

Pyramid Lake Paiute Tribal Council

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RESOLUTION NO.: PL 049-19

RESOLUTION OF THE TRIBAL COUNCIL OF THE PYRAMID LAKE PAIUTE TRIBE NIXON, NEVADA

WHEREAS, the Pyramid Lake Paiute Tribe is organized pursuant to the provisions of Section 16 of the Indian Reorganization Act (25 U.S.C. § 476) and is federally recognized by the United States Government through the Secretary of the Interior and the Bureau of Indian Affairs; and possesses attributes of sovereignty over both the members and territory.

WHEREAS, the Pyramid Lake Paiute Tribe, pursuant to Article VI, Section 1 of the Constitution and By-laws of the Pyramid Lake Paiute Tribe, authorized the Pyramid Lake Tribal Council to act on behalf of the Pyramid Lake Tribe, and to promulgate ordinances to safeguard the peace and safety of residents of the Reservation and to establish courts for the adjudication of claims and disputes; and

WHEREAS: pursuant to these powers, the Tribal Council has created a Law & Order Code and other laws and ordinances to govern the conduct of people within the Tribe's Reservation; and

WHEREAS: the Tribal Council has recognized the importance of reviewing and updating the Law and Order Code to ensure the Code meets the Tribe's needs and best serves to protect the interests of the Tribe, its members and persons living and working on Tribal lands; and

WHEREAS: to meet this goal, the Tribe's Law and Order Committee has recommended that the Tribal Council add revised Chapters 1- TITLE, AUTHORITY AND POLICY, 2 – TRIBAL COURT SYSTEM and 3 – CRIMINAL PROCEDURE, of the Law and Order Code 2013 to current code.

WHEREAS: the revised Chapters 1, 2, and 3 were posted for at least thirty days to allow for public comment, No comments received by the Law and Order Committee and the Committee submitted its recommendation to the Tribal Council;

NOW, THEREFORE BE IT RESOLVED, that the Pyramid Lake Paiute Tribal Council hereby accepts the recommendation of the Law and Order Committee and hereby adopts the revised Chapter 1, 2, and 3 of the Law and Order Code.

BE IT FURTHER RESOLVED, the Tribal Chairman or designee is hereby authorized to effectuate any and all administrative actions necessary for implementation of this resolution.

BE IT FINALLY RESOLVED, nothing in this resolution shall be construed as a waiver of the sovereign immunity of the Pyramid Lake Paiute Tribe.

CERTIFICATION

It is hereby certified that the foregoing resolution of the Pyramid Lake Paiute Tribal Council, governing body of the Pyramid Lake Paiute Tribe, composed of ten members, of whom ten (10) constituting a quorum were present at a meeting duly held on the 16th day of May, 2019 was adopted by the affirmative vote of eight (8) FOR and zero (0) AGAINST, with one (1) ABSTENTION; pursuant to the authority contained in the Constitution and By-laws of the Pyramid Lake Paiute Tribe.



Brenda A. Henry, Tribal Secretary
Pyramid Lake Paiute Tribal Council

CHAPTER 3

CIVIL PROCEDURE

3.3.100 GENERAL PROVISIONS

3.3.102 Scope

Except as otherwise provided by law, these rules shall govern the procedure in the Tribal and Appellate Courts of the Pyramid Lake Paiute Tribe in all actions, suits and proceedings of a civil nature, and in any other special proceedings established by this Chapter.

3.3.104 Jurisdiction

The Court shall have jurisdiction over all civil actions as set forth in this Chapter.

3.3.106 Construction

These rules shall be liberally construed to secure a just, speedy, and inexpensive determination of every action.

3.3.108 Definitions

A. "Affidavit" means a written statement of facts sworn to by the person signing it (the "affiant") and verified by a Notary Public or the Clerk of the Court.

B. "Answer" means a written document that a Defendant may file in the Court when a Plaintiff has filed a complaint against him; the answer contains the Defendant's version of the dispute.

C. "Attachment" means a legal procedure before the Court whereby the Tribal Police are authorized and required to seize certain personal property belonging to a debtor in order to ensure that a creditor will be able to collect on a judgment when it is finally entered by the Court.

D. "Civil Action" pertains to a lawsuit filed in the Court whereby one person seeks to resolve a non-criminal dispute against another by obtaining a judgment from the Tribal Court. An example would be a lawsuit to recover on a debt that is due.

E. "Complaint" means the first written document that starts the lawsuit and contains the complaining party's version of the facts of the civil dispute; the complaint usually lists what amount of money or thing of value the complaining party wants from the other party.

F. "Counterclaim" means a party against whom a claim has been made may assert in his answer any claims he has against the party claiming against him.

G. "Creditor" means a person who is owed a debt, money or anything of value by another person.

H. "Cross complaint" is a counterclaim whereby the Defendant in a lawsuit brings a legal claim against another party to recover money or things of value.

I. "Disposable earnings" means that portion of a debtor's earnings remaining after the deduction of all amounts required by law to be withheld.

J. "Execution" means a legal procedure that takes place after the Tribal Court has entered a judgment, whereby the Tribal Police or other law enforcement officers of county or state agencies are authorized and required to enforce the court's judgment by seizing certain personal property of the judgment debtor, such as personal furniture.

K. "Exemption" means those items of personal property which are not subject to execution of a judgment.

L. "Final judgment" refers to a Tribal Court Judgment, including any supporting opinion of the court that determines the rights of the parties involved in a civil dispute.

M. "Comity" refers to acceptance and recognition by the Court of final judgments entered by the courts of the fifty (50) states, the Federal courts and of other Federally-recognized Indian tribes.

N. "Defendant" is a person or party against whom a claim is made for money, performance or services through the filing of a lawsuit.

O. "Garnishment" means a legal process through which the earnings or other monies of a debtor are required to be withheld by a third party for payment of a debt which has been reduced to a Court judgment.

P. "Hearing" means an opportunity for the parties in dispute to present all relevant oral testimony and documentary evidence in their favor in order to allow the Tribal Judge to evaluate the merits of the dispute and render a decision. All hearings require that the party being served be given at least ten (10) days' notice before the hearing unless ordered otherwise by the Judge, or unless otherwise stated in this Code or other applicable Tribal law.

Q. "Household goods" refers to clothing, furniture, appliances, linens, kitchenware, and personal effects of any consumer and his or her dependents.

R. "Indian" for all purposes in this Code, unless otherwise stated, is defined as any person who is a member of the Pyramid Lake Paiute Tribe, a member of any other Federally-recognized tribe (non-member Indian), or any person who is eligible to be a member of a Federally-recognized tribe.

S. "Injunction" is a temporary or permanent court order to prevent someone from doing an action that may cause harm if carried out.

T. "Judgment creditor" is a party who has obtained a court judgment against a debtor.

U. "Judgment debtor" is a party against whom a court judgment has been obtained by a creditor.

V. "Jurisdiction" means the power of a court, as the Tribal Court, to hear and decide a dispute; to inquire into facts, apply the law, and make decisions and declare judgments.

W. "Motor vehicle" means any vehicle with two or more wheels that operates with a combustion engine.

X. "Personal Property" means everything that is the subject of ownership that does not come under the denomination of real property; any right or interest that an individual has in movable things, including but not limited to: motor vehicles, furniture, appliances, televisions, stocks, bonds and other intangible property.

Y. "Personal service" means the delivery of legal papers as described in §3.3.204 herein.

Z. "Protective Order" is an order issued by the Court to protect a person who is threatened by immediate harm from another person, including someone who is related to the person or who is a spouse or in a domestic relationship.

AA. "Repossession" means the physical recovery by a creditor of personal property that has been sold to a debtor or purchase on an installment credit basis.

BB. "Statute of Limitations" means the time in which an action must be filed or be forever barred.

CC. "Summons" means a written document that specifically notifies a person that he must appear in Court to respond to a complaint filed by another person.

DD. "Temporary Restraining Order" means an order of the Court directing a person, agency or other entity to take certain actions or refrain from certain actions during a specified and limited period of time.

EE. "Trust Property" means any property which is held by the United States in trust for the benefit of any Indian or tribe, and which is subject to restrictions on alienation or encumbrance without the consent of the United States; or acquired by an Indian through a loan from the Pyramid Lake Paiute Tribe when the funds for such loan are provided by the United States.

FF. "Writ" means a written judicial order to perform a specific act, or giving authority to have it done.

3.3.110 Law Applicable to Civil Actions

A. In all civil cases, the Court shall apply any laws and regulations of the United States that may be applicable, and any ordinances or customs of the Tribe not prohibited by Federal law.

B. Where any doubt arises as to the customs and usages of the Tribe, the Court or the parties may request the advice of a Tribal elder familiar with these customs and usages. Testimony of said Tribal elder shall be presented in Court with opposing party having the right of cross-examination.

C. Any matters that are not covered by a Tribal ordinance or the traditional customs and usages of the Tribe, or by applicable Federal laws and regulations, shall be decided by the Court according to the decisions of the Court and Federal case law. The Court may also refer to and rely upon the decisions of other tribal courts or state courts where appropriate.

3.3.112 Legal Process from Other Jurisdictions

All civil action writs and legal processes issued by state, county, and municipal courts for persons or property within the boundaries of the Pyramid Lake Indian Reservation shall be presented to the Court for a determination of validity. All such legal writs and processes determined to be valid shall be ordered served by a Tribal law enforcement officer. Such service shall not amount to personal service for purposes of a state, county, or municipal court jurisdiction, as the Reservation is outside of such court's jurisdiction, but is merely the way substituted service shall be effected within the Reservation.

3.3.200 COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS

3.3.202 Commencement of the Action

A civil action shall be commenced by the filing of a complaint with the Clerk of the Court and the payment of the filing fee. The fee may be waived by the Court on a show of good cause.

3.3.204 Statute of Limitations for Civil Actions

Every action not covered by the criminal provisions of this Code, unless specifically addressed elsewhere in this Code or other applicable Tribal law, shall be barred unless the complaint is filed within two (2) years after the cause of action first occurs.

3.3.206 The Complaint

There shall be one (1) form of civil action in which the party complaining shall be designated "Plaintiff" and the adverse party, "Defendant." The Complaint shall contain:

- A. A short, plain statement of the grounds of the Court's jurisdiction;
- B. A short, plain statement of the claim showing that the Plaintiff is entitled to relief;
- C. A demand for judgment for the relief to which the Plaintiff considers himself entitled. Such claim for relief may be in the alternative or for several types of relief; and
- D. An affidavit under penalty of perjury, witnessed by a member of the Court staff or a licensed Notary Public, attesting that the facts set out in the complaint are true and correct, based upon information and belief.

3.3.208 Notification

A. NOTICE AND SERVICE. Personal service of process shall consist of delivering to the party served a copy of the complaint, along with a summons issued by the Clerk of the Court, which advises the party that he is required to answer the complaint within twenty (20) days or a default judgment maybe entered against him.

1. The return of service shall be endorsed with the name of the person making service and the date, time and place of service and shall be filed with the Clerk of the Court.
2. Service shall be made on a party by a Tribal law enforcement officer or such other officer of the Court who may be assigned the duties of service of process, or by such other person following the method authorized by a court order.
3. If a person personally refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.

B. SERVICE BY MAIL OR DELIVERY. Service of all papers required to be filed, except the summons and complaint, may be made by depositing them in the United States Mail, first class, certified mail with return receipt postage prepaid thereon and properly addressed, at the person's last known address, or by hand delivery to the person. If a party is represented by an attorney or advocate, service under this Subsection must be made on the attorney/advocate unless the Court orders service on the party. The person making the service shall file with the Court a proof of service by certificate of the attorney/advocate or his/her employee, or by written admission, or by affidavit of a party, or other proof satisfactory to the Court.

3.3.210 Response to the Complaint

An answer filed in the Court shall contain the following information:

- A. Name, address and telephone number of the Defendant named in the Complaint and his counsel, if any;
- B. Names of the parties and the case number which has been assigned by the Clerk of the Court;
- C. A general or specific denial or admission of the allegations in the complaint; and
- D. A short, plain statement of any affirmative defenses which the Defendant is asserting against the claim or complaint of Plaintiff if he is filing an answer.

3.3.212 Amendment of Pleadings

A. AMENDMENT BEFORE TRIAL. A party may amend his pleadings once, before the opposing party has responded or if no response is required, not less than twenty (20) days before the case is scheduled for trial. The opposing party may respond, if appropriate. Other amendments shall be allowed only upon motion and order of the Court.

B. AT TRIAL. When issues or evidence not raised in the pleadings are heard at trial, the judgment may conform the pleadings to such issues or evidence without the necessity of amending the pleadings, but only if each party has been provided an opportunity to object and to properly address any prejudice that may result.

3.3.214 Setting of Trial

The Clerk of the Court shall schedule a hearing on the action as soon as possible after the Answer is filed. The Clerk shall furnish the parties with a copy of the notice

showing the time and place of the hearing and shall affix such notice to the copy of the Answer to be served in a manner deemed appropriate by the Court. If the case is ready for trial, the Judge may try it immediately or set a subsequent date for trial. If the case is not ready for trial, the Judge shall set a subsequent date for trial and order such preparation by the parties as he deems necessary.

3.3.216 Time

A. COMPUTATION OF TIME. In computing any period of time, the day from which the period is to commence shall not be counted and the last day of the period shall be counted; provided, however, that for any time period under eleven (11) days, Saturdays, Sundays or legal holidays in the period will not be counted, and for any period which would otherwise end on a Saturday, Sunday, or legal holiday will be deemed to end on the next day which is not a Saturday, Sunday or legal holiday.

B. EXTENSION OR CONTRACTION OF TIME. The Court may, for good cause shown, extend or contract the time within which any required act may be done.

C. NOTICE OF MOTIONS. Written motions and any notice of a hearing thereon, other than ones which may be heard *ex parté*, shall be served at least ten (10) days prior to the time specified for the hearing, unless otherwise ordered by the Court.

D. SERVICE BY MAIL. Whenever service is accomplished by mail, three (3) days shall be added to the prescribed period of time, but such addition shall not cause Saturdays, Sundays, or legal holidays to be counted in the time period if they would not otherwise have been counted.

3.3.218 Parties

A. REAL PARTY IN INTEREST. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought; and when a statute of the Pyramid Lake Paiute Tribe so provides, an action for the use or benefit of another shall be brought in the name of the Tribe.

B. *Guardian ad Litem*. When a minor child or an incompetent person who has not had a guardian appointed is a party, the Court shall appoint a *guardian ad litem* to represent such person in the suit or action.

C. JOINDER OF PARTIES. To the greatest extent possible, all persons or parties interested in a particular action may be joined in the action, but failure to join a party over whom the Court has no jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without such party.

D. INDISPENSABLE PARTIES.

1. Persons to be joined if feasible. A person who is subject to service of process and whose joinder will not deprive the Court of jurisdiction over the subject matter of the action shall be joined as a party in the action if:

- a. In the person's absence, complete relief cannot be accorded among those who are already parties; or
 - b. The person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person's absence may:
 - i. As a practical matter impair or impede the person's ability to protect that interest, or
 - ii. Leave any of the persons already parties subject to a substantial risk of incurring double, multiple or otherwise inconsistent obligations by reason of the claimed interest. If the person should join as a plaintiff but refuses to do so, the person may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and joinder of that party would render the venue of the action improper, that party shall be dismissed from the action.
2. DETERMINATION BY THE COURT. If a person as described in §3.3.216 D.1., hereof cannot be made a party, the Court shall determine whether or not in equity and good conscience the action should proceed among the parties before it, or should be dismissed, if the Court finds the absent person indispensable. The factors to be considered by the Court include: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective or other measures, the prejudice can be lessened or avoided; third, whether or not a judgment rendered in the person's absence will be adequate; fourth, whether or not the plaintiff will have an adequate remedy if the action is dismissed for non-joinder.
3. PLEADING REASONS FOR NON-JOINDER. A pleading asserting a claim for relief shall state the names, if known, to the pleader, of any persons as described in §3.3.216 hereof who are not joined and the reasons why they are not joined.

E. SUBSTITUTION OF PARTIES. A party may be joined or substituted if a party dies, becomes incompetent, transfers his interest or is sued in his official capacity, and is no longer functioning in that official capacity.

3.3.300 INTERVENTION

A person may intervene and be treated in all respects as a party to an action in cases in which the applicant claims an interest relating to the property or transaction which is the subject of the action, unless the applicant's interest is adequately represented by existing parties.

3.3.400 PROSECUTION OF THE ACTION

3.3.402 DISCOVERY

A. TIME. The parties may obtain discovery upon the filing of the answer to the complaint.

B. INTERROGATORIES. A party may submit written interrogatories to any other party and that party shall answer them in writing, under oath, within thirty (30) days of their receipt.

C. DEPOSITIONS. A party may take the oral deposition of an adverse party or non-party witness under oath upon thirty (30) days' notice specifying the person taking the deposition, and the time and place where the deposition will take place within the Reservation.

D. PRODUCTION, ENTRY, OR INSPECTION. A party may request another party to produce any documents or other things in his custody or possession for inspection or copying or request permission to enter and inspect property of another party that is reasonably related to the case, and the opposing party shall within thirty (30) days, reply as to whether or not such production, entry and inspection will be allowed and, if not, why not.

E. SCOPE OF DISCOVERY. Parties may obtain discovery regarding any matter not privileged, which is relevant to the pending action, whether or not such discovery would be admissible at trial, if it appears reasonably calculated to lead to the discovery of admissible evidence, except that discovery may not be had of the work product of a party's attorney.

F. PROTECTIVE ORDER. A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harassment, embarrassment, oppression or undue burden or expense, and the Court may order that the discovery cease or proceed only upon specified conditions.

G. FAILURE TO COMPLY WITH DISCOVERY. If a party fails to respond or appear for discovery as provided in this Section, the opposing party may move for an order to compel the defaulting party to perform and 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 deemed established or strike part of a claim or defense, or dismiss or render a judgment by default against the non-complying party.

H. USE OF DISCOVERY. Answers to interrogatories and depositions may be used in a motion, hearing or at trial for any purpose, by any party.

I. EXPEDITED DISCOVERY. Discovery may be expedited by any party upon a showing of need.

3.3.404 Motions

A. Motions in any pending case may be heard separately or may be consolidated at the discretion of the Court.

B. All motions filed in Court by the parties shall be served on the opposing party or his counsel, along with an affidavit of mailing certifying that the documents were sent. The Clerk of the Court shall serve any motions if so requested by the parties.

C. Unless otherwise ordered by the Court, a response shall be filed and served by an opposing party within fourteen (14) days after service of the motion, and a reply may be filed and served by the moving party within ten days (10) after service of the response.

3.3.406 Subpoenas

A. ISSUANCE. Upon the written request of any party or by the Court's own action, subpoenas for attendance of witnesses at Court or production of documents or things necessary for the presentation of the case shall be issued by a Judge or the Clerk of the Court and served personally by the Tribal Police or other officer of the Court assigned to perform such service at any place within the jurisdiction of the Tribal Court. Subpoenas must be served at least seven (7) days prior to the appearance date, unless otherwise ordered by the Court.

B. FAILURE TO OBEY. Failure, without an adequate excuse, to obey a properly served subpoena may be deemed a contempt of Court, and prosecution thereof may proceed upon the order of the Court. No contempt shall be prosecuted unless a return of service of the subpoena has been made on which is endorsed the date, time and place of service and the name and signature of the person performing such service.

C. SUBPOENA UNNECESSARY. A person present in Court may be required to testify in the same manner as if he were in attendance upon a subpoena.

D. If a subpoena is requested by a party to an action, the necessary witness and mileage fees will be collected in advance of issuing the subpoena. The fees shall be stated in the Rules of the Court or other order of the Court.

3.3.408 Disqualification of a Judge

A. Whenever a party to any action or proceeding, or his attorney shall make and file an affidavit that the judge before whom such action or proceeding is to be tried or heard has a bias or prejudice, either against such party or his attorney or in favor of any opposite party to the suit, such judge shall proceed no further therein, except to call in another judge to hear and determine the matter.

B. Every such affidavit shall state the facts and the reasons for the belief that such bias or prejudice exists, and shall be filed as soon as practicable after the case has been assigned or such bias or prejudice is known. If the judge against whom the affidavit is directed questions the sufficiency of the affidavit, he shall enter an order directing that a copy thereof be forthwith certified to another judge who shall then pass upon the legal sufficiency of the affidavit, or if the judge to whom the affidavit is certified finds that it is legally sufficient, another judge must be called in to try the case or determine the matter in question. No party shall be entitled in any case to file more than one (1) affidavit; and no such affidavit shall be filed unless accompanied by a certificate of counsel of record that such affidavit and application are made in good faith.

3.3.410 Disability of a Judge

If, by reason of death, sickness, or other disability, a judge before whom an action has been heard is unable to perform the duties to be performed by the Court under this Chapter, then any other judge regularly sitting or assigned to the Court may perform those duties following review of the records and transcripts.

3.3.412 Dismissal for Want of Prosecution

All civil actions that have been pending in the Court for more than two-hundred seventy (270) days without any proceeding of record having been taken may, after notice, be dismissed for want of prosecution on motion of a party or the Court.

3.3.500 TEMPORARY RESTRAINING ORDER

3.3.502 Notice of Temporary Restraining Order

No temporary restraining order shall be issued without written notice to the adverse party.

3.3.504 Temporary Restraining Order: Notice, Hearing and Duration

A. No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before notice can be served and before the adverse party can be heard in opposition. The moving party shall specifically state why notice should not be required.

B. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; and shall be filed with the Clerk of the Court and entered of record.

C. The order shall define the injury and state why it is irreparable and why the order was granted without notice.

D. The order shall expire by its terms within such time after entry, not to exceed fifteen (15) days, as the Court determines, unless within the time so determined, the order for good cause shown is extended for a like period – or unless the party against whom the order is directed consents that it may be extended for a longer period. The reasons for the extension shall be entered of record.

E. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matters of the same character.

F. When the motion comes on for hearing, the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the Court shall dissolve the temporary restraining order without notice or on such shorter notice to that party as the Court may prescribe. The adverse party may appear and move for its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

G. A temporary restraining order cannot be issued against the Tribe unless it has prior notice of the action and has an opportunity to appear and defend.

3.3.506 Form and Scope of Injunction or Restraining; Service

Every order granting an injunction and every restraining order shall be specific in its terms and the reasons why it is issued; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; 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.

3.3.508 Grounds for an Extended Restraining Order

An extended restraining order may be granted when it appears:

A. By the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of some act complained of, either for a limited period or perpetually;

B. From the pleadings or by affidavit that the commission or continuance of some act during the litigation would produce great or irreparable harm or injury to the party seeking relief;

C. During the litigation that either party is doing or threatens to do, or is about to do, or is procuring or suffering to be done, some act in violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual; or

D. In all other cases where an injunction would be proper in equity.

3.3.600 TRIAL

3.3.602 Procedures and Evidence

A. In the absence of Court Rules or a specific provision in this Code, the time and place of court sessions, the rules of evidence to be followed by the Court and all other details of judicial procedure are those set out in the Federal Rules of Civil Procedure and the Federal Rules of Evidence.

B. All testimony of witnesses shall be given orally under oath in open court and subject to the right of cross-examination. Documentary and tangible evidence shall also be received in open court.

3.3.604 Order of Trial

A. Civil cases shall be tried before a judge and not a jury.

B. The Court shall call the case name and number and ask the parties if they are ready to proceed. If the parties are not ready, the Court, in its discretion, may continue the case or direct the case to proceed.

C. The case of the Plaintiff shall be presented first, followed by the case of the Defendant. If rebuttal is required, the Plaintiff shall proceed first, followed by the Defendant.

D. The Court may question the witnesses directly, generally to clarify the testimony of the witness, but shall not interfere with the rights of either party to examine and cross-examine the witnesses, except to the extent necessary to enforce applicable rules of evidence or procedure.

E. At the conclusion of the evidence, the Plaintiff and the Defendant, each in turn, may summarize the proof and make final argument.

F. The Judge shall then make his decision or announce the time at which he will present his decision.

3.3.700 JUDGMENTS

3.3.702 Generally

A. DEFINITION. A judgment includes any final order from which an appeal is available and no special form of judgment is required. A judgment shall be entered in each civil case. The judgment shall be for money, for performance of certain acts, for surrender of specified property or other relief or for dismissal of the case. A judgment is complete and shall be deemed entered when it is signed by the Judge and filed with the Clerk of the Court.

B. DEMAND FOR JUDGMENT.

1. Generally. Except in the case of a default judgment, every final judgment shall grant the relief to which the party whose favor it is rendered is entitled, even if such relief is not demanded in the pleadings. It may be given for or against one (1) or more of several claimants and it may, if justice so requires, determine the ultimate rights of the parties on each side as between or among themselves.
2. Judgment by Default. A judgment by default shall not be different in kind from, or exceed in amount, that specifically prayed for in the demand for judgment.

C. COSTS. Unless the Court shall otherwise direct, necessary costs and disbursements shall be awarded to the prevailing party or parties as a matter of course. Such prevailing party shall file a memorandum with the Court stating the costs and necessary disbursements under penalty of perjury, within five (5) days of the entry of judgment and serve a copy of the memorandum on the opposing party. If no objections to the memorandum are received within ten (10) days of service, the costs and disbursements shall be deemed to be a part of and included in the judgment rendered. Costs shall not be awarded against the Tribe, its agencies or its officers, employees and agents acting in the official capacities unless allowed by specific Tribal law.

D. ATTORNEY'S FEES. The Court shall not award attorney's fees unless a contract or agreement of the parties specifically so provides or unless it reasonably appears that the case had been prosecuted for purposes of harassment only, or that there was no reasonable expectation of success on the part of the claiming party. Attorney's fees shall not be awarded against the Tribe, its agencies or its officers, employees and agents acting in the official capacities unless allowed by specific Tribal law.

3.3.704 Fault; Compensation

A. In all civil actions, judgment may consist of an order of the Court awarding money damages to be paid to the injured party or directing the surrender of specified property to the injured party, or any other relief deemed proper by the judge for the benefit of the injured party.

B. Where the injury inflicted was the result of carelessness of the Defendant, the judgment shall fairly compensate the injured party for the loss he has suffered if such relief is requested.

C. Where the injury was deliberately inflicted, the judgment may impose an additional award in the nature of punitive damages to the injured party where the conduct resulting in injury was outrageous and unacceptable in a civilized society in an amount not more than three (3) times the actual damages. Before any such award is made, the Court

shall make a determination, on the record, that such actions were intentional and the resultant injuries foreseeable, and more probably than not.

D. Where the injury was inflicted as a result of an accident, or where both the Complainant and the Defendant were at fault, the judgment for compensation to the Plaintiff shall take into consideration the extent to which the Plaintiff was responsible for his injury. Plaintiff's damages should be reduced by the percentage his negligence contributed to his injury.

E. This Section shall not be construed nor apply to matters in which the Tribe is a defendant and no punitive damages shall be assessed against the Tribe pursuant to this Section. This Section shall not be construed in any way so as to waive the sovereign immunity of the Tribe.

3.3.706 Default Judgments

A. ENTRY OF DEFAULT. When a party against whom a judgment for affirmative relief is sought has failed to file an answer or otherwise defend as provided by these rules, his default may be entered by the Clerk of the Court and judgment by default granted. Once the default is entered and notice of default has been provided to the defaulting party, no further notice to the defaulting party of any action taken or to be taken need be given.

B. JUDGMENT BY DEFAULT. Judgment by default may be entered by the Clerk of the Court if a party's claim against the opposing party is for a sum of money which is or can by computation be made certain, and if the opposing party has been personally served. Otherwise, judgment by default can be entered only by the Court upon receipt of whatever evidence the Court deems necessary to establish the claim. No judgment by default shall be entered against the Pyramid Lake Paiute Tribe, its agencies, or its officials, employees or agents in their official capacities.

C. SETTING ASIDE DEFAULT. The Court may for good cause shown set aside either an entry of default or a default judgment. The motion to set aside shall be made within one (1) year from the entry of the default judgment.

3.3.708 Entry of Judgment

A. Judgments shall be signed by the Judge and filed with Clerk of the Court.

B. A judgment is complete and shall be deemed entered for all purposes when it is signed and filed with the Clerk of the Court. The Clerk of the Court shall, upon entering the judgment, mail a copy of the judgment to the parties which shall start the time for appeal.

C. A judgment may be satisfied, in whole or in part, by the judgment creditor executing under oath and filing an acknowledgment of satisfaction of judgment specifying the amount paid and whether or not such is a full or partial satisfaction. A judge may order the entry of satisfaction of judgment upon proof of payment and failure of the judgment creditor to file a satisfaction. The Clerk of the Court shall file all satisfactions of judgment.

D. Effect of Satisfaction.

1. A judgment satisfied in whole shall cease to operate as a judgment.

2. A partially satisfied judgment or unsatisfied judgment shall continue in effect for five (5) years or until satisfied. An action to review the judgment remaining unsatisfied may be maintained any time prior to the expiration of five (5) years and will extend the period of limitations an additional five (5) years.

3.3.710 Relief from Judgment or Order

A. Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by Court at any time on its own initiative or on the motion of any party and after such notice as the Court may direct.

B. Mistakes: Inadvertence, Excusable Neglect, Newly Discovered Evidence, Fraud. On motion and upon such terms as are just, the Court may, in the furtherance of justice, relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

1. Mistake, inadvertence, surprise, or excusable neglect;
2. Newly discovered evidence which by due diligence could not have been discovered;
3. Fraud, misrepresentation or other misconduct of an adverse party;
4. Lack of proper service upon the defendant and resulting failure to appear;
5. Void judgment;
6. Satisfaction, release or discharge of judgment or reversal or vacation of a prior judgment on which this judgment is based, or inequity of prospective enforcement of the judgment; or
7. Other reasons justifying relief from the operation of the judgment. A motion shall be made within a reasonable time and for reasons 1, 2, 3 or 4, not more than three (3) months after the judgment, order or proceeding was entered or taken. A motion under this Section does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the Court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

3.3.712 Harmless Error

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties, is grounds for granting a new trial or otherwise disturbing a judgment or order unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceedings shall disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

3.3.800 EXECUTION OF JUDGMENTS

3.3.802 Judgment Constitutes a Lien

A judgment shall constitute a lien on any nonexempt property of the Judgment Debtor. Notice of this lien may be placed by the Judgment Creditor in the public records of any tribe, county, or state where such property is located.

3.3.804 Stay of Proceedings to Enforce a Judgment

A. STAY UPON ENTRY OF JUDGMENT. Proceedings to enforce a judgment may issue no sooner than ten (10) days after the entry of judgment unless the Court, in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.

B. STAY OF JUDGMENT UPON MULTIPLE CLAIMS. When the Court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in §3.3.702, the Court may stay enforcement of that judgment until the entering of subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

C. WAIVER OF UNDERTAKING. In all cases, the parties may, by written stipulation, waive the requirements of this Section with respect to the filing of a bond or undertaking. In all cases where an undertaking is required by this Chapter, a deposit to the Court in the amount of such undertaking, or such lesser amount as the Court may order, is equivalent to the filing of the undertaking.

3.3.806 Procedure for Examination of the Judgment Debtor

A. SETTING THE EXAMINATION. At any time after the time for appeal has passed, but within three (3) years of the judgment, the Judgment Creditor may file a Request for Examination of Judgment Debtor with the Court. The Clerk of the Court shall set a date and time in the Court for the Debtor to answer specific questions regarding his personal assets. At the beginning of the hearing, the Tribal Judge shall swear the Judgment Debtor under oath and both the Judge and the Judgment Creditor may ask questions directly related to the Judgment Debtor's personal assets and finances. The questions and answers may be electronically recorded.

B. RECORDS. At the time the Judgment Creditor files the Request for Examination of Judgment Debtor, he may also request the Clerk of the Court to subpoena certain documentation to be provided at the time of the hearing. This documentation may include, but is not limited to, the following:

1. Bank records and bank accounts;
2. Payroll stubs;
3. Tax returns;
4. Securities investments; or
5. Motor vehicle registration and car license plate information.

C. NOTICE REQUIREMENTS. A Request for Examination of Judgment Debtor must be personally served on the debtor at least five (5) days prior to the hearing.

D. CONTEMPT. The Judge may issue an order of contempt against the Judgment Debtor in the following instances if:

1. The Judgment Debtor fails to appear personally in court after being personally served and a valid proof of service has been filed; or
2. The Debtor fails to disclose certain assets when questioned by the Judge or the Judgment Creditor.

3.3.808 Garnishment

A. PROCEDURE. At any time after the time for appeal has passed, but within three years of the judgment, a Judgment Creditor may proceed to enforce his judgment by garnishment in the Court. A Writ of Garnishment may extend to a Judgment Debtor's payroll wages, bank accounts and any IIM account. Garnishment of IIM accounts is subject to the rules and regulations which have been promulgated under 25 CFR Part 115 as they may from time to time be amended. Application for an Order of Garnishment must be made through the Court.

1. A Judgment Creditor must first file a Petition for Writ of Garnishment with the Court which requests the Court to issue an Order of Garnishment pursuant to a judgment previously obtained. The Order of Garnishment may allow for an additional fee for reasonable attorney's fees.
2. The Petition for Writ of Garnishment must be personally served on the Judgment Debtor at least five (5) days before the date set to hear the petition.

B. EARNINGS SUBJECT TO GARNISHMENT. The maximum portion of earnings of a judgment debtor that are subject to garnishment is twenty-percent (20%) of the Debtor's disposable earnings, with the exception of garnishment for child support. Garnishment for payment of child support and any arrears which may be due shall not exceed fifty-percent (50%) of the Debtor's disposable earnings.

C. HEARINGS.

1. The hearing on the Petition for Writ of Garnishment shall be recorded by any approved method and/or transcribed. If a Judgment Debtor has received at least five (5) days' notice of the hearing and fails to appear, the Judgment Debtor shall be deemed to have waived his right to a hearing and a default order may be issued. At the hearing the Judgment Debtor may show through testimony and other documentation that a substantial hardship will be imposed on the Judgment Debtor and his dependents if any of his wages should be garnished. The Judgment Debtor may also show that a lesser amount than set forth in §3.3.808. B should be garnished. At the conclusion of the hearing, the Judge shall have the discretion to determine whether or not a substantial hardship has been shown or a smaller portion of the Debtor's wages should be garnished.

2. The Judgment Debtor may also establish by a preponderance of the evidence that the garnishment is wrongful either by showing there was no personal service or no valid judgment in effect at the time of the garnishment or that the judgment has already been satisfied.

D. DISMISSAL BY EMPLOYER. No employer shall discharge an employee based solely on a Judgment Creditor obtaining a wage garnishment. If an employer discharges an employee for this exclusive reason, the employee may commence a civil action within ninety (90) days of the dismissal date to recover lost wages and to request reinstatement to his job.

3.3.810 Attachment Remedy

A. PROCEDURE. At the time of the issuance of a summons and complaint in a civil action, or at any time prior to final judgment, a Creditor may file a request for a Pre-Judgment Order of Attachment with the Clerk of the Court. All requests for Pre-Judgment Orders of Attachment shall be accompanied by an affidavit of the Creditor which shall contain the following facts to establish that:

1. A debt is owed to the Creditor by a Debtor and a description of the nature and amount of the debt owed;
2. The personal property being attached must be specifically identified as non-trust personal property belonging to the Debtor;
3. The creditor has reasonable cause to believe that the specific property sought to be attached may be lost, damaged, vandalized or removed off the Reservation prior to payment of a final judgment and such loss, damage, vandalism or removal of the property would jeopardize the ability of the creditor to collect on the judgment that may later be obtained.

If the Judge is satisfied after reviewing the complaint and affidavit, an Order of Attachment may be issued to identify the designated personal property. The Police shall be given the Order of Attachment and the Police shall seize any property identified by the Order. Such property shall be kept in storage under the control of the Police. Such personal property shall be held by the Police pending any further order of the Court. If the Judgment Creditor prevails on his complaint against the Judgment Debtor, the Judgment Creditor must follow the Section in this Chapter regarding the Execution of Judgment.

B. BOND. An Order of Attachment shall not be issued until the Creditor has filed with the Clerk of the Court a surety bond or cash bond in the sum of at least One-Thousand Dollars (\$1,000.00). This bond shall be necessary to ensure that the Creditor will pay the amount of the bond to the Debtor in the event that the order of attachment was wrongfully issued and the Debtor was damaged, or in the event the Debtor prevails when final judgment is rendered.

C. SERVICE OF ATTACHMENT ORDER. The Debtor shall be served with the Order of Attachment at the time the Police seize the personal property of the Debtor. If the Debtor is not available or is not present at the time the personal property is seized, the Order of Attachment shall be posted in a conspicuous place on the door of the Debtor's house or residence, and a copy mailed to his last known address. The service shall be documented and filed with the Court for the record.

D. **WRONGFUL ATTACHMENT.** At any time following the issuance of an Order of Attachment, the Debtor shall be entitled to challenge the validity of the writ. The Debtor may contest the Writ of Attachment by filing a Response to Writ of Attachment with the Court. At the time of the filing with the Clerk of the Court, the Court shall set a hearing and notice of the hearing shall be served on the Creditor at least five (5) days prior to the hearing. At the hearing the Debtor must establish by a preponderance of the evidence that:

1. The specific personal property sought to be attached would not be likely to be lost, damaged, vandalized or removed from the Reservation prior to final judgment and that any such loss, damage, vandalism or removal of property would not result in hindering the ability of the creditor to collect on a judgment if one should subsequently be obtained; or
2. No debt is owed to the creditor; or
3. The property sought to be attached is exempt under the provisions of this Chapter regarding exemptions or is trust property.

If the Court determines that the pre-judgment writ of attachment was wrongfully issued, the Court may impose a fine up to One-Thousand Dollars (\$1,000.00) and/or the amount of damages incurred, and order payment of the other party's attorney's fees and costs.

3.3.812 Exemptions

A. **HOMESTEAD.** The homestead of every family, including a mobile home, designated as the place of residence by that family is entitled to a full and absolute exemption from all collection processes as set forth herein; however, the mobile home is subject to the legal process of repossession in accordance with Chapter 14 of this Code, if the Debtor defaults on payments to the creditor dealer who sold him his home or his assignee. The homestead is automatic and no filing of any documents shall be necessary to preserve it. All other real property in which the Debtor owns a possessory interest is also entitled to a full exemption from any collection process.

B. **PERSONAL PROPERTY.** Every person residing within the exterior Reservation boundaries shall have exempt from seizure and sale upon any attachment, execution or other process issued from the Court, the following articles of personal property:

1. Provisions, including food, fuel and clothing which are in the possession of the Debtor or any dependents in his household and which are reasonably necessary for sustaining the Judgment Debtor for a period of one (1) year;
2. Ornaments belonging to Debtor or the dependents in his household, including jewelry, not to exceed a value of Five Thousand Dollars (\$5,000.00);
3. The Debtor's interest, not to exceed Fifteen Thousand Dollars (\$15,000.00), in one means of conveyance regularly used for the transportation of the Debtor to and from the Debtor's place of work, except that the value limitation specified in this Subsection shall not apply when the means of conveyance is a vehicle designed or equipped, or both, for handicapped persons;

4. Burial plot or crypt or any cemetery lot;
5. Books, furniture, instruments, tools, implements and equipment, the breeding stock, seed grain or growing plants stock, or other tangible means of production regularly and reasonably necessary in carrying on the person's profession, trade, business or occupation in an aggregate value not to exceed Seven Thousand Five Hundred Dollars (\$7,500.00);
6. All household and kitchen furniture and items and appliances up to a value of Twelve Thousand Dollars (\$12,000.00); in the case that the debtor owns more than Twelve Thousand Dollars (\$12,000.00) in value for all household and kitchen furniture and items and appliances, the Debtor must select those items he desires to retain up to a value of Twelve Thousand Dollars (\$12,000.00) and all other items shall then be abandoned for legal process;
7. All miscellaneous books, musical instruments and family pictures for the use of the family that do not exceed Two Thousand Dollars (\$2,000.00) in value; and
8. Any interest in any pension plans, individual retirement accounts or 401(k) plans.

3.3.814 Enforcement of Foreign Judgments

A. FOREIGN JUDGMENTS DEFINED. "Foreign judgment" means any judgment, decree or order of a court of the United States, another Indian Nation or of any other court.

B. FILING OF FOREIGN JUDGMENTS. A copy of a certified authenticated foreign judgment may be filed in the office of the Clerk of the Court.

3.3.816 Doctrine of Comity

A. COMITY. The Pyramid Lake Paiute Tribe shall apply the doctrine of comity to the judicial proceedings of all foreign courts in which a final judgment has been issued.

B. DEFINITIONS. Unless the context clearly indicates otherwise, the following words and phrases shall mean:

1. "Comity" means the recognition and enforcement by the Court, under the review criteria as set forth in §3.3.816-E herein, of final judgments of all foreign courts.
2. "Foreign court" refers to all federal and state courts, and the courts of Federally-recognized Indian Nations.
3. "Foreign court judgments" are the judgments issued by Federal and state courts, and the courts of Federally-recognized Indian Nations.
4. "Petitioner" refers to the person who files a petition in the Court requesting that a foreign court's judgment be recognized by the Court based upon comity.

5. "Respondent" refers to the person(s) against whom a petition has been filed in the Pyramid Lake Tribal Court seeking enforcement of a foreign court judgment.
6. "Verified copy of foreign court's judgment" refers to the requirement that all copies of foreign court judgments shall be authenticated and certified by the Clerk of the issuing court who shall attest to the fact that the verified copy is an accurate copy of the original judgment on file with the issuing court.

C. JURISDICTION. Any person who has obtained a final foreign court judgment shall be entitled to seek enforcement of a foreign court judgment based upon comity through the Tribal Court.

D. PROCEDURE FOR REQUESTING COMITY OF FOREIGN COURT JUDGMENTS.

1. The Petitioner shall file a written petition with the Clerk of the Court which shall be accompanied by two verified copies of the foreign court's judgment sought to be enforced. The Petition shall set forth the following:
 - a. Names of all parties to the foreign court judgment sought to be recognized and their respective addresses;
 - b. Type of relief granted in the foreign court's judgment;
 - c. Full amount of the judgment, if money was awarded;
 - d. Court costs and attorney's fees;
 - e. Date the foreign court's judgment was entered;
 - f. Record of entries filed in the foreign court after the entry of the judgment, such as levies, execution, garnishment, partial satisfaction; and
 - g. Any additional information which the Petitioner believes is relevant.
2. The Petition shall be served upon the Respondent in the same manner as authorized by this Code.
3. The Respondent may file with the Clerk of the Court a written answer to the Petition at any time prior to the hearing on the petition.
4. A hearing on the Petition seeking comity of the foreign court judgment shall be held at least twenty (20) days after notice is given to the Respondent. The Petitioner shall have the burden of proof in the hearing on the petition; however, in accordance with the provisions of §3.3.816 of this Code, the Court shall inquire into the underlying facts of the foreign court's judicial proceedings as well as the underlying facts and circumstances of the incident which formed the basis for such proceedings.

E. REVIEW. After the hearing upon the petition, the Court shall examine the underlying facts of the foreign court's judicial proceedings that are the subject of the petition. Only after the following requirements are met shall the Court give comity to the judgment that:

1. The foreign court had proper jurisdiction over both parties and the subject matter;
2. The foreign court judgment was not obtained fraudulently;
3. The foreign court judgment was rendered by a system of law reasonably assuring the requisites of an impartial administration of justice due through notice and hearing were afforded; and
4. The foreign court judgment did not contravene the public policy of jurisdiction in which it was determined.

F. ENTRY OF JUDGMENT. If the Court is satisfied that the four elements listed in §3.3.816 E have been met, then and only then, shall the foreign court judgment be entitled to be recognized under the doctrine of comity by the Court. The Court shall then enter a judgment in favor of the Petitioner which shall entitle the Petitioner to enforce his judgment against the Respondent in the Court.