

Tribal Court COVID-19 Response Resources

Tribal court orders in response to COVID-19 might consider the following factors:

- Timeframe for which the court order is in effect
- Courthouse access
 - How and when contact with the court can be made currently
- How filings will be handled
- Health screenings for any individuals who will be physically accessing the court
- Civil matters
- Criminal matters
- Any emergency or ongoing matters that should proceed outside of the umbrella matters already addressed (e.g., protection orders, UAs)

Sample language derived from how actual tribal courts have addressed these topics follow below.

EXAMPLE TRIBAL COURT ORDER PROVISIONS #1

1. Courthouse access

Only parties, attorneys, and witnesses who have business with the court will be permitted inside the courtroom. Those individuals will be screened before entering for symptoms/signs of the COVID-19 virus. Anyone showing signs of illness or feeling ill shall not enter the _____ Tribal Courtroom.

2. Civil matters and youth court

a. All civil matters currently scheduled for court hearings shall be continued for a minimum of 45 days.

b. No new hearings shall be set, unless necessary to address emergency petitions or motions.

c. Emergency hearings shall be held telephonically.

3. Criminal matters

a. All criminal matters, including jury trials, shall be continued for a minimum of 45 days, which shall be considered an excluded time period for purposes of speedy trial.

b. All essential criminal in-custody hearings, including first appearances on mandatory arrest charges, shall be conducted telephonically.

c. Any party wishing to continue their currently set criminal matter longer than 45 days may execute a speedy trial waiver and request new court dates.

4. Filings

a. The court shall accept all court filings, including emergency petitions and motions, via either email or U.S. mail.

b. The court shall also accept emergency petitions or motions filed in-person at the courthouse, in compliance with the public health restrictions in place. Emergency petitions or motions include, but are not limited to, requests for domestic violence protection orders, restraining orders, emergency child custody, protection of a vulnerable adult, or emergency pick-up order for a child.

c. Upon request, the court shall distribute court orders and other documents to parties and attorneys electronically.

EXAMPLE TRIBAL COURT ORDER PROVISIONS #2

This Emergency Standing Order shall be in effect immediately, and shall remain in effect until rescinded by the _____ Tribal Court Chief Judge. The order shall apply to all persons who are transacting business with the _____ Tribal Court and shall include but is not limited to attorneys, parties, witnesses, and jurors.

1. Courthouse access: the courthouse is closed to the public through [DATE]. Courthouse staff will be in the office on Tuesdays and Thursdays to process emergency filings, but the office will still be closed. If you need to file paperwork outside these hours you can place the paperwork in the box outside or file per the instructions in this order (paragraph 4).

2. Civil matters: All civil matters currently scheduled for court hearings shall be continued by the court for a minimum of 30 days. The court will be providing notices of new court dates.

3. Criminal matters: The court hereby finds good cause to continue all criminal matters including jury trials from [DATE] through [DATE]. This period of time shall be considered an excluded time period for purposes of speedy trial. All jury trials for March and April are hereby stricken and shall be rescheduled to a later date. No criminal in-custody

defendants shall be transported during this time. In addition, any essential criminal in-custody hearings, including first appearances on mandatory arrest charges, shall be conducted telephonically.

4. Filings: The court shall accept all court filings via either email or mail.

5. UA tests: UA tests are suspended until further notice.

6. Domestic Violence Protective Orders and No-Contact Orders: The court will continue to accept and process Petitions for Domestic Violence Protective Orders and Petitions for Anti-Harassment/No-Contact Orders as outlined in this order. New petitions for Domestic Violence Protective Orders or No-Contact Orders may be filed with the court via email or U.S. mail. The court shall continue to review emergency protective order/no-contact order petitions and issue temporary emergency protective orders if appropriate under the facts of the case, and hearing dates for final orders shall be set out a minimum of 30 days.

EXAMPLE TRIBAL COURT ORDER PROVISIONS #3

This Emergency Standing Order shall be in effect immediately, and shall remain in effect until rescinded by the _____ Tribal Court Chief Judge or Deputy Chief Judge. The order shall apply to all persons who are transacting business with the _____ Tribal Court and shall include but is not limited to attorneys, parties, witnesses, and jurors.

1. Limited hours: The _____ Tribal Court and Probation will close for normal business operations to the public from [DATE] to [DATE].

A. The Judges and _____ staff will be working offsite and will remain on call, and will provide all necessary personnel with their fax numbers, cell phone numbers, and email. We will have necessary personnel on stand-by if needed at the Court.

2. Courthouse access: Only attorneys, parties, witnesses, and jurors who have business with the court will be permitted inside the courthouse. They will be screened at the courthouse entrance for signs/symptoms of the COVID-19 virus. Anyone showing signs of illness or feeling ill shall not enter the _____ Tribal Courthouse. Anyone in the high-risk categories for the COVID-19 virus shall not enter the courthouse and may also seek to avail themselves of the policies set forth in this Emergency Order.

3. Criminal court: The court has found good cause to continue all criminal matters, including jury trials, for a minimum of 21 days which shall be considered an excluded time period for purposes of speedy trial. The earliest that a jury trial can be set is May.

A. The court's jury trial line shall be updated to state that all jury trials for March are continued and jurors called for the month of March are relieved of their jury service. There will be no summons issued for April.

B. No in-custody defendants shall be transported until further notice or before [DATE], whichever comes sooner.

C. Any search warrants or probable cause hearings will continue to be sent to the Judge on duty that week, which is the normal process for the Judges and Prosecution by the Police Dept. 24/7.

D. Any essential in-custody hearings, including first appearances on mandatory arrest charges, shall be conducted telephonically.

E. Any party wishing to continue their currently set criminal matter longer than 21 days may execute a speedy trial waiver and request new court dates.

4. Emergency Orders pursuant to _____[TRIBAL CODE CITATION], if needed, will be emailed/faxed to the Clerk's office and then forwarded to the Judges for review and signature. These petitions shall have Orders incorporated in them so they can be signed and emailed/faxed back. Hearings will be held within 72 hours as needed, excluding Saturday, Sunday and holidays telephonically. The Juvenile Court shall create a plan for other types of hearings.

A. All non-urgent civil matters currently scheduled for court hearing shall be continued by the court for a minimum time period of 30 days.

5. Probation offices will be closed and all check-ins will be done telephonically beginning _____ and a plan for telephonic hearings/counseling will be issued by separate order.

6. Domestic Violence or Sexual Assault Protection Orders: The court has previously found good cause to continue DVPO and SAPO cases currently set to hearing for a minimum period of 30 days. Temporary Protective orders will remain in place and the court will notify the parties of new court dates. New petitions for emergency Domestic Violence Protection Orders or Sexual Assault Protective Orders may be filed with the court via email or U.S. mail. If parties need legal assistance from _____, the parties may contact _____ via email and arrange for telephonic assistance.

The court shall continue to review emergency protective order petitions and issue temporary protective orders if appropriate, and shall set hearing dates at least 30 days out.

A. The court shall be alerted by email and will accept all court filings either via email or U.S. mail.

7. UA tests: Any individual with a current court-ordered UA requirement shall continue to call in and report to _____ to UA when required. _____ is conducting its own screening process and will not permit any symptomatic individual to UA.

8. Ex parte/bench warrant quash calendar: For the next two weeks, the court will not conduct an ex parte/bench warrant calendar. Any individual wishing to file documents with the court may file via email or U.S. mail as described above.

EXAMPLE COURT ORDER PROVISIONS #4

1. All of the following incoming and scheduled hearings and existing deadlines shall be continued, including speedy trial requirements until further notice. The Court will follow the guidance of the _____ Tribe's Emergency Declaration and the CDC Guidelines.

- Criminal: jury trials, bench trials, show cause/review hearings, restitution hearings.
- Civil: probate, name changes, civil claims, custody, guardianships, infraction/traffic and paternity.
- Children's: truancy, dependency review hearings, dependency guardianships.

2. The _____ Tribal Courts will maintain a schedule to hear the following types of hearings:

- Criminal: arraignments, bench trials wherein the defendant is in custody at the _____ Corrections Center, extradition hearings, bail or bail reduction hearings.
- Civil: emergency ex parte and temporary restraining orders.
- Children's: dependency shelter care, dependency fact findings, dependency case planning, dependency emergency medical motions and detention hearings.

3. On a case-by-case basis, the court will maintain the discretion to schedule hearings using the following approach and/or under the following conditions:

a) Pro se litigant, counsel of record and/or prosecution may motion the court to set a hearing based on urgency or upon agreement of the parties.

b) There is a circumstance which exists that a person's health and safety are at risk.

4. All continued hearings and trial dates will be reset and scheduled when it is deemed safe according to the timeframe decided by the _____ Tribal Council under the State of Emergency.

5. The Tribal Courts will encourage telephonic or video conference hearings whenever possible. In the event that there are non-telephonic hearings, the public will not be allowed in the courtrooms.

6. Parties and/or counsel who are sick will not be allowed to enter the courthouse and should contact the court as soon as possible if they are expected to participate or appear for a hearing. A warrant will not be issued for criminal defendants who contact the court prior to a scheduled hearing because of illness.

7. The court encourages parties to file joinders or agreed orders which will be considered and signed in chambers.

8. The court encourages and will accept electronic filings.

9. The court will only allow persons who are picking up or dropping off documents in the court lobby. If you appear to be sick you will be directed to leave. We will also enforce a minimal 1-2 persons at a time in the court lobby. Do not visit the courthouse in person if not necessary.