



Mesa Grande Band of Mission Indians Tribal Court Rules

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Rule 1 - Scope of Rules.

These Rules shall govern all civil proceedings brought in the Tribal Court. They shall be applied and interpreted to assure justice to all parties who come before the Court. The Federal Rules of Civil Procedure and the Federal Rules of Evidence, as applicable, shall be used insofar as they do not conflict with these Tribal Court Rules. The Tribal Court, however, has the discretion to limit the application of any Federal rule in a specific case if it is determined that such limitation is in the best interests of justice.

- (A) Priority of Rules Included in Specific Ordinances. Rules for service of process and other procedural rules included in any ordinance enacted by the Band shall govern proceedings under that ordinance. If any conflict exists between these Tribal Court Rules and the rules set forth in an ordinance, the rules described in the ordinance shall be followed. These Tribal Court Rules may be used as a guide for matters not specifically included in the ordinance.
- (B) Definitions. Any capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Mesa Grande Band of Mission Indians Judicial Ordinance, as may be amended from time to time.

Rule 2 - Amendment of Rules.

The Tribal Court Rules may be amended from time to time by the General Council. The Chief Judge or Judicial Committee, in coordination with each other, may recommend amendments to the Tribal Court Rules for adoption by the General Council.

Rule 3 - Commencement of Action.

A Tribal Court case is commenced by the filing of a complaint, petition, or application with the Tribal Court and by paying all applicable fees. The Tribal Court will not take up a case that has not been properly filed in writing or where the required filing fee has not been paid or waived by order of the Court.

Rule 4 - Filing Fee.

Any Party who chooses to invoke the powers of the Tribal Court or to defend any cause shall pay an applicable filing fee unless the Tribal Court waives the filing fee for good cause shown.

- (A) Waiver of Filing Fee. A person who can demonstrate indigence or other good cause may apply for a waiver if required to pay filing fees. A waiver shall be granted by the order of the Tribal Court in writing and shall be filed in the case file.
- (B) Schedule of Fees. The Court Clerk shall set forth and maintain a schedule of filing fees and other fees required for services from the Tribal Court. The Judicial Committee, in consultation with the Chief Judge, shall set the fees. The Schedule of Fees shall be available upon request.

Rule 5 - Legal Representation and Licensing of Attorneys.

Legal representation and licensing of attorneys is governed by Chapter 5 of the Judicial Ordinance.

Rule 6 - Assignment of Judge.

All cases shall be assigned to the Chief Judge, who may recommend the assignment of the case to another Judge. Once assigned, and unless recused, excused, or disqualified, the assigned Judge will preside over any proceedings in a case. Once a case is assigned to a Judge, the parties and their attorneys, advocates, or representatives shall have no ex parte communications with the Judge regarding the matter presented, except that the Judge may consider any necessary scheduling matters. A Judge may perform any act of duty authorized to be performed by the Court Clerk.

Rule 7 - Issuance of Summons.

The Court Clerk shall assign each newly filed case a case number and shall issue Summons or other appropriate notice to the parties to the case. In civil cases, a copy of the Summons must accompany the complaint when it is served on a defendant.

Rule 8 - Service of Process.

(A) Personal Service.

- (1) Personal Service. Personal service of any Court document is accomplished by delivery of a copy of the document to the named individual, person, or entity subject to service at any place he, she, or it may be found by any person aged eighteen (18) or over who is not a party to the proceeding.
- (2) Substituted Service. In the event that personal service is not completed, substituted service may be completed by leaving copies of the documents at the dwelling house, usual place of abode, or usual place of business of the person served in the presence of a competent member of the household or a person apparently in charge of the office or place of business, at least eighteen (18) years of age, who was informed of the general nature of the papers, and thereafter mailing by first class mail, postage prepaid, copies to the person served at the place where the copies were left.

(B) Service of Documents Issued by Another Jurisdiction.

When the document is issued by any court other than the Mesa Grande Tribal Court, whether the service is to be made on an Indian or a non-Indian, the following procedures shall be observed:

- (1) The person or party who wishes to accomplish service must present the document to the Court Clerk for review who will affix the “Approved for Service” stamp to the front of the document.

- (2) The “Approved for Service” stamp must be dated and signed by the Chief Judge. If a document has not been so stamped and signed, it cannot be lawfully served within the territory over which the Mesa Grande Band exercises jurisdiction.
- (3) Any delivery of a document issued by a court other than the Mesa Grande Tribal Court to a person within the territory over which the Mesa Grande Band exercises jurisdiction without observing these requirements shall be deemed to be a defective service.

(C) Service by Mail.

As to the parties that have formally appeared before the Tribal Court by either filing a complaint, petition, application, answer or other responsive pleading as provided under Rule 3 and Rule 13, those parties may serve other parties to the action by mail provided that a Certificate of Service by Mailing is attached to each document that states that the document was mailed by first class mail, states the date on which the document was mailed, certifies that adequate postage was affixed to the envelope, and states the name of the party and the address to which the document was mailed, which shall be the party’s address on file with the Court. Such a service shall be deemed completed on the fifth (5th) day after the Certificate of Service by Mailing is signed.

Such a party may also be served Court documents by certified or registered mail with return receipt requested, in which case service shall be deemed completed on the third (3rd) day after a Certificate of Service by Mailing is signed that meets the following requirements. This Certificate of Service by Mailing must be attached to each document that states that the document was mailed by certified or registered mail, return receipt requested, states the date on which the document was mailed, certifies that adequate postage was affixed to the envelope, and states the name of the party and the address to which the document was mailed, which shall be the party’s address on file with the Court.

(D) Service by Publication or by Public Notice.

- (1) If the whereabouts of a party are not immediately known that party may be served with process by publishing the complaint, petition, application or notice in a newspaper or newsletter of general circulation in the vicinity of the last known address of the party. The legal notice shall be published for a reasonable length of time. Service shall be deemed completed on the date of the last publication.
- (2) If the party avoids service after reasonable steps have been taken to serve that person with any Court document, the party may be served by Public Notice. The Court Clerk is required to document at least two (2) attempts to serve the party personally or by mail. Thereafter, the Court Clerk or his or her designee may affix the legal notice to the residence of the party in a

conspicuous place. The Court Clerk must also post legal notice naming the party and notifying him or her that legal action is pending in at least (3) three other public places that are open to the members of the Band. This service shall be deemed constructive notice to the party that he or she is required to appear at the time stated and that further information is available by contacting the Court Clerk. The exact nature of the Court action shall not be declared in the public notice.

Rule 9 - Return of Service.

When a document is served by any person other than the Court Clerk, proof of service shall be in writing and shall specify the manner of service and the date and place of service and shall be signed by the person completing the service. The return of service shall list and identify all documents served and the name and address of those persons on whom the documents were served or the manner in which the service was accomplished. The person serving the document may request the signature of the person being served as acknowledgement that he or she received the document, but such signature is not required for the service to be completed.

Rule 10 - Required Service.

Every document filed with the Court shall be served on all parties to the case except those motions which may be heard ex parte and those filed against parties who are in default by reason of the party's failure to answer or appear.

Rule 11 - Certificate of Service.

Every document filed with the Court shall bear either a Return of Service or a Certificate of Service. The Certificate of Service shall name the document; shall include the name of the person who is certifying to the Court that the service took place; shall indicate the method of service, the date of service, and the name and address of each person or party on whom the document was served. The Certificate of Service shall be signed by the person who is certifying the service.

Rule 12 - Filing.

- (A) File-Stamping. Before a document may become an official part of the Court record, it must first be file stamped by the Court Clerk. The file-stamp shall be dated and signed. The Court Clerk shall keep original documents in the Court's file. Documents such as letters shall not be file stamped but shall be stamped "Received" and dated and placed on the left side of the file. All documents in the case file shall be maintained in chronological order, with the latest documents appearing on top.
- (B) Paper Copy Filing. Paper copy documents may be filed with the Court in person or by U.S. mail or FedEx. If filed in-person, such documents will be deemed filed on the day on which both the documents and payment of any applicable filing fee are submitted to the Court in-person. If filed by U.S. mail or FedEx overnight, the documents will be deemed filed on the day when both of the following are met: (1) three (3) days after the postmark for such documents for U.S. mail or one (1) day after the postmark for such documents if sent by FedEx overnight, and (2) the day

of submission of payment of any applicable filing fee. If filed by U.S. mail or FedEx overnight, documents and payment must be addressed to “Mesa Grande Tribal Court P.O. Box 270 Santa Ysabel CA 92070.”

- (C) Electronic Filing. Documents may be filed electronically by emailing documents to MGTC@mesagrandeband-nsn.gov and attaching proof of payment of any applicable filing fee. Documents emailed to such email address by 11:59 pm on a day shall be deemed filed on that same day so long as proof of payment of any applicable filing fee is included in the email. Documents emailed to such email address on a day that is a Saturday, Sunday, or holiday shall be deemed to be filed on the next day that is not a Saturday, Sunday, or holiday so long as payment of any applicable filing fee has been submitted. The Court Clerk shall acknowledge receipt of the party’s electronic filing.
- (D) Conformed Copies. Any party or representative may obtain conformed electronic copies of filed documents in their case at no charge by emailing a request to MGTC@mesagrandeband-nsn.gov.

Rule 13 - Filing an Answer or Responsive Pleading.

A person who is made a party to a Court case shall file an Answer or other responsive pleading within thirty (30) days of receipt of Service of Process or may be subject to judgment by default.

Rule 14 - Time Computation.

The time permitted for any action or response shall be counted from the day after the act, event, or completed service which sets the time period in motion. If the final day for filing a response or taking other appropriate action falls on a Saturday, Sunday, or holiday, the time period will extend to the next day that is not a Saturday, Sunday, or holiday. Every calendar day shall be counted in computing the permitted time periods for all time limits of five (5) days or more. Periods of time of less than five (5) days shall exclude Saturdays, Sundays, and holidays from the count.

A party may make a motion for an extension of time by motion and for good cause. The Court Clerk shall provide a list of holidays for the applicable calendar year to a party upon the party’s request.

Rule 15 - Filing of Motions.

An application to the Court for an order shall be made by motion and shall state the relief sought and the rule, statute, or reasoning on which the motion is based. The reasoning may be in the form of a written brief by the party or by the party’s representative, including points and authorities, or may be a declaration signed under penalty of perjury by the party. The opposing party may file a written response within fifteen (15) days after completion of service of the written motion. A reply to the opposing party’s response may be filed within ten (10) days after completion of service of the opposing party’s response. See Rule 19 for scheduling of hearing dates.

Thereafter, the Court may rule on the motion based on the written submittals or may require that the hearing be held as scheduled to hear oral arguments. Failure to file a written response may be deemed to be submittal of the motion to the Court for a ruling without hearing.

Rule 16 - Signing of Documents.

Every document filed with the Court must be signed by the party filing it or by his or her attorney.

Rule 17 - Counterclaims or Cross Claims.

Defendants shall include any counterclaims or cross claims which arise from the same set of facts complained of by the plaintiff. A cross claim is a claim against a co-defendant.

Rule 18 - Amendments to Pleadings.

A party may amend a pleading prior to the filing of an answer or other response by the opposing party. If a response has already been filed, the party seeking to amend a pleading may do so only by order of the Court after notice and an opportunity to be heard by the party opposing the amendment.

Rule 19 - Hearings.

Prior to filing a motion, the party filing the motion is to confirm with the Court Clerk what date is to be set for the hearing. If a hearing date is set, it must be set so as to allow for the filing of a response and reply. See Rule 15 above.

Rule 20 - Scheduling Orders.

In order to maintain an orderly flow of matters to come before the Court, the Judge presiding in a case where a responsive pleading has been filed, shall issue a Scheduling Order as soon as practical to govern the proceeding. The Scheduling Order shall include, but not be limited to, an order governing the extent of discovery that may be permitted.

Rule 21 - Continuances.

A party may request a continuance or a postponement of any proceeding or any required action by filing a motion for continuance with the Court. The motion must be timely made and shall state the reason why continuance is needed. Granting continuance shall be within the discretion of the Court and shall ensure that it shall not result in unfairness to the opposing party.

Rule 22 - Setting Cases for Hearing or for Trial.

The Court Clerk shall be responsible for setting matters for hearing or trial either at the direction of the Judge or by his or her own authority in order to maintain the orderly flow of cases to come before the Court.

Rule 23 - Discovery.

The parties to an action may conduct discovery only in accordance with an order issued by the Court. A party wishing to conduct discovery shall submit to the Court by way of a noticed motion, a proposed schedule of discovery.

Rule 24 - Subpoena.

The Court Clerk may issue subpoenas that may be served at any time for the attendance of witnesses at Court, at depositions, or hearings or for any other legitimate use in connection with Court proceedings, including the production of documents. A subpoena may be served in any manner consistent with these Tribal Court Rules for the service of process except for time limitations. If a subpoena is served and the Court date is changed for any reason, a new subpoena shall be issued and served setting forth the new time and date for the person to appear.

A person who has been properly served with a subpoena and fails to appear or fails to produce the things named in the subpoena may be found in contempt of Court and fined if no substantial justification exists for refusal to respond or produce.

Rule 25 - Dismissal in Inactive Cases.

If a party fails to prosecute a civil complaint by failing to act on it within a period of six (6) months, the Court may dismiss the case. Before a case is dismissed for inactivity, the Court Clerk shall notify the plaintiff that he or she has thirty (30) days to take appropriate action. If nothing is filed, the case may be dismissed.

Rule 26 - Judgments and Orders.

The Court shall enter a judgment or order in writing in each matter presented, which shall be date-stamped and filed by the Court Clerk. All judgments issued after trial of a matter shall include findings of fact and conclusions of law.

Rule 27 - Default Judgment.

If a party fails to plead or otherwise respond, the complaining party may file a motion for judgment by default which shall be accompanied by a declaration confirming adequate service of process. The Court may set the matter for a default hearing and may enter judgment against the party who is in default. The judgment shall not be set aside except by showing good cause for the failure to plead.

Rule 28 - Ex Parte Matters.

- (A) Ex Parte Motions. A party may file an ex parte motion, and the Court may grant such motion based on its equitable powers, only when the motion intends to maintain law and order, to provide necessary emergency relief, or to preserve the status quo. Such a motion shall be made in writing and shall include a declaration under penalty of perjury that states the reason why the relief requested should be granted. All parties are to be given at least twenty-four (24) hours' notice of the

hearings on the ex-parte motion. The moving party by declaration shall state what notice was given. If no notice was given, then the reason for no notice must be stated in the declaration accompanying the ex parte motion.

- (B) Orders Resulting from Ex Parte Motions. The order granting the relief sought in an ex parte motion shall be served on all parties to the proceeding.
- (C) Temporary Restraining Orders. An ex parte temporary restraining order may be granted for ten (10) days by the Court without written or oral notice to the adverse party if it appears from the specific facts shown in the application and declaration that an immediate threat of injury or loss may be suffered by the applicant for the temporary restraining order. Such an ex-parte order shall state the conditions of the order, including the date of its expiration, and shall be personally served on the individual who is the subject of the temporary restraining order. A hearing shall be set within ten (10) days of the issuance of the temporary restraining order to give the party so restrained an opportunity to oppose a future injunction.

Rule 29 - Trials.

All cases shall be tried before a Judge. The Judge shall conduct the trial in accordance with the procedures set forth in the Judge's bench book. The Court Clerk shall administer all oaths and shall maintain a complete audio record of the trial.

Rule 30 - Sanctions.

The Court may impose any appropriate sanction against a party or a representative for a violation of an order of the Court, these Rules, or any act that constitutes contempt as determined by the Court. The sanction may include but is not limited to fine or community service.

Rule 31 - Settlement.

Nothing in these Rules shall prohibit the parties to agree to a mutually acceptable settlement of their dispute. The parties shall file a Stipulation for Settlement signed by all parties and their counsel, if applicable. The stipulation does not need to set forth the exact terms of the settlement but must state sufficient information to support the entry of a final order by the Court.

Rule 32 - Mediation.

- (A) Mediation by Court Order. The Court may order persons who are in litigation before the Court to participate in mediation. If the parties wish, they may select a mediator or, if the parties do not select a mediator, the Court may appoint a mediator known to the Court to be qualified. All costs of Court-ordered mediation shall be paid by the parties to the dispute in equal shares.
- (B) Confidentiality. All mediation proceedings and all arguments and evidence presented are confidential and may not be referred to or entered into evidence in any judicial proceeding, including but not limited to, the proceeding from which a mediation order was entered.