

SOUTHERN UTE INDIAN TRIBE
ADMINISTRATIVE APPEALS AND HEARINGS OFFICE (AAHO)
AMENDED RULES TO GOVERN APPEALS AND HEARINGS
April 29, 2019

1. Rules; Authority and Applicability

These Rules shall apply to appeals and hearings (proceedings) before the Administrative Appeals and Hearings Office (AAHO) as authorized by the Southern Ute Indian Tribal Council per the Southern Ute Indian Tribal Code (Tribal Code) at Secs. 1-5-101 through 1-5-107 (AAHO Code).

2. Scope of Rules

These Rules shall apply to proceedings before the AAHO arising under the Tribal Code provisions, regulations and policies as set forth in the AAHO Code at Sec. 1-5-102 and as otherwise may be provided by law. Specific timelines, procedures, practices and standards in the Tribal Code, regulations and policies shall be followed in proceedings before the AAHO. In the event of any conflict between the AAHO rules and applicable Tribal Code provisions, regulations or policies, such Tribal Code provision, regulation or policy shall control.

3. Petition; Parties; Counsel

A. An individual filing a grievance, protest, complaint, request for review, request for reconsideration, or request for a hearing or appeal (petition) to the AAHO shall be the Petitioner. The other party shall be the Respondent.

B. Parties shall have the right to represent themselves before the AAHO or be represented by legal counsel at their own expense. Counsel shall file an entry of appearance. Counsel appearing before the AAHO shall meet the admission requirements for appearing before the Southern Ute Indian Tribal Court.

C. Parties and counsel shall be present at the hearing on a petition. Parties represented by legal counsel need not be present at pre-hearing or scheduling conferences. The Southern Ute Indian Tribe (Tribe) may appear through its legal counsel at all hearings.

4. Disqualification

A. No AAHO Hearing Officer shall preside in any proceeding in which he or she has a conflict of interest, or in which the Hearing Officer has any personal bias or prejudice.

B. The AAHO Hearing Officer shall determine, upon motion of a party or upon his or her own motion, whether he or she will recuse himself from the proceeding. A motion to

recuse filed by a party must be supported by an affidavit of someone having direct knowledge of the facts supporting a recusal.

5. Initiation of Proceedings; Service on Respondent; Pre-Hearing Motions

A. A petition shall be filed in accordance with the Tribal Code, regulation or policy provisions authorizing such action. If no time limit is established in the Tribal Code, regulations or policy provisions governing the matter that is the subject of the petition, the Petitioner must file his or her petition within thirty (30) days of the contested decision or action. AAHO Code, Sec. 1-5-104(4)(d). The AAHO will assign a case number as follows: “AAHO-TYPE OF CASE-YEAR-NUMBER”

B. Whenever a party files a petition with the AAHO, the AAHO shall issue a notice of filing to the parties and serve a copy of the petition on the Respondent along with a copy of the notice of filing and a copy of these rules by personal service, commercial courier, mail or electronic means. Unless an entry of appearance has previously been made by counsel for the Tribe with respect to that petition, service on the Director of the Tribe’s Legal Department constitutes sufficient service on the Tribe.

6. Motions, Responses

A. Pre-hearing motions and responses thereto may be filed pursuant to case management deadlines set by the Hearing Officer or the AAHO Rules.

B. An application to the AAHO for an order shall be by written motion and shall set forth the relief or order sought with the grounds stated with particularity. Responses to motions must be filed within ten (10) days after receipt by a party unless the Hearing Officer, for good cause, grants additional time or orders a response within a shorter time in order to expedite the appeal process.

7. Filing of Documents

A. Electronic Filing.

(i) Documents shall be filed electronically with AAHO in PDF format via email at: AAHO@southernute-nsn.gov.

(ii) Electronic filing shall be deemed effective as of the date and time of receipt by the AAHO. Documents received by 11:59 p.m. shall be deemed filed and received as of that date.

B. Unrepresented Parties, Filing by Mail. Documents may be filed by mail at the following address by unrepresented parties without the ability to file electronically:

Southern Ute AAHO
Attn: Hearing Clerk
P.O. Box 737, M.S. # 79
Ignacio, CO 81137

When a party files a document with the AAHO and the responding party has been served by mail, three (3) business days shall be added to any prescribed time for action by the receiving party under the AAHO Code, the AAHO Rules, or any order.

C. Upon receipt of a document from a party, the AAHO will file-stamp the document, indicating the time and date of receipt, docket it, and include it in the record of the case unless the document is confidential in accordance with tribal policy or applicable law, in which case it shall be protected and restricted to access only by AAHO and maintained in a separate file marked "Confidential". If a party with a legitimate right or interest requests access to a confidential record or file, with good cause and legal right shown, access may be approved upon order of the AAHO.

8. Filing of the Record; Supplementation or Correction of the Record

Initial filing deadlines shall be as follows after a petition is filed per Rule 5(A):

A. Unless an applicable provision in the Tribal Code, regulation, or policy provision states otherwise, the Respondent shall have the responsibility of assembling and filing the record of the matter that is the subject of the petition within ten (10) days after receipt of the Notice of Filing of the petition issued by AAHO. The record shall consist of the decision or action that is the subject of the petition, any document(s) cited in the decision or action as being a basis for the decision or action, and any other document deemed relevant by Respondent. Each document in the record shall be marked numerically for identification, i.e., R.1, R.2, R.3, etc. It is not necessary to attach the AAHO Code or AAHO Rules in the administrative record.

B. Respondent shall serve a true copy of the record on the Petitioner with a certificate of filing showing the date of filing with the AAHO.

C. Petitioner has ten (10) days from receipt of Respondent's notice of filing to file a motion to supplement or correct the record, to include additional documents that are relevant to the proceedings. The Respondent shall either produce the specified documents or file a response setting forth the reason or reasons for its decision not to do so within ten (10) days of receipt of the motion to supplement or correct the record.

9. Discovery; Privileges

A. Depositions are permitted by the AAHO Code at Sec. 1-5-104(3)(d), the costs of which are to be borne by the party requesting the deposition. Deposition requests will be granted by the AAHO upon timely motion of a party upon a showing that the information sought is relevant to the termination appeal, are not sought for purposes of harassment, and

are not unduly burdensome. The scope of the deposition shall be limited to the applicable Tribal Code, regulation or policy under which the petition was brought. The AAHO may place reasonable limitations on the number of persons being deposed, the duration of the depositions and the location of the depositions.

B. The AAHO will recognize such evidentiary privileges as may exist under tribal law and the rules and procedures of the Southern Ute Tribal Court.

10. Service

Once an action has been initiated by the filing of a petition, the Petitioner and Respondent shall serve on the other party, or on counsel for the other party, copies of any pleadings, motions, documents, exhibits or the record filed with the AAHO. Service of all documents shall be made electronically, except that unrepresented parties may use first class mail.

11. Computation of Time; Enlargement of Time; Initial Filing Deadlines

A. Computation of time shall be made in conformity with the Tribal Code at Sec. 2-1-106. As used in these Rules, however, except as otherwise provided, all references to “days” means “calendar days.” If the last day of a time period under these Rules or an order falls on a Saturday, a Sunday, or a legal holiday or other day in which Southern Ute Indian Tribal employees are excused from work, the deadline shall be extended until the end of the next business day.

B. The Hearing Officer, on his own motion or upon a timely motion of a party upon good cause being shown, may take the following actions:

1. Enlarge or reduce the prescribed period of time within which any required act may be done.
2. Continue or vacate a hearing or conference.

12. Pre-Hearing, Scheduling or Settlement Conference; Stipulations

A. The Hearing Officer will determine if a pre-hearing, scheduling or settlement conference is appropriate and will notify the parties if such a conference is to be held. A notice to the parties setting such conference shall be scheduled within ten (10) days of the filing of the response to the petition. The notice will specify the date, time and anticipated duration of such conference, which may be held telephonically.

B. If the parties agree to settle the case, stipulate to facts, or to limit the issues to be heard, a copy of such stipulation signed by both parties shall be provided to the Hearing Officer prior to the conference or hearing.

C. The Hearing Officer shall determine whether such agreement complies with applicable provisions of the Tribal Code, regulations or policy provisions and, if so, will issue an order consistent with the agreement of the parties.

13. Scheduling of Hearing; Notice, Motions.

A. The AAHO shall issue a Notice of Hearing to the Parties after a scheduling conference or stipulation of the parties.

B. Unless another date is set per a scheduling order, pre-trial motions shall be filed no later than thirty (30) days prior to a hearing on a petition. The non-moving party shall have ten (10) days to file a response to such motions.

C. The Hearing Officer may decide such motions on the pleadings or schedule a motion hearing.

14. Subpoenas

A. On Reservation. Requests for subpoenas for the attendance of witnesses shall be made no later than fifteen (15) days prior to a hearing. Subpoenas will be issued by the AAHO no later than ten (10) days prior to a hearing. Service shall be by the Southern Ute Police Department unless the requesting party uses a private process server.

B. Off Reservation. A party seeking to compel the appearance of a witness or for production of evidence from outside of the territorial jurisdiction of the Southern Ute Indian Tribe Reservation has the burden of seeking recognition of the AAHO subpoena by the courts of the foreign jurisdiction, if necessary, per the law of such jurisdiction.

15. Ex Parte Communications

A. The Hearing Officer may not communicate directly or indirectly with a party, counsel for a party, or a witness regarding any issue in the proceeding outside of the presence of the opposing party or counsel.

B. Parties must copy the other party or parties on all correspondence sent to the AAHO.

16. Proceedings

All proceedings shall be closed. The only persons who may be present in addition to the parties and the Hearing Officer are witnesses for the parties, subject to the provisions of Rule 17.

17. Exclusion of Witnesses

The Hearing Officer may exclude witnesses from the room where the proceedings are being held upon request of either party. Parties may not be excluded from the hearing room under this rule.

18. Telephonic Hearings and Conferences

Pre-hearing and scheduling conferences may be held telephonically. A party may file a motion requesting an order for a telephonic conference, hearing or appearance no later than ten (10) days before a scheduled hearing. The Hearing Officer may call a telephonic hearing or conference on his own initiative.

19. Standard of Review

The standard of review of an action that is the subject of a petition, unless another standard is set forth in applicable provisions of the Tribal Code, regulations or policy, shall be whether the action complied with applicable law or policy, as shown by a preponderance of the evidence. (AAHO Code, Sec.1-5-104(4) (a)).

20. Burden of Proof

Unless a different burden of proof is established in applicable provisions of the Tribal Code, regulations or policies, the initial burden of proof in all actions before the AAHO shall be on the Petitioner. The burden shall only shift to the Respondent once the Petitioner meets his or her initial burden to prove his or her case by a preponderance of the evidence and the Hearing Officer enters a ruling explaining how the Petitioner has met this burden on the matter at issue in the action.

21. Briefs

Upon receipt of the complete record from Respondent and review of the pleadings, the AAHO may issue a briefing schedule for legal arguments by the parties which will aid in resolution of the matter.

22. Witness Lists and Exhibits

Each party shall file proposed exhibits and a witness list along with the witnesses' addresses, phone numbers and e-mail addresses, if known, with the AAHO, and serve the same on each party no later than ten (10) days prior to the hearing. Absent a showing of good cause, no witness shall be permitted to testify at the hearing who was not disclosed per this Rule; nor shall any exhibit be admitted that was not previously included in the record or disclosed per this Rule.

23. Conduct of Hearing

Unless a different process is established in the applicable provisions of the Tribal Code, regulation or policy, the following shall apply:

- A. The Hearing Officer shall administer oaths to witnesses.
- B. Each party shall have an opportunity to give an opening statement prior to the presentation of his or her case.
- C. Formal rules of evidence are not applicable, but the Hearing Officer may exclude evidence that is privileged, irrelevant or unduly repetitious. (AAHO Code at Sec.1-5-104(4)(b)).
- D. Each party may call, examine and cross-examine witnesses. The Hearing Officer may question witnesses upon conclusion of their testimony. Either party may then question those witnesses regarding only the issues raised by the Hearing Officer's inquiry.
- E. Each party may give closing arguments upon conclusion of the presentation of the evidence.
- F. All hearings shall be recorded and any party may request a copy of the recording or a transcript at his or her own expense.

24. Interpreters

A party who requires an interpreter due to the party or a witness speaking a language other than English, or with a hearing impairment requiring American Sign Language (ASL), shall make such a request no later than twenty (20) days prior to the hearing. The AAHO shall provide a qualified and neutral interpreter at its expense.

25. Orders

Unless a different time is established in the Tribal Code, regulations, or policy provisions, the Hearing Officer shall issue a final written decision not more than ten (10) days following conclusion of the review or hearing.

26. Default

In the event the Petitioner does not make an appearance at the date and time set for the proceeding, the Hearing Officer may dismiss the proceeding.

27. Appeal

The decision of the Hearing Officer shall be final. The right of appeal of a party aggrieved by the Hearing Officer's decision shall be as provided for in the applicable provisions of the Tribal Code, regulation or policy. The Hearing Officer shall inform the parties in AAHO's final order of any right to appeal under the applicable provisions of the Tribal Code, regulation or policy.

28. Adjudicatory Record

The AAHO shall maintain an official record of each proceeding which shall include all pleadings and exhibits filed with the AAHO, any notices or orders issued by the AAHO, and a recording of the hearing through the expiration of time of appeal under tribal law.

29. Fees and Costs, Relief

A. Parties shall bear their own attorney fees and costs unless otherwise expressly provided in applicable provisions of the Tribal Code, regulation or policy.

B. No form of relief shall be awarded that is not expressly authorized by applicable provisions of the Tribal Code, regulation or policy.

Effective this 29th day of April, 2019.

By: The Administrative Appeals and Hearings Office

DAVID GOMEZ
AAHO HEARING OFFICER