

IN THE SOUTHERN UTE TRIBAL COURT
ON THE SOUTHERN UTE INDIAN RESERVATION

ADMINISTRATIVE ORDER 2020-03

MODIFIED ADMINISTRATIVE ORDER IN RESPONSE TO THE COVID-19
OUTBREAK

WHEREAS, the emergence of the COVID-19 virus has created a public health emergency, the Southern Ute Tribal Court shall take all measures reasonably necessary to protect the health of Tribal elders, Southern Ute Tribal membership, Southern Ute community, litigants, and court staff from the COVID-19 virus.

Whereas, since early this year, the Southern Ute Tribe, the State of Colorado, and our community have struggled in the face of the unrelenting COVID-19. Virtually every segment of the Southern Ute Tribe has been impacted by this terrible disease. The Southern Ute Tribal Court is not insulated from the impact of this virus and we have necessarily adjusted our operations to provide the essential court services we are legally bound to, while striking a balance between fulfilling our responsibilities and promoting public safety. While it has not always been easy, we have successfully managed to accomplish much of our essential work under these trying circumstances. Despite our collective best efforts, the COVID-19 pandemic marches on and has recently worsened.

WHEREAS, the Chief Judge of the Southern Ute Tribal Court possesses the inherent authority to establish such standards and procedures by administrative order.

NOW, THEREFORE, IT IS ORDERED THAT:

Effective Monday, November 16, 2020, and continuing until further notice and order of the court, the Southern Ute Tribal Court shall only hear cases that directly affect public safety or are mandated to be heard pursuant to the Southern Ute Tribal Code. Such cases include:

1. Petitions for protection orders;
2. First appearance advisements for incarcerated persons and the setting of bail;
3. Revocation hearings involving an incarcerated defendant;
4. Proceedings necessary to protect the rights of criminal defendants, pursuant to the Indian Civil Rights Act and the Southern Ute Tribal Code;
5. Detention hearings for juvenile delinquency cases;
6. Dependency and neglect cases, as required by the Southern Ute Tribal Code;
7. Involuntary commitment hearings;
8. At-risk adult or juvenile hearings, if emergency;
9. Emergency custody matters or other domestic issues requiring immediate attention;
10. Bench trials, if the trial can be conducted remotely or in a manner reasonably safe enough for the Southern Ute Tribe and its employees;

11. Other proceedings deemed necessary by a Southern Ute Tribal Court judge to protect the health, safety, or welfare of an individual or members of the community.

Modified Operations of the Court

All employees and people entering the Tribal Court shall follow the Southern Ute Tribe's mandate to wear an appropriate face covering, maintain social distancing, and to refrain from entering the Tribal Court if exhibiting the following symptoms:

- You or anyone you live with tested positive for COVID-19 within the past 14 days;
- You have fever or chills;
- You have a cough;
- You have difficulty breathing or shortness of breath;
- You have muscle or body aches;
- You have a sore throat; or,
- You have a new loss of taste or smell.

The clerk's office, probation services, and family court support office shall operate on minimal staffing. Probation and Family Court Support employees shall minimize in-person contact to the extent they are reasonably able to do so, while maintaining their essential services for the protection and safety of those they serve and the community.

The Tribal Court shall be available by telephone and email from Monday through Friday from 8:00 a.m. to 5:00 p.m. Attorneys and the public are encouraged to communicate with the court via email, remote technology and telephone to avoid any unnecessary appearances at the Southern Ute Tribal Court. The Tribal Court clerk's window shall be open for in-person business only Mondays through Thursdays between the hours of 8:00 a.m. and 12:00 p.m. The clerk of the court shall keep updated information on the telephone answering service (970.563.0240). The hours of operation may change as conditions require and if in the interest of the Southern Ute Tribe and its employees. Notice of the court's hours of operation shall be posted on the door at the entrance to the Southern Ute Tribal Court, on its telephone answering system, and on the Tribe's website: <https://www.southernute-nsn.gov/tribal-court/>

Alternatives to Physical Appearance in Court

For all civil trial matters, the standard practice shall be that all parties and witnesses testify by remote technology (Zoom/Webex/telephone). Upon request of a party, the judge may allow in-person testimony. If in-person testimony or appearances are required, then the Court may set the cases for a future date when such appearances may be hosted in a safe manner.

Emergency hearings or hearings required to be heard by law shall be held, but courtroom appearances shall be minimized to the extent possible. Requests for in-person hearings must be submitted in advance such that the Court can make necessary arrangements.

For all criminal cases, the judges shall establish procedures to maximize the ability of criminal defendants to appear remotely where constitutionally and legally permissible.

Hearings for all defendants who are not incarcerated shall be heard remotely. If a defendant requires to be present for a hearing, the defendant must file the request for consideration. The defendant and plaintiff shall be responsible for the arrangements to allow for each party's witnesses to appear remotely and for evidence to be admitted using remote technology.

Pursuant to the Southern Ute Indian Tribal Code, the court finds the delay of criminal trials beyond the 90 day speedy trial period to be "necessary", when a remote hearing is deemed insufficient. Jury trials shall be disallowed until they may be conducted in a safe manner. The Court finds the Southern Ute Indian Tribe forbids gatherings of more than five people in an enclosed indoor space, the Southern Ute Indian Tribe has a vulnerable Elder population, and there are insufficient resources to be able to safely conduct a jury trial during the COVID-19 pandemic.

Where applicable, defense attorneys need not obtain the signature of a defendant, where instead the attorney may sign and represent the wishes and understanding of a client. This is to allow for the safety of defense attorneys to communicate with their clients by telephone and file pleadings on their clients' behalf.

The Court finds that for those identified as part of a vulnerable or at-risk population by the Center for Disease Control, COVID-19 is presumed to be a material change in circumstances, and the parties do not need to supply additional briefing on COVID-19 to the court. For all other cases, the COVID-19 crisis may constitute a "material change in circumstances" and "new information" allowing for the amendment of a previous bail order or providing different conditions of release, but the finding of changed circumstances is left to the sound discretion of the presiding judge.

Parties may present agreed orders for release of in-custody defendants, which should be presented to the court without the need of a hearing.

If a hearing is required for a vulnerable or at-risk person, the court shall schedule a hearing, which shall be expedited with due consideration of the rights of witnesses and victims to participate in a safe environment.

The courts will utilize remote technology hearings for any scheduled criminal hearings, unless impossible. For all critical stages and hearings, courts shall provide a means for the defendant to have the opportunity for private and continual discussion with his or her attorney. These hearings must be recorded and preserved for the record.

For civil protection orders, the Court finds "good cause" to extend an initial temporary protection order beyond the 14 days within which to hold the permanent protection order, pursuant to the SUI §2-2-103(5). The Court shall further allow for service on the Defendant by way of mail, rather than personal service. This provision does not relieve the prosecution of proving a knowing violation of such an order. Good cause exists to extend any temporary ex parte orders beyond the initial period until a hearing can be held in a safe environment for the plaintiff, defendant and witnesses.

The presiding judges will allow the prosecutor and defense counsel to stipulate that when nothing of substance will occur at a scheduled hearing, then the defense attorney may appear in court or telephonically in lieu of the defendant's appearance without prior court order.

If, upon motion in a criminal case, a criminal defendant who has a compromised immune system or is over the age of 55, the court shall attempt to continue the defendant's case to later date to minimize health risks.

Notice to the Public

The clerk of the court shall post the following notice at the entrance of the Justice Building and other locations in the courthouse:

The Southern Ute Tribal Court provides essential services to the public and we will endeavor to maintain operations to the fullest extent possible, while protecting the Southern Ute Tribal community, employees, and litigants. We understand there is concern about the COVID-19 virus and so we are requiring that you PLEASE NOT COME TO THE COURTHOUSE, PROBATION, OR FAMILY COURT SUPPORT OFFICE if: (1) you have been diagnosed with COVID-19 and you have not received a subsequent test confirming you are currently virus-free; (2) you have been in direct contact with someone who has been diagnosed with COVID-19 within the past fourteen days; (3) you are experiencing a fever, cough, shortness of breath, or any other respiratory illness symptom. If any of these three criteria apply please call the clerk's office at 970.563.0240 to reschedule your court date or request to appear by telephone if you are not represented by an attorney, or contact your attorney to file a request for a continuance or a telephone appearance. If you are a witness in a case, please contact the attorney or party issuing the subpoena to explain the circumstances and discuss the available options. If you are summoned to report for jury duty, please call the court to request an excuse. Please call the probation department or family court support office to reschedule any appointment if any of the three listed criteria apply to you.

Until further notice, the court will require persons to wear face coverings / masks in court. It is also permissible to bring small plastic containers of hand sanitizer into court and the probation and family court support offices. Please remit any criminal or traffic payments using the Tribal Court's online payment system found at www.citepay.com, if possible.

This administrative order may be modified as conditions warrant.

DONE AND SIGNED THIS 13th DAY OF NOVEMBER, 2020.

M. SCOTT MOORE
CHIEF JUDGE, SOUTHERN UTE TRIBE