

SOUTHERN UTE INDIAN TRIBAL CODE

TITLE 2

CIVIL PROCEDURE CODE

TABLE OF CONTENTS

ARTICLE 1. CIVIL PROCEDURE CODE 1

2-1-101. SCOPE AND PURPOSE 1

2-1-102. COMMENCEMENT OF ACTION 1

2-1-103. PROCESS - TYPE OF SERVICE..... 1

2-1-104. LONG-ARM JURISDICTION 3

2-1-105. PLEADINGS 4

2-1-106. COMPUTATION OF TIME 4

2-1-107. GENERAL RULES OF PLEADING..... 4

2-1-108. ANSWERS AND DEFENSES - WHEN AND HOW PRESENTED - RETURN FOR TRIAL 4

2-1-109. COUNTERCLAIM..... 4

2-1-110. AMENDMENT OF PLEADINGS..... 5

2-1-111. INTERVENTION OR SUBSTITUTION OF PARTIES..... 5

2-1-112. DEPOSITION AND DISCOVERY 5

2-1-113. INJUNCTIONS..... 6

2-1-114. ASSIGNMENT OF CASES FOR TRIAL 7

2-1-115. DISMISSAL OF ACTIONS 7

2-1-116. SUBPOENAS..... 7

2-1-117. EVIDENCE 8

2-1-118. JUDGMENT 8

2-1-119. DEFAULT 8

2-1-120. NEW TRIAL 9

2-1-121. STAY OF PROCEEDINGS TO ENFORCE JUDGMENT..... 9

2-1-122. COSTS 9

2-1-123. EXECUTION..... 9

2-1-124. PLACE OF TRIAL..... 10

2-1-125. FORMS 10

2-1-126. COURT RULES..... 10

2-1-127. TRIALS 11

2-1-128. TITLE 11

ARTICLE 2. PROTECTION ORDER CODE..... 11

2-2-101. DECLARATION AND PURPOSE 11

2-2-102. EMERGENCY PROTECTION ORDERS 11

2-2-103. ISSUANCE OF A TEMPORARY PROTECTION ORDER BY THE TRIBAL COURT 13

2-2-104. ISSUANCE OF A PERMANENT PROTECTION ORDER BY THE TRIBAL COURT..... 14

2-2-105. ORDERS PROTECTING INTIMATE PARTNERS; LIMITATION ON MUTUAL PROTECTION ORDERS; EFFECT 15

2-2-106. MODIFICATION OR DISMISSAL OF A CIVIL PROTECTION ORDER 16

2-2-107. FULL FAITH AND CREDIT GIVEN TO FOREIGN RESTRAINING 17

2-2-108. REGISTRATION OF FOREIGN PROTECTION ORDERS 17

2-2-109. PEACE OFFICERS NOT LIABLE FOR ACTIONS TAKEN TO ENFORCE ORDERS 18

Appendix A - Civil Form #1

Appendix B - Southern Ute Civil Form #5 – Interrogatories

Appendix C - Court Rules One, Two, Three

TITLE 2
SOUTHERN UTE INDIAN TRIBAL CODE
CIVIL PROCEDURE CODE

Article 1. CIVIL PROCEDURE CODE

2-1-101. Scope and Purpose.

- (1) These rules are promulgated under the inherent rule-making power of the sovereign Southern Ute Indian Nation.
- (2) These rules shall govern the procedure in all civil actions. They shall be liberally construed to secure the just, speedy, and inexpensive determination of every civil action.
- (3) All persons may file a claim in the Southern Ute Indian Tribal Court.
- (4) All actions must be within the jurisdiction of the Tribe as follows:
 - (a) The actions complained of took place on Indian lands within the exterior boundaries of the Southern Ute Indian Reservation; or
 - (b) They involve a tribal member within the exterior boundaries of the Southern Ute Indian Reservation.

2-1-102. Commencement of Action.

- (1) A civil action is commenced by filing with the court a short statement of the plaintiff's claim setting forth the facts giving rise in accordance with Civil Form #1 (Appendix A) and paying the appropriate docket fee.
- (2) The court shall have jurisdiction from the time of filing of the claim.

2-1-103. Process - Type of Service. Service of process may be obtained in either of two ways:

- (1) Within 3 days after the action is filed, the clerk of the court shall send a signed and sealed notice in compliance with Civil Form #1 to the defendant by certified mail, return receipt requested, to be signed by addressee only at the address supplied or designated by the plaintiff. The notice shall contain the following: Name and address of both parties, the date of appearance, all fees involved, including that of counterclaim, the copy of plaintiff's claim and a form for the defendant's response.

- (a) If notice is delivered or if the court is advised that notice has been refused, the clerk shall note on the register of actions and in the file the mailing date and address, the date of delivery shown on the receipt, and the name of the person who signed the receipt. If the notice was refused, the clerk shall note the date of refusal.
 - (b) Notice shall be sufficient even if refused by the defendant and returned. Service shall be complete upon the date of delivery or refusal.
 - (c) If the notice is returned or refused for any reason, the clerk should inform the plaintiff immediately.
- (2) In the alternative, the clerk may issue a summons under the seal of the court which shall contain the name of the court, the name and designation of the parties to the action and inform the defendant that he has a certain time within which he is required to answer and to appear in court.
- (a) This type of process may be served by any law enforcement officer of the Southern Ute Indian Tribe, the sheriff of any county where service is made or by his deputy or by any other person over the age of 18 years not a party to the action.
 - (b) **Personal Service - How Obtained.** Personal service shall be as follows:
 - (i) Upon a natural person over the age of 18 years by delivering a copy or copies to him personally of the summons and complaint; or by leaving a copy or copies at his dwelling house, or his usual place of abode with some member of his family over the age of 18 years, or at his usual place of business with one of his employees; or by delivering a copy to an agent authorized by appointment or by law to receive service of process.
 - (ii) Upon a person under the age of 18 years or a person who has been judged mentally incompetent or who is otherwise incapable of handling their affairs by leaving a copy with the parent, guardian, conservator, or other person authorized to act in their behalf.
 - (iii) Upon a partnership or other incorporated association by delivering a copy to one or more of the partners or associates or a manager or general agent.
 - (iv) Upon a private corporation upon delivering a copy to any officer, manager, or agent.
 - (v) Upon a municipal corporation by delivering a copy to the municipal corporation's clerk or chief deputy.

- (vi) Upon the Southern Ute Indian Tribe by delivering a copy to the office of the Tribal Chairman.
 - (vii) Upon a county by delivering a copy to the county clerk or chief deputy.
 - (viii) Upon a school district by delivering a copy to a clerk or one of the directors of such school district.
 - (ix) Upon a state by delivering a copy to the attorney general or to any employee in his office.
- (c) **Manner of Proof.** Return on the summons shall be filled out by the person who has delivered the summons or publication.
 - (d) **Service by Publication.** If a person cannot be found, publication may be made in a newspaper of general jurisdiction in the reasonable vicinity of defendant's last known address. Civil Form #1 shall be published 3 times within a period of 21 days. Proof of the inability to find the person shall be submitted to the court and proof of publication shall be subject to court approval before the time of publication.
 - (e) **Refusal of Copy.** If the person to be served refuses to accept a copy of the process, service shall be sufficient if the person serving same shall state the name of the process and offer to deliver a copy.

2-1-104. Long-Arm Statute.

- (1) **Jurisdiction of the Court.** Engaging in any act enumerated in this section by any person whether or not a member of the Southern Ute Indian Tribe either in person or by agent submits such person, and if a natural person his personal representative, to the jurisdiction of the courts of the Southern Ute Indian Tribe concerning any cause of action arising from:
 - (a) Transaction of any business on the Southern Ute Indian Reservation.
 - (b) Commission of any tortious act within the exterior boundaries of the Southern Ute Indian Reservation.
 - (c) Ownership, use, or possession of any property situate within the exterior boundaries of the Southern Ute Indian Reservation.
- (2) **Service of Process.** Service of process upon any person subject to the jurisdiction of the courts of the Southern Ute Indian Tribe may be made by personally serving the summons upon the defendant outside the exterior boundaries of the Southern Ute Indian Tribe in the manner prescribed within this section with the same force and effect as if the summons had been personally served within the exterior boundaries of the Southern Ute Indian Reservation.

Nothing in this section shall limit or affect the right to serve any process as described within this section.

- 2-1-105. Pleadings.** There shall be a claim and a response which may or may not include a counterclaim.
- 2-1-106. Computation of Time.** In computing any period of time set forth herein, the day that the period is to commence from shall not be counted. The last day of the period shall be counted; provided, however, that any time period under 7 days will not include Saturday, Sundays, or legal holidays and any period which would otherwise end on a Saturday, Sunday, or legal holiday will be deemed to end on the next business day.
- 2-1-107. General Rules of Pleading.**
- (1) **Claim for Relief and Responses.** Claims and responses filed in the Southern Ute Indian Tribal Court shall be in the form attached hereto, mandatory Civil Form # 1. It shall be signed by the party under penalty of perjury.
 - (2) **Availability of Forms; Assistance by Court Personnel.** The clerk of the court shall provide such assistance as may be required by the plaintiff or defendant regarding the forms, operations, procedures and functions of the Southern Ute Indian Tribal Court; however, court personnel shall not engage in the practice of law. The clerk shall also advise parties of the availability of subpoenas to obtain witnesses and documents. All necessary and appropriate forms shall be available in the office of the clerk.
- 2-1-108. Answers and Defenses - When and How Presented - Return for Trial.** The defendant shall file a response within 21 days from the date of service or before the appearance date set forth in the notice of claim. The appearance date shall not be less than 21 days from the date of service of the notice claim. The amount of docket fee shall be requested from the plaintiff upon the mailing of the notice of claim. Unless for good cause shown the court grants a continuance, the trial shall be held on the appearance date.
- 2-1-109. Counterclaim.**
- (1) If at the time of return it shall appear that the defendant has a counterclaim within the jurisdiction of the Southern Ute Indian Tribal Court, the court either may proceed to hear the entire case or may continue the hearing for a reasonable time at which continued hearing the entire case shall be heard.
 - (2) Counterclaims shall not be compulsory in the Southern Ute Indian Tribal Court except that if at the time the action is begun the defendant possesses a claim against the plaintiff, which claim:
 - (a) Is within the jurisdiction of the Southern Ute Indian Tribal Court;

- (b) Arises out of the same transaction or event of the subject matter of the plaintiff's claim;
- (c) Does not require for its adjudication the joinder of third parties; and
- (d) Is not the subject of another pending action,

the defendant shall file such a claim as a counterclaim in the action of the Southern Ute Indian Tribal Court or thereafter be barred from suit thereon.

2-1-110. Amendment of Pleadings.

- (1) **Amendment before Trial.** A party may amend its pleadings once before trial but not more than 5 days before the date of appearance. Amended pleadings shall be mailed to the opposing party so he receives them at least 5 days before trial.
- (2) **At Trial.** When issues or evidence not raised in the pleadings are heard without objection at trial, the judgment may conform to such issues or evidence without the necessity of amending the pleadings.

2-1-111. Intervention or Substitution of Parties.

- (1) **Intervention.** A person may intervene and be treated in all respects as a party to an action in cases in which property in which he has an interest may be affected or a question of law or fact common to a claim of his may be litigated.
- (2) **Substitution of Parties.** If a party dies or becomes incompetent or transfers his interest or leaves office, a substitute party may be joined as justice requires.

2-1-112. Deposition and Discovery.

- (1) **Interrogatories.** A party may submit written questions to any other parties who shall answer them in writing under oath within 25 days of receipt of such.
- (2) **Deposition.** Oral depositions may be taken of a party or a non-party witness only upon the stipulation of the parties or upon order of the court based upon the demonstrated inadequacy of other discovery methods under the circumstances.
- (3) **Production of Documents, Entry, or Inspection.** A party may request another party to produce any documents or things in his custody or possession for inspection or copying or request permission to enter and inspect property reasonably related to the case and the opposing parties shall within 25 days reply as to whether or not such will be allowed and, if not, why not.

- (4) **Scope of Discovery.** Parties may obtain discovery regarding any matter not privileged that is relevant to the pending action whether or not such would be admissible at trial if it appears reasonably calculated to lead to the discovery of admissible evidence.
- (5) **Protective Order.** A party against whom discovery is sought may move the court for a protective order to prevent undue annoyance, harassment, embarrassment, impression, burden, or expense and the court may order that the discovery cease or proceed only upon specified conditions.
- (6) **Order Enforcing Discovery.** The party seeking discovery may request the court to order discovery if the opposing party is unwilling to participate. The court may award costs to the non-defaulting party. If a party fails to perform after being ordered to do so by the court, the court may, upon motion, order that a certain fact, claim, or defense be disestablished or strike part of a claim or defense or dismiss or render a judgment by default against the non-complying party.
- (7) **Use of Discovery.** Answers to interrogatories and depositions may be used in a motion, hearing, or a trial to impeach or contradict testimony of a person whose pre-trial answers were a part of discovery or by an adverse party for any purpose or to supply evidence otherwise unavailable to the court.

2-1-113. Injunctions.

- (1) **Preliminary Injunction.**
 - (a) **Notice.** No preliminary injunction shall be issued without notice to the adverse party.
 - (b) **Consolidation of Hearing with Trial on Merits.** Before or after the commencement of the hearing on an application for a preliminary injunction, the court may order the trial of the action on the merits to be advanced and consolidated with the hearing of the application. Even when this consolidation is not ordered, any evidence received upon an application for a preliminary injunction which would be admissible upon a trial on the merits becomes part of the record on the trial and need not be repeated upon the trial, this subsection (1)(b) shall be so construed and applied as to save the parties any rights they may have to trial by jury.
- (2) **Security.** Before the issuance of a preliminary injunction, the court may require the applicant to give security in such sum as the court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined. No such security shall be required of the Southern Ute Indian Tribe or of any officer or agency thereof

acting in official capacity. If at any time it shall appear to the court that security given under this Code has become impaired or is insufficient, the court may vacate the preliminary injunction unless within such time as the court may fix the security be made sufficient.

- (3) **Form and Scope of Injunction or Restraining Order.** Every order granting an injunction and every restraining order shall set forth the reasons for its issuance; shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be enjoined; and is binding only upon the parties to the action, their officers, agents, servants, employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.
- (4) **Mandatory.** If merely enjoining the doing of an act or acts will not effectuate the relief to which the moving party is entitled, an injunction may be made mandatory. Such relief may include an injunction restoring to any person any property from which he may have been ousted or deprived of possession by fraud, force, or violence, or from which he may have been kept out of possession by threats or words or actions that have a natural tendency to excite fear or apprehension of danger.
- (5) **When Relief Granted.** Relief may also be granted on the motion of any party at any time after an action is commenced and before or in connection with final judgment.
- (6) This section shall not apply to suits for dissolution of marriage, separation, maintenance, child support, or custody of minors. Section 7-1-112, Title 7, of the Domestic Relations Code of this Code shall take precedence. This section shall apply only to ongoing civil matters.

2-1-114. Assignment of Cases for Trial. The Southern Ute Indian Tribal Court shall provide for the expeditious trial of all cases before it. If necessary, civil trials may be heard at night or on weekends.

2-1-115. Dismissal of Actions. A party who files the original complaint or the party who files the cross-claim may at any time before the beginning of trial ask for voluntary dismissal of the action. The court may order that the party moving to dismiss his own claim pay the costs of the adverse party if the proceeding has progressed beyond the pleading state and may order payment of costs in other circumstances where it is deemed appropriate.

2-1-116. Subpoenas.

- (1) **For Attendance of Witnesses, Form, Issuance.** Every subpoena shall state the name of the Southern Ute Indian Tribal Court and the title of the action and shall command each person to whom it is directed to attend and give testimony at the time and place specified. Subpoenas shall be issued by the court and signed by the clerk.
- (2) **For Production of Documentary Evidence.** A subpoena may also command a person to whom it is directed to produce the books, papers, documents, or tangible things designated; but the court, upon oral motion made promptly and in any event at or before the time specified in the subpoena for compliance, may:
 - (a) Quash or modify the subpoena if it is unreasonable and oppressive; or
 - (b) Condition denial of the motion upon the advancement by the person in whose behalf the subpoena is issued of the reasonable costs of producing the books, papers, documents, or tangible things.
- (3) **Service.** Service of a subpoena upon a person named shall be made by delivering a copy to such person and by tendering to him the fees for one day's attendance, \$2, and the mileage allowed by law, \$.12 per mile. When the subpoena is issued on behalf of the Southern Ute Indian Tribe or an officer or agency thereof, fees and mileage need not be tendered. Proof of service shall be made as in Section 2-1-103(c). Unless otherwise ordered by the court for good cause shown, such subpoena shall be served no later than 48 hours before the appearance time set out in the subpoena.

2-1-117. Evidence. The hearing of all cases shall be informal, the object being to dispense justice promptly and economically between the litigants. The parties may testify and offer evidence and testimony of witnesses at the hearing, however, all constitutional and statutory privileges shall be observed.

2-1-118. Judgment. At the end of the trial, the court shall immediately state its findings and decisions and direct the entry of judgment. Judgment shall be entered immediately in the judgment docket book. No written findings shall be required.

2-1-119. Default.

- (1) **Entry at Time of Appearance and Trial.** Upon the date and at the time set for appearance and trial if the defendant has filed no response or fails to appear and if the plaintiff proves by appropriate return that proper service was made upon the defendant as provided herein at least 21 days before the appearance date, the court may enter a judgment for the plaintiff for the amount due including interest, costs, and other items provided by statute or by agreement. However, before any judgment is entered under the rule, the court shall be satisfied that the

venue of the action is proper and may require the plaintiff to present sufficient evidence to support his claim or claims.

- (2) **At the Time of Continued Trial.** Failure to appear on any other date set for trial shall be grounds for entering a default and judgment against a non-appearing party.
- (3) **Setting Aside Entry of Default.** For good cause shown, within a reasonable period and in any event not more than 30 days after entry of judgment, the court may set aside an entry of default and a judgment entered.

2-1-120. New Trial. A motion for new trial may be filed within 10 days after entry of judgment. A motion for new trial should set forth the judgment, the alleged errors in trial, any new evidence that was not available at trial, and any other matters deemed pertinent. Granting of a motion for new trial is within the discretion of the Southern Ute Indian Tribal Court.

2-1-121. Stay of Proceedings to Enforce Judgment.

- (1) **No Automatic Stay.** If upon entry of judgment, payment is not made forthwith, an execution may issue immediately and proceedings may be taken for its enforcement unless the party against whom the judgment was entered requests a stay of execution and the court grants such request. Proceedings to enforce execution and other process after judgment and the fees therefor shall be as provided by these rules.
- (2) **Stay on Motion for Relief from Judgment.** In its discretion, the court may stay the execution of any proceedings to enforce a judgment pending the disposition of a motion for relief from judgment or order made under Section 2-1-119.
- (3) **Judgment Debtor to File, List of Assets and Property.** Immediately following entry of judgment, the party against whom the judgment was entered, if present in court, shall complete and file the information of judgment debtor's assets and property, the Southern Ute Civil Form 5 unless the judgment debtor tenders immediate payment of the judgment or the court orders otherwise.

2-1-122. Costs. The prevailing party in an action of the Southern Ute Indian Tribal Court is entitled to costs of the action and also costs of execution upon a judgment entered.

2-1-123. Execution.

- (1) **Time for Execution.** Except upon good cause shown giving adequate justification, no execution shall enter until the judgment debtor has been given

an opportunity to fill out the Southern Ute Civil Form 5 and to pay the judgment or to respond to the form.

- (2) **Execution.** A writ of execution shall be issued by the Court and shall direct the Tribal police to seize as much of the personal property of the judgment debtor as reasonably appears necessary to satisfy the judgment amount. Sale of the seized property shall be at a public auction conducted by the Tribal police after giving not less than 10 days' public notice posted conspicuously in 3 public places on the reservation. Property shall be sold to the highest bidder who shall make payment for the property at the time of sale. The person conducting the auction may postpone the same in his discretion if there is inadequate response to the auction or the bidding, and may reschedule such upon giving the required notice. The person conducting the sale shall give a certificate of sale to the purchaser and shall make a return to the court reciting the details of the sale.
- (3) **Exemption from Execution.** The court shall only order seizure and sale of such property of the judgment debtor to satisfy a money judgment, the loss of which will not impose an immediate substantial hardship on the family of the judgment debtor. Only property of the judgment debtor himself may be subject to execution and not property of his family. However, property which has been transferred immediately prior or after the judgment was entered shall be considered to be still property of the judgment debtor unless adequate consideration was received for the same.
- (4) **Redemption from Sale.** At any time within 30 days after sale under this Rule, the judgment debtor may redeem his property from the purchaser by paying the amount such purchaser paid for the property plus 8% interest, plus any excesses actually incurred by the purchaser, such as taxes and insurance, to maintain the property.

2-1-124. Place of Trial. The trial shall be held in the Southern Ute Indian Tribal Justice building unless otherwise ordered.

2-1-125. Forms. All forms referred to in this Code are mandatory and are attached and made a part hereof.

2-1-126. Court Rules.

- (1) The Chief Judge of the Tribal Court, with approval of the Tribal Council, may adopt court rules not inconsistent with these rules and in supplement thereto.
- (2) If no procedure is specifically prescribed by rule, the Court may proceed in any lawful manner not inconsistent with the principles of justice and fairness underlying these rules.

- 2-1-127. Trials.** There shall be no jury trials in civil cases. All trials in civil cases shall be to the Court, sitting without a jury.
- 2-1-128. Title.** This Code shall be known and may be cited as the Southern Ute Rules of Civil Procedure.

Article 2. PROTECTION ORDER CODE

- 2-2-101. Declaration and Purpose.** The Southern Ute Indian Tribal Council finds that the issuance and enforcement of civil protection orders by the Tribal Court are critical to the safety, health, and welfare of the members of the Southern Ute Indian Tribe and the local community because such orders promote safety, reduce violence, and prevent serious harm and death. This Code, therefore, enhances and clarifies the Tribal Court's ability to issue civil protection orders against those under its jurisdiction and provides a mechanism for the recognition, enforcement, and optional registration of similar orders from foreign jurisdictions.
- 2-2-102. Emergency Protection Orders.**
- (1) A Tribal Court judge shall be available to issue, by telephone, emergency protection orders at all times when the Court is otherwise closed for judicial business.
 - (2) When Tribal Court is unavailable from the close of business at the end of the day or week to the resumption of business at the beginning of the day or week and a peace officer asserts reasonable grounds to believe that an adult is in immediate and present danger, based upon an allegation of a recent incident of actual violence or threat of violence, or that a minor child is in immediate and present danger, a judge made available in subsection (1) may issue a written or verbal ex parte emergency protection order. Such an order may be issued only if the judge finds that an imminent danger in close proximity exists to the life or health of one or more persons or that a danger exists to the life or health of the minor child in the reasonably foreseeable future.
 - (3) Any verbal emergency protection order shall be reduced to writing and signed by the officer or other person asserting the grounds for the order and shall include a statement of the grounds for the order asserted by the officer or person. The officer or person shall not be subject to civil liability for any statement made or act performed in good faith. The emergency protection order shall be served upon the restrained party with a copy given to the protected party and filed with the Tribal Court as soon as practicable after issuance. Any written emergency protection order issued under this subsection shall be on a standardized form prescribed by the Tribal Court, and a copy shall be provided to the protected person.

- (4) Any emergency protection order issued under this section may include provisions:
- (a) Restraining a party from harassing, stalking, threatening, molesting, injuring, or contacting, including through a third party, any other party, a minor child of either of the parties, or a minor child who is in danger in the reasonably foreseeable future;
 - (b) Excluding a party from the family home or from the home of another party upon a showing that harm would otherwise result;
 - (c) Prohibiting a party from possessing or controlling firearms or other weapons;
 - (d) Awarding temporary care and control of any minor child of a party involved as well as parenting time and decision-making responsibilities associated with such children; or
 - (e) Enjoining an individual from contacting another party or his/her child at school, at work, or wherever he or she may be found.
- (5) An emergency protection order issued under this subsection (1) shall expire not later than the close of judicial business on the next day of judicial business following the day of issue, unless otherwise continued by the Tribal Court. The Tribal Court may continue an emergency protection order filed to prevent violence or the threat of violence under this subsection only if a Verified Complaint for Protection Order has been filed, under Section 2-2-103. For any emergency protection order continued under the provisions of this paragraph, following two days' notice to the party who obtained the emergency protection order or on such shorter notice to the party as the Court may prescribe, the restrained party may appear and move its dissolution or modification. The motion to dissolve or modify the emergency protection order shall be set for hearing at the earliest possible time and shall take precedence over all matters except older matters of the same character, and the court shall determine such motions as expeditiously as the ends of justice require.
- (6) A copy of any order issued under this section shall be electronically transferred into the central registry of protection orders and the Tribal Court shall ensure that a copy of such order is delivered to the protected party or his or her parent or an individual acting in the place of a parent who is not the restrained party.
- (7) Violation of an emergency protection order shall constitute a criminal offense under Section 5-1-107(3)(i), SUITC, or shall constitute contempt of court and subject the restrained party to such punishment as shall be prescribed by law.

- (8) If any person named in an order issued under this section has not been served personally with such order but has received actual notice of the existence and substance of such order from any person, any act in violation of such order may be deemed sufficient to subject the person named in such order to any penalty for such violation.

2-2-103. Issuance of a Temporary Protection Order by the Tribal Court.

- (1) Upon the filing of a Verified Complaint for Protection Order and payment of the appropriate filing fee or request for waiver, the Tribal Court shall set the matter for hearing, which may be ex parte, at the earliest possible time and shall hear such matters as expeditiously as possible.
- (2) Following a hearing on the issue, the Tribal Court judge may issue a temporary civil protection order if the judge finds, upon a preponderance of the evidence, that an imminent danger exists to the person or persons seeking protection under the civil protection order.
- (3) In determining whether an imminent danger exists to the life or health of one or more persons, the Tribal Court judge shall consider when the most recent incident of violence or threat of harm occurred as well as all other relevant evidence concerning the safety and protection of the person or persons seeking the protection order. However, the judge shall not deny a person seeking a protection order from the relief requested solely because of a lapse of time between an act of violence or threat of harm and the filing of the Verified Complaint for Protection Order.
- (4) If the Tribal Court judge is fully satisfied that sufficient cause exists on the basis of the Verified Complaint for Protection Order or the evidence presented at the hearing, a temporary civil protection order may be issued to prevent the actions of the restrained party complained of in the Verified Complaint and shall include a summons to the restrained party commanding the restrained party to appear before the Tribal Court at a specific time and date to show cause, if any, why the temporary civil protection order should not be made permanent. In addition, the judge may order any other relief that the judge deems appropriate, including any of the following:
 - (a) Restraining a party from harassing, stalking, threatening, molesting, injuring, or contacting, including through a third party, any other party, a minor child of either of the parties, or a minor child who is in danger in the reasonably foreseeable future;
 - (b) Excluding a party from the family home or from the home of another party upon a showing that harm would otherwise result;

- (c) Awarding temporary care and control of any minor child of a party involved as well as parenting time and decision-making responsibilities associated with such children;
 - (d) Enjoining an individual from contacting another party or his/her child at school, at work, or wherever he or she may be found;
 - (e) Prohibiting the possession or control of firearms or other weapons; or
 - (f) Prohibiting possession or consumption of alcohol or controlled substances.
- (5) The length of the temporary civil protection order shall be until the return date of the summons, which shall be set no more than 14 days following the issuance of the temporary order. The duration of the order and return date shall not be extended beyond the initial 14 day period unless, within the initial 14 day period, good cause is shown for extending the order and return date, such as if the restrained party is not properly served under this section, or the party against whom the order is directed consents to an extension. The reason(s) for any such extension shall be entered of record.
- (6) A copy of the Verified Complaint for Protection Order together with a copy of the temporary civil protection order and a copy of the summons shall be served upon the restrained party and upon the person to be protected, if the Verified Complaint was filed by another person, in accordance with the rules for service of process under Section 2-1-103 of this Title. The summons shall inform the restrained party that, if the restrained party fails to appear in the Tribal Court in accordance with the terms of the summons, the temporary civil protection order previously issued by the Tribal Court may be made permanent without further notice or service upon the restrained party.

2-2-104. Issuance of a Permanent Protection order by the Tribal Court.

- (1) On the return date of the summons, or on the day to which the hearing has been continued, the Tribal Court judge shall examine the record and evidence and hold a hearing at which those parties present may provide additional evidence. If, upon receipt of such evidence and reviewing the record, the judge determines that:
- (a) the restrained party has received reasonable notice of the proceedings and had an opportunity to be heard; and
 - (b) the preponderance of the evidence supports the allegations of the Verified Complaint for Protection order that a threat exists to the life or health of one or more persons,

the judge shall order that the temporary civil protection order be made permanent or order a permanent civil protection order with different provisions from the temporary civil protection order.

- (2) If the restrained party fails to appear before the Tribal Court for the hearing at the time and on the date identified in the summons issued by the Tribal Court and the Tribal Court judge finds that the restrained party was properly served with the temporary civil protection order and such summons, it shall not be necessary to re-serve the restrained party to issue a permanent civil protection order. However, if the Tribal Court issues a permanent civil protection order that differs from the temporary civil protection order, the modified permanent order shall be served upon the restrained party.
- (3) If the protected party fails to appear before the Tribal Court for the hearing at the time and on the date identified in the summons issued by the Tribal Court, the matter shall be dismissed.
- (4) The Tribal Court judge shall inform the restrained party that a violation of the civil protection order shall constitute a criminal offense under Section 5-1-107(3)(i), SUIITC, or shall constitute contempt of court and subject the restrained party to such punishment as shall be prescribed by law.
- (5) A copy of any order issued under this section shall be electronically transferred into a central registry of protection orders and the Tribal Court shall ensure that deliver a copy of such order is delivered to the protected party.
- (6) If the order has not been personally served upon the restrained party, the Tribal Court shall have the order so served.
- (7) The Tribal Court may further require the restrained party to pay the filing and service of process fees, as well as any other applicable court costs, incurred by the protected party in bringing the action.

2-2-105. Orders Protecting Intimate Partners; Limitation on Mutual Protection Orders; Effect.

- (1) If, in the course of reviewing the evidence presented in support of a temporary or permanent civil protection order under this Article, the Tribal Court judge determines that the order requested would restrain one Intimate Partner from contact with another such partner, the judge shall include such a finding in the temporary or permanent order.
- (2) For purposes of this Section, Intimate Partners shall be individuals to whom any of the following apply:

- (a) currently or formerly married to each other;
 - (b) involved or having been involved in an intimate relationship, including, but not limited to, persons who are cohabitating or have cohabitated; or
 - (c) sharing one or more common children.
- (3) Upon a finding that an order to be issued will restrain Intimate Partners, the Tribal Court judge shall determine:
- (a) whether or not the party to be restrained represents a credible threat to the physical safety of the other Intimate Partner or his/her child; or,
 - (b) whether the order to be issued should explicitly prohibit the use, attempted use, or threatened use of physical force against such Intimate Partner or child that would reasonably be expected to cause bodily injury.

A finding made under either subsection (a) or subsection (b) of this subsection 3, or both, shall be specifically included in the order to be issued by the Tribal Court judge.

- (4) No protection order shall be issued against an individual who has filed a written pleading for protection against abuse by an Intimate Partner, unless:
- (a) a written pleading was filed seeking such a protection order; or
 - (b) a cross or counter petition or complaint has been filed and the Tribal Court made specific findings that each party was entitled to such an order.
- (5) A restrained party, against whom a temporary or permanent protection order has been issued, based on findings made under this Title, may be subject to the restrictions set forth in 18 U.S.C. §922.

2-2-106. Modification or Dismissal of a Civil Protection Order.

- (1) Either party protected or restrained by a permanent civil protection order may move the Tribal Court for a modification of such order or dismissal.
- (2) The Tribal Court shall affect service upon the non-moving party with a copy of the motion and notice of the hearing on the motion, if appropriate, or as otherwise required under the Southern Ute Indian Tribal Code.
- (3) The Tribal Court may set a hearing on motions filed under this Section and, for all such hearings, the burden of proof to show, by a preponderance of the evidence, that a modification or dismissal is appropriate, shall be upon the moving party.

2-2-107. Full Faith and Credit given to Foreign Restraining and Protection Orders.

- (1) Consistent with applicable federal law (18 U.S.C. §2265), any civil restraining or protection order issued that is consistent with subsection (2) of this Section by the court of a state, a different Indian tribe, or a territory shall be accorded full faith and credit by the Tribal Court and enforced by the Tribal Court and law enforcement of the Southern Ute Indian Tribe as if it were issued by the Tribal Court.
- (2) To be accorded full faith and credit and enforced by the Tribal Court and law enforcement under this Section, a civil restraining or protection order must have been issued:
 - (a) by a court with jurisdiction over the parties and matter according to the laws of that jurisdiction; and
 - (b) only after reasonable notice and opportunity to be heard has been given to the person against whom the order is sought sufficient to protect that person's right to due process. In the case of ex parte orders, notice and opportunity to be heard must be provided within the time required by state, tribal, or territorial law, and in any event within a reasonable time after the order is issued, sufficient to protect the restrained party's due process rights.
- (3) No notification of the party restrained by an order accorded full faith and credit under this Section shall be required for enforcement of such order nor shall registration of such order under this Article be a prerequisite for enforcement.
- (4) For purposes of this section, the Tribal Court shall exercise the full extent of its jurisdiction to enforce restraining or protection orders, including authority to enforce any orders through civil contempt proceedings, exclusion of violators from the Southern Ute Indian Reservation, and other appropriate mechanisms, in matters arising within the authority of the Tribe.

2-2-108. Registration of Foreign Protection Orders.

- (1) Parties protected by a civil restraining or protection order from the court of a state, another Indian tribe, or a territory, may file the foreign order with the Tribal Court and request that the Tribal Court enter a separate, comparable order entitling the requesting party to protection under this Article and the laws of the Tribe.
- (2) Before issuing an order under the previous subsection, the Tribal Court judge shall ensure that the standards for according full faith and credit to and

enforcement of foreign restraining or protection orders, contained in the previous Section, are met.

- (3) Registration of an order under this Section shall not be a prerequisite for its enforcement under this Article and no notification of the party restrained by an order accorded full faith and credit under this Section shall be required for enforcement of such order.

2-2-109. Peace Officers not Liable for Actions Taken to Enforce Orders. A peace officer enforcing an order that the peace officer has reasonable cause to believe is entitled to enforcement under this Article shall not be held criminally or civilly liable for such enforcement unless the peace officer acts in bad faith and with malice or otherwise does not act in compliance with applicable law.

TITLE 2
CIVIL PROCEDURE CODE

History and Amendments¹

Title 2 adopted by Tribal Resolution No. 80-120, approved by the Bureau of Indian Affairs and effective on February 25, 1981.

Sections 13 through 27 renumbered to be §§14 through 28 respectively, and new §13 added by Tribal Resolution No. 86-14, approved by the Bureau of Indian Affairs and effective on August 18, 1986.

Title 2 section and page numbering scheme revised and amended by Tribal Resolution No. 89-34, effective on March 21, 1989.

Court Rules One, Two, and Three adopted by Tribal Resolution No. 96-44, effective on March 19, 1996.

Section 2-1-127 amended by Tribal Resolution No. 2007-66, approved by the Bureau of Indian Affairs and effective on May 24, 2007.

Title 2, Article 2, Protection Order Code and Section 2-1-113 amended by Tribal Resolution No. 2010-84.

Title 2 – Civil Procedure Code repealed and replaced (Resolution No. 2021-151) with a reformatted version for online publication, code amended to refer to "Civil Form #1" throughout document, and Appendix A - Civil Form #1 amended. Amendments to the reformatted version were approved by the Bureau of Indian Affairs on July 28, 2023 and adopted by the Tribal Council (Resolution No. 2023-125) with an effective date of August 8, 2023.

¹ This page does not constitute an official part of any code. Information contained on this page is solely for informational and historical purposes and is from sources deemed reliable.