings. The Chairperson may designate another Magistrate to serve as Chairperson or may, in writing, designate a hearing officer to preside over a hearing. The Chairperson, the Chairperson's designee or a hearing officer shall preside over the hearing, shall call the proceedings to order and control the presentation of evidence. The hearing shall be recorded.

The employer can designate one employee one human resources employee to represent the employer at the hearing. The employee shall be present at the hearing.

Any Party to the hearing may call and examine witnesses. The Tribunal, primarily through the Chairperson, shall exercise the discretion to limit the testimony of witnesses where the testimony is irrelevant, argumentative or repetitive. The Tribunal, primarily through the Chairperson, shall eject from the hearings any person who is disruptive, disorderly, or who shows lack of proper respect for the Tribunal or the nature of the proceedings. Any Magistrate may ask questions of witnesses and may request or allow additional evidence at any time. Any Party to the hearing may conduct cross-examination reasonably required for a full and true disclosure of the facts.

The hearing before the Tribunal will proceed as follows:

- A. Chairperson of the Tribunal makes opening comments regarding the hearing process.
- B. Employer will present its opening statement on the merits. The employee will then be permitted to make an opening statement.
- C. Employer will present its case in chief.
- D. Upon conclusion of employer's case in chief, the employee shall present their case.
- F. Upon conclusion of employee's case, the employer may present its case on rebuttal.

G. Upon conclusion of the employer's rebuttal, the employee may present their rebuttal.

H. After rebuttal, the employer will present its closing argument and thereafter the employee shall present their closing argument. At that time, the matter will stand submitted for decision.

I. Chairperson concludes the hearing and excuses the parties and others.

111. Evidence

The Tribunal shall use the informal rules of evidence and shall admit all testimony having reasonable probative value, but shall exclude immaterial, irrelevant or unduly repetitious testimony. The Tribunal shall give full effect to the rules of privilege unless such privilege is waived. The technical rules relating to evidence and witnesses shall not apply. The Tribunal may take official notice of any generally recognized fact or any established technical or scientific fact.

The employer has the burden of proof to show by a preponderance of the evidence that the employer's decision to terminate, suspend or demote the employee was not arbitrary. The Tribunal will use the arbitrary standard to determine the facts and apply the facts to the employer's policies, procedures and other employment standards.

If there is a factual basis supporting the employer decision which is consistent with the employer's rules (policy, procedure, job descriptions, etc.) the decision is not arbitrary.

112. Continuances

Continuances will not be granted except for good cause shown.

113. Default

The Tribunal can make a decision on the written record if a party fails to appear at the hearing.

114. Decision of the Tribunal

The Tribunal shall issue a final decision within 10 business days after the hearing which addresses whether the employer's decision was arbitrary. If the decision was not arbitrary the Tribunal will uphold the employer's decision. If the employer's decision was arbitrary, the Tribunal shall consider imposing a remedy. Remedies are limited to a request for back pay, reinstatement, rehire, return of accrued leave or other accrued benefit, or any other personnel action not in conflict with existing applicable employer policies or Nation laws.

The written decision shall be transmitted to the District Court, the employee and the employer and the employer's human resources department.

115. Appeals

The Tribunal's decision is final.

**PRAIRIE BAND POTAWATOMI NATION EMPLOYMENT
DISPUTES TRIBUNAL HEARING PROCEDURES**

