

**TITLE II  
RULES OF CIVIL PROCEDURE**

**CHAPTER 1**            **GENERAL PROVISIONS**

**Rule 1**                    **Scope of Rules**

(1)    **Scope.** Except when different rules prescribed by this code specifically apply, these rules shall govern the procedure in the trial and appellate courts of the Shoshone and Arapaho River Tribal Courts, in all actions, suits and proceedings of a civil nature, in all special proceedings established by law, and in criminal matters to the extent no different rule is specified.

(2)    **Construction.** These rules shall be liberally construed to secure a just, speedy and inexpensive determination of every action.

(3)    **One Form of Action.** There shall be one form of action known, except in criminal cases, known as a “civil action.”

(4)    **Collateral References.** Any procedures or matters not specifically set forth herein shall be handled in accordance with the Federal Rules of Civil Procedure insofar as such are not inconsistent with these rules, and with general principals of fairness and justice as prescribed and interpreted by the court.

**CHAPTER 2**            **COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS**

**Rule 1**                    **Commencement of Action: Service of Process**

(1)    **Commencement of Action.** A civil action is commenced by filing a complaint and serving a copy of such on the defendant or defendants as provided herein. The court shall have jurisdiction from such time as both the complaint is filed and properly served upon the defendant. (Form II-1)

(2)    **Service of Process.** Service of process shall consist of delivering to the party, served a copy of the complaint along with a summons, which need not be issued by a judge or clerk, which advises the defendant that he is required to answer the complaint within twenty (20) days or a default judgment may be entered against him. (Form II-2)

    a)    The return of service shall be endorsed with the name of the person serving and the date, time and place of service and shall be filed with the clerk. (Form II-3)

b) Service may be made on a party by delivering the required papers to the party himself or upon some person of suitable age and discretion over fourteen (14) years of age at the party's house or principle place of business, or on an officer, managing agent, or employee, or partner of a non-individual party.

c) Service by publication may be made upon order of the court for good cause shown by publishing the contents of the summons in a local newspaper of general circulation at least once per week for four (4) weeks and by leaving an extra copy of the complaint and paper with the court for the party. (Form II-4)

d) Service may be made by any law enforcement officer or other person, not a party, eighteen (18) years of age or older.

e) Service upon a person otherwise subject to the jurisdiction of the Shoshone and Arapaho Court may be made anywhere in the United States; otherwise, service shall be made within the exterior boundaries of the Wind River Indian Reservation.

f) 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. An affidavit shall be filed by the person serving this.

g) All papers required to be filed shall be served as under this rule. Service of all papers except the complaint may be made by mail, first class, postage prepaid and properly addressed, or certified or registered mail.

## Rule 2

## Time

(1) Computation. In computing any period of time set forth herein, the date that the period is to commence shall not be counted and the last day of the period shall be counted; provided, however, that any time period under seven (7) days will not include intermediate Saturdays, Sundays or legal holidays in the period and 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.

(2) Enlargement. The court for good cause shown may enlarge the prescribed period or the time within which any required act may be done.

(3) Notice of Motions. Written motions and notice of hearing thereon, other than ones which may be heard ex-parte, shall be served no later than five (5) days prior to the time specified for hearing.



claims and statements upon which the adverse party relies. If he is without information or knowledge regarding a statement or claim, he shall so state and such shall be deemed to be a denial. Denials shall fairly meet the substance of the claims or statements denied and may be made as to specified parts, but not all of a claim, statement or averment. A general denial shall not be made unless the party could in good faith deny each and every claim covered thereby. A claim to which a responsive pleading is required, except for amount of damages, shall be deemed admitted unless denied; if no responsive pleading is allowed the claims of the adverse party shall be deemed denied.

(3) General Content of Claims and Defenses. Claims and defenses shall be simple, concise and directly stated, but may be in alternative or hypothetical form, on one or several counts or defenses, need not be consistent with one another, and may be based on legal or equitable grounds or both.

(4) Affirmative Defenses. Matters constituting an affirmative defense in avoidance shall be affirmatively set forth. When a party has mistakenly designated a defense as a counterclaim or vice versa, the court may treat the pleading as if it had been properly designated if justice so requires.

(5) Construction of Pleadings. All pleadings shall be construed so as to do substantial justice.

## Rule 5                      Form of Pleadings

(1) Caption. Every pleading shall contain a caption heading, the name of the court, the title of the action, the court file number (if known) and a designation as to what kind of pleading it is. All pleadings shall contain the names of the parties except the name of the first party on each side may be used on all pleadings except the complaint.

(2) Paragraphs. All averments of claims or defense shall be set forth in separate numbered paragraphs each of which shall be limited, as nearly as possible, to a single circumstance. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.

(3) Exhibits; Adoption by Reference. Statements in a pleading may be adopted by reference in a different part of the same pleading or in another pleading or in any motion. A copy of a written instrument which is an exhibit to a pleading is a part thereof for all purposes.

a) Papers used in pleadings insofar as is possible, pleadings and other papers filed in any action shall be on legal or 8 x 11" size paper, double spaced, except for matters customarily single spaced, contain at least a 2-inch top margin and a 1-inch left side margin, and contain the court file number on the first page thereof. Substantial

compliance with this rule will be sufficient for all parties not represented by a professional attorney.

Rule 6                      Defenses and Objections

(1)     When Presented. A defendant or other party against whom a claim has been made for affirmative relief shall have twenty (20) days from the date of service upon him to answer or respond to the claim.

(2)     Motions.

        a)     Motions to dismiss or to have the opposing parties pleadings more definite may be made prior to answering a claim and an answer will not be due until ten (10) days after the disposition of the motion by the court.

        b)     A party served with a pleading stating a cross-claim against him shall serve his answer thereto within twenty (20) days after the service upon him. The Plaintiff shall serve his reply to a counterclaim in the answer within twenty (20) days of service of the answer or, if a reply is ordered by the court, within twenty (20) days after service of the order, unless otherwise directed.

(3)     How Presented. Every defense, in law and fact, to a claim for relief in any pleading, whether a claim, cross-claim, counterclaim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of pleader be made by motion:

- a)     Lack of jurisdiction over the subject matter;
- b)     Lack of jurisdiction over the person;
- c)     Improper venue;
- d)     Insufficiency of process;
- e)     Insufficiency of service of process;
- f)     Failure to state a claim upon which relief can be granted; or
- g)     Failure to join a party under Rule 9 (1).

(4)     Preliminary Hearing. The defenses specifically enumerated (a)-(g) in subsection (3) of this rule, whether made in a pleading or by motion, shall be heard and determined before trial on application of any party unless the court orders that it be deferred until the trial.



A person may intervene and be treated in all respects as a party to an action in cases in which property he has an interest in may be affected or a question of law or fact common to a claim of his may be litigated.

Rule 11                      Substitution of Parties

If a person dies or becomes incompetent or transfers his interest, a substitute party may be joined or substituted as justice requires.

Rule 12                      Discovery

(1)     Interrogatories. A party may submit written interrogatories to any other party who shall answer them in writing, under oath, within thirty (30) days after service of them, except that a defendant may serve answers or objections within forty-five (45) days after the service of the summons and complaint upon that defendant.

(2)     Depositions. A party may take the oral deposition of an adverse party or non-party witness under oath upon not less than ten (10) days' notice specifying the time and place where such shall occur, or may serve written questions with a notice of:

- a)        The name and address of the person who is to answer them; and
- b)        The name, title and address of the officer before whom the deposition is to be taken.

Within thirty (30) days after the notice and written questions are served, a party may serve cross-questions. Within ten (10) days after service of the cross-questions, a party may serve redirect questions on all other parties.

(3)     Production, 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 party shall within thirty (30) days reply as to whether or not such will be allowed. Any party objecting to a request may move the court for a protective order; otherwise, said party must comply with the request within thirty (30) days of service of said request.

(4)     Scope of Discovery. Parties may obtain discovery regarding any matters not privileged which is relevant to the pending action, whether or not such would be admissible at trial, if such 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 advocate or attorney.

(5)     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. (Form II-12)

(6) Failure to Make Discovery. If a party fails to respond or appear for discovery as provided in this rule, 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 in a case. (Form II-13)

(7) Use of Discovery. Answers to interrogatories and depositions may be used in a motion, hearing or a trial to impeach or contradict the testimony of the person discovered, or by an adverse party for any purpose.

### Rule 13                      Jury Trials

(1) When Allowed. Trials of all actions shall go before the court without a jury unless a party to the action files a request for a jury trial in writing and a fee of \$25.00, not less than ten (10) days prior to the scheduled date of trial. A judge may, upon good cause shown, waive payment of the required fee. Failure of a party to serve a request as required by this rule and to file it constitutes a waiver of a trial by jury. (Form II-14)

(2) Issues Triable. Unless the requesting party specifies otherwise, all factual issues properly triable by a jury shall be decided by the jury at trial. A party requesting a jury trial may specify only those issues he wants tried to the jury, and any other party may specify, not less than ten (10) days before the date scheduled for trial, any other issues he wishes to be so tried. Once any or all issues of a case have been requested for a jury trial, such request may not be withdrawn without the consent of all the parties.

### Rule 14                      Assigning Cases for Trial

(1) Assignment of Judge and Date. The Chief Judge shall determine which judge shall hear a case, and shall provide by rule for the placing of cases on the court calendar with or without the request of any party provided all parties are given adequate notice of trial dates.

(2) Postponements. Upon motion of a party or upon its own motion, the court may in its discretion, and upon terms it deems just, postpone a trial or proceeding upon good cause shown. (Form II-15)

### Rule 15                      Dismissal of Actions

(1) Voluntary Dismissal. Prior to the responsive pleading of a party against whom a claim has been made or motion to dismiss or for summary judgment, the party making the claim

may file a notice of dismissal and his claim shall be deemed dismissed without prejudice. In all other circumstances, a party may move the court to dismiss his own claim and the court shall do so either with or without prejudice as is just and proper given the stage of the proceeding, provided, however, if a cross-claim or counterclaim has been filed against the moving party, the judge shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can prosecute his claim independently without undue additional hardship. (Form II-13)

(2) Involuntary Dismissal. A party against whom a claim has been made may move the court to dismiss the claim of the adverse party upon any of the following grounds (Form II-14):

- a) Failure of the adverse party to pursue prosecution of his claim;
- b) Failure of the adverse party to comply substantially with these rules;
- c) Failure of the adverse party to comply with an order of the court;
- d) At the close of the presentation of the other party's evidence and without prejudicing his own right to present evidence, failure of the opposing party to establish a right to relief based on the facts and law presented; or
- e) Whenever dismissal appears proper based upon a failure to prove a claim, such dismissal shall be deemed an adjudication of the merits of the issue dismissed unless the court shall, for good cause shown, order otherwise. The court may postpone ruling on a motion to dismiss for failure to establish a right to any relief until the close of all the evidence.

(3) Costs. The court may order a party moving to dismiss his own claim to pay the costs of the adverse party if the proceeding has progressed beyond the pleading stage, and may order payment of costs in other circumstances where such is deemed appropriate.

#### Rule 16                      Consolidation, Separate Trials

(1) Consolidation. The court may, upon motion of any party or its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating the actions, or if such will tend to avoid unnecessary cost or delay. (Form II-15)

(2) Separate Trials. The court may, to avoid prejudice or in furtherance of convenience order a separate trial of a claim or issue. (Form II-16)

#### Rule 17                      Evidence

(1) Form and Admissibility. At all hearings and trials, the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules. All evidence admissible under the Federal Rules of Evidence shall be admissible and the competency of witnesses to testify shall be similarly determined. (Form II-17)

(2) Examination and Cross-Examination.

a) A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate.

b) A party may call any person to be a witness and examine any witness so called on any matter relevant to the action. A party may impeach his own witness.

c) Cross-examination shall be limited to the general scope of direct examination, provided, however, that full examination of all witnesses shall be allowed on direct or cross-examination to assure complete development of all relevant facts.

(3) Physical Evidence. Written documents and other physical evidence shall be received upon being identified, authenticated, and a showing of relevance to the action.

(4) Official Documents. Official documents or an official law, record or copy thereof may be admitted into evidence upon the testimony of an official having custody or official knowledge thereof or without such testimony if the document or record or copy thereof is accompanied by a certificate identifying such things and stating that it is a true and correct representation of what it purports to be.

(5) Record of Excluded Evidence. In an action tried to a jury, excluded evidence may upon request be included in the record for purposes of appeal and excluded oral testimony shall be put into evidence by means of an offer of proof made out of the hearing of the jury, in a action tried only to the court, the judge may receive such excluded testimony into the record.

## Rule 18                      Subpoenas

(1) Issuance. Subpoenas for attendance of witnesses or production of documents or things shall be issued and served. (Form II-18 and II-19)

(2) Failure to Appear. A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of court.

(3) Subpoena Unnecessary. A person present in court, or before a judicial officer, may be required to testify in the same manner as if he were in attendance upon a subpoena.

## Rule 19

## Jurors

(1) Number of Jurors; Alternate. There shall be six (6) jurors chosen to hear a case, plus the court may allow one (1) additional juror to be chosen as an alternate juror. In the event that an alternate juror is chosen and hears the case, he shall be dismissed prior to the jury's deliberation if not needed, and treated like a regular juror if needed.

(2) Examination of Jurors. The court shall permit the parties or the attorneys to conduct the examination of prospective jurors and may itself examine the jurors, utilizing the struck jury method.

(3) Challenges.

a) A challenge is an objection made to a potential trial juror. Either party may challenge jurors, but where there are several parties on either side, they must join in a challenge before it can be made.

b) Challenges to jurors are either peremptory or for cause. Each party or side shall be entitled to three (3) peremptory challenges.

c) Challenges for cause shall be made against a potential juror on the grounds that he is not entitled or qualified to be a juror, he is familiar with the case or has favored an opinion regarding the case, likely or reasonably possible that a juror will not be able to render a fair, impartial verdict. The judge may take evidence relative to a challenge for cause and shall in any event render a decision thereon.

(4) Selection of Jury. The clerk shall draw lots to determine potential jurors and shall replace jurors for whom a challenge is sustained until a full panel is completed. Upon completion, the clerk shall administer the oath to the jurors, the form of which shall be prescribed by rule of the court.

(5) Discharge of Juror. If, after the proceedings begin and before a verdict is reached, a juror becomes unable or disqualified to perform his duty, the alternate juror shall take his place; if there is no alternate juror, the parties may agree to complete the action with the other jurors. If no agreement can be reached, the judge shall discharge the jury and the case shall be tried with a new jury.

(6) View of Jury. The court may, for good cause shown, allow the jury to view the property or place of occurrence of a disputed or otherwise relevant event.

(7) Separation of a Jury. Any time prior to their verdict when the jurors are allowed to leave the courtroom, the judge shall admonish them not to converse with or listen to any other person on the subject of the trial and further admonish them not to form or express an opinion

with the other jurors. If no agreement can be reached, the judge shall discharge the jury and the case shall be tried with a new jury.

(8) Deliberation. Once the case is submitted to them, the jury shall retire to deliberate in private under the charge of an officer of the court who will refrain from communicating with them except to inquire whether they have reached a verdict, and he shall prevent others from improperly communicating with the jury.

(9) Things Taken by Jury. The jury may take with them when deliberating any of the following;

- a) The court's instructions;
- b) Papers or things received in evidence as exhibits; and
- c) Notes taken by the jurors themselves, but not notes taken by a non-juror.

(10) Additional Instructions. If, after the jury retires, there is some question on an instruction or other point of law or disagreement regarding the testimony, the jury may request additional instructions from the court, such to be given on the record after notice to the parties or their counsel.

(11) No Verdict. If the jury is discharged before rendering their verdict or for any reason prevented from giving a verdict, the action shall be retried.

(12) Declaration of the Verdict. When a majority of the six (6) jury members agree on a verdict, they shall so inform the officer who shall notify the court. The jury shall be conducted into the courtroom and the clerk shall call the jury roll, the verdict shall be given in writing to the clerk and then read by the clerk to the court; inquiry shall be made by the court to the jury foreman as to whether such is their verdict. Either party may have the jury polled individually to determine if such is, in fact, their verdict. If insufficient jurors agree with the verdict, the jury shall be sent out again to reconsider; otherwise the verdict is complete and the jury shall be dismissed. If the verdict is read or recorded in correctly by the clerk of foreman, the jury shall retire to correct the verdict.

(13) Upon recommendation if the vote is tied 3-3, the jury shall be dismissed and a new trial ordered.

## Rule 20                      Special Verdicts and Interrogatories

The court may require the jury to return their verdict in the form of specific findings on specified issues or may require the jury to return a general verdict accompanied by answers to questions related to the issues under consideration.

Rule 21

Instructions to the Jury; Final Arguments

(1) Instructions. At the close of the evidence or at such earlier time as the court may direct, any party may file written requested instructions for the court to give to the jury. The court shall inform the parties or their counsel of the instructions it intends to give and hear argument thereon out of the hearing of the jury. (Form II-20A and II-20B)

(2) Arguments. Final arguments for the parties shall be made after the jury has been instructed. The court shall not comment on the evidence of the case and, if it should restate any of the evidence, it shall inform the jury that they are the sole judges of the facts.

Rule 22

Motions for Directed Verdict and for Judgment Notwithstanding the Verdict

(1) Motion for a Directed Verdict. A party who moves for a directed verdict at the close of the evidence offered by the opposing side may offer evidence as if no motion had been made in the event that the motion is denied. A motion for directed verdict shall state the grounds therefore and may be granted by the court without the assent of the jury.

(2) Motion for Judgment Notwithstanding the Verdict. A party who has made a motion for a directed verdict at the close of all the evidence, which motion has been denied or not granted, may, within ten (10) days after entry of judgment, move to have the verdict and any judgment entered thereon set aside and entered according to his motion for directed verdict; or if there has been a verdict, the party may so move within ten (10) days after the jury has been discharged. A motion for a new trial may be made in the alternative. The court shall enter judgment or make any order consistent with his decision on the motion.

Rule 23

Findings by the Court

In cases tried without a jury, and except in cases where a party defaults, fails to appear or otherwise waives such, findings of fact and conclusions of law shall be made by the court in support of all final judgments. Upon its own motion or the motion of any party within ten (10) days of the entry of judgment, findings may be amended or added to and the judgment may be amended accordingly.

Rule 24

Judgment Costs

(1) Definition. A judgment includes any final order from which an appeal is available and no special form of judgment is required.

(2) Judgment on Multiple Claims. When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on less than all of such claims only upon the court specifically finding that such is justified. Absent such a finding, an order or

decision will not terminate the action as to any of the claims until they are finally decided, nor will the appeal period commence to run.

(3) Demand for Judgment.

a) Generally. Except in the case of a default judgment, every final judgment shall grant the relief to which the party in 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 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.

b) 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.

(4) Costs. Unless the court shall otherwise direct, the court shall allow necessary costs and disbursements to the prevailing party or parties as a matter of course. Such prevailing party shall file with the court verified memorandums of his costs and necessary disbursements within five (5) days of the entry judgment and serve a copy of such on the opposing party, and if such are not objected to within ten (10) days, they shall be deemed to be a part of and included in the judgment rendered. The appellate court may award costs in a like manner.

(5) Attorneys' Fees. The court shall not award attorneys' fees in a case unless such have been specifically provided for by contract or agreement of the parties under dispute, or unless it is proven by a preponderance of the evidence that the case has been prosecuted for purposes of harassment only, or that there was no reasonable expectation of success on the part of the affirmatively complaining party. In any action in which the tribes and/or any of its officers or employees are sued for a cause of action arising out of, or in the course of, the performance of a tribal function or duty, or in any action, except by the tribes, against the bond of any such officer or employees, if judgment shall be against the plaintiff the court shall award a reasonable attorney's fee against such plaintiff and in favor of the defendant or defendants.

Rule 25                      Default

(1) Entry of Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, his default may be entered by the clerk and judgment by default granted. Once the default is entered, no further notice to the defaulting party of any action taken or to be taken need be given. (Form II-21)

(2) Judgment by Default. Judgment by default may be entered by the clerk 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 can be entered only by the court upon receipt of whatever evidence the court deems necessary to establish the claim. (Form II-22)

(3) Setting Aside Default. The court may, for good cause shown, set aside either an entry of default or a default judgment.

Rule 26                      Summary Judgment

Any time twenty (20) days after commencement of an action, any party may move the court for summary judgment as to any or all of the issues presented in the case and such shall be granted by the court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Such motions, which shall be served not less than ten (10) days prior to the hearing of said motion, may be supported by affidavits, discovery or memoranda, all of which must be made available to opposing parties at least two (2) days prior to the hearing. (Form II-23)

Rule 27                      Entry of Judgment

(1) Judgment. Judgment upon verdict of a jury shall be signed by the clerk and filed. All other judgments shall be signed by the judge and filed with the clerk.

(2) Effective; Recordation. A judgment is complete and shall be deemed entered for all purposes when it is signed and filed as provided herein. The clerk shall immediately make a notation of the judgment in the register of actions and the judgment docket. (Form II-24 and II-25)

(3) Death of a Party. If a party dies after a verdict or decision upon any issues of fact and before judgment, judgment may nevertheless be entered thereon.

(4) Satisfaction of Judgment. A judgment may be satisfied, in whole or in part, as to any or all of the judgment debtors by the owner thereof or his attorney of record executing under oath and filing an acknowledgment of satisfaction specifying the amount paid and whether such is a full or partial satisfaction. A judge may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction. The clerk shall file all satisfactions of judgment and note the amount thereof in the register of actions and the judgment docket. (Form II-26 and II-27)

(5) Effect of Satisfaction Limitation. A judgment satisfied in whole, with such fact being entered in the judgment docket, shall cease to operate as such. A partially satisfied judgment or unsatisfied judgment shall continue in effect for eight (8) years or until satisfied. An action to renew the judgment remaining unsatisfied may be maintained anytime prior to the expiration of eight (8) years and will extend the period of limitations an additional eight (8) years and may be thereafter further extended by the same procedure.

Rule 28                      New Trials; Amendment of Judgment

(1) Grounds; Time. Any party may petition for a new trial on any or all of the issues presented by serving a motion not later than ten (10) days after the entry of judgment (Form II-28) for any of the following causes:

- a) Error or irregularity which prevented any party from receiving a fair trial;
- b) Misconduct of the jury members;
- c) Accident or surprise, or newly discovered evidence which ordinary prudence could not have guarded against or produced at trial;
- d) Damages so excessive or inadequate that they appear to have been given under influence of passion or prejudice;
- e) Insufficiency of the evidence to justify the verdict or other decision, or that it is contrary to the law; or
- f) Error in law.

(2) Harmless Error. A new trial shall not be granted on the basis of error or irregularity which was harmless in that it did not affect substantial justice.

(3) Support for Motion. Parties may include memoranda or affidavits in support of their motions to which reply memoranda and affidavits shall be allowed if desired.

(4) Court Initiative. The court may, on its own initiative, not later than ten (10) days after entry of judgment order a new trial on any grounds assertable by a party to the action and shall specify the reasons for so ordering. (Form II-29)

(5) Motion to Alter or Amend Judgment. A motion to alter or amend a judgment shall be served not later than ten (10) days after the entry of the judgment. (Form II-30)

## Rule 29                      Relief from Judgment or Order

(1) 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 the court at any time of its own initiative or on the motion of any party and after such notice as the court may direct; mistakes may be corrected before an appeal is docketed in the appellate court, and thereafter while the appeal is pending may be corrected with leave of the appellate court.

(2) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. 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:

- a) Mistake, inadvertence, surprise, or excusable neglect;
- b) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 28 (1);
- c) Fraud, misrepresentation or other misconduct of an adverse party;
- d) When, for any cause, the summons in an action has not been personally served upon the defendant or services was not made by mail or no publication was made and the defendant has failed to appear in said action;
- e) The judgment is void;
- f) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been revised or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or
- g) Any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (a), (b), (c), or (d), not more than three (3) months after the judgment, order, or proceeding was extended or taken. A motion under subdivision (4) 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 independent action.

Rule 30                      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 proceeding shall disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 31                      Stay of Proceedings to Enforce a Judgment

(1) Stay upon Entry of Judgment. Proceedings to enforce a judgment may issue immediately upon the entry of the judgment, unless the court in its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.

(2) Stay and Motion for New Trial or for Judgment. In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of, or any proceedings to enforce, a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment or of a motion for relief from a judgment or order, or of a motion for judgment in accordance with a motion for a directed verdict, or of a motion for amendment to the findings or for additional findings. (Form II-31)

(3) Injunction Pending Appeal. When an appeal is taken from an interlocutory or final judgment granting, dissolving, or denying an injunction, the court in its discretion may suspend, modify, restore, or grant an injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of the adverse party.

(4) Stay Upon Appeal. When an appeal is taken, the appellant, by giving a bond in an amount set by the court, may obtain a stay, unless such a stay is otherwise prohibited by law or these rules. The bond may be given at or within ten (10) days after the time of filing the notice of appeal. The stay is effective when the bond is approved and received by the court.

(5) Stay in Favor of the Tribe or Agency Thereof. When an appeal is taken by the tribe, or an officer or agency of the tribe, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

(6) Power of Appellate Court not Limited. The provisions in this rule do not limit any power of an appellate court or a judge or justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

(7) Stay of Judgments upon Multiple Claims. When a court has ordered a final judgment on some, but not all, of the claims presented in the action under the conditions stated in Rule 24, the court may stay enforcement of that judgment until the entering of a 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 altered.

(8) Waiver of Undertaking. In all cases, the parties may, by written stipulation, waive the requirements of this rule with respect to the filing of a bond or undertaking. In all cases where an undertaking is required by those rules, a deposit in court in the amount of such undertaking, or such lesser amount as the court may order, is equivalent to the filing of the undertaking.

## Rule 32

## Disability of a Judge

If by reason of death, sickness, or other disability, a judge before whom an action has been tried is unable to perform the duties to be performed by the court under these rules after a

verdict is returned or findings of fact and conclusions of law are filed, then any other judge regularly sitting in or assigned to the court may perform those duties.

Rule 33

Injunction; Restraining Orders

(1) Preliminary Injunction; Notice. No preliminary injunction shall be issued without notice to the adverse party.

(2) Temporary Restraining Order; Notice; Rehearing; Duration. 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 a hearing held thereon. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance, and shall be filed forthwith in the clerk's office and entered on record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms within such time after entry, not to exceed fifteen (15) days, as the court fixes, unless within the time so fixed the order, for good cause shown, is extended for a like period 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 on record. In case a temporary restraining order is granted without notice, the motion for permanent 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; and when the motion comes on for hearing the party who obtained the temporary restraining order shall proceed with the application for permanent injunction and, if he does not do so, the court shall dissolve the temporary restraining order. On two (2) days' notice to the party who obtained 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 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. (Form II-32)

(3) Security. Except as otherwise provided by law, no restraining order or preliminary injunction shall issue except upon the giving of security by the applicant, in such sum as the court deems proper, for the payment of costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Shoshone and Arapaho Indian Tribes, or of an office or agency of either; nor shall it be required of a person who is allowed to proceed with a waiver by the court of such bond. A surety bond or undertaking under this rule submits himself to the jurisdiction of the court and irrevocably appoints the clerk of court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the court prescribes may be served on the clerk of court who shall forthwith mail copies to the persons giving the security if their addresses are known.

(4) Form and Scope of Injunction or Restraining Order; Service. Every order granting an injunction and every restraining order shall be specific in terms, shall describe in reasonable language, 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, attorneys, and advocates, and upon those persons in active consent or participation with them who receive actual notices of the order by personal service or otherwise. (Form II-33)

(5) Grounds for Injunction. An injunction may be granted:

a) When it appears 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) When it appears from the pleading or by affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the party seeking injunctive relief;

c) When it appears during the litigation that either party is doing or threatens, 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.

#### Rule 34                      Extraordinary Writs

Grounds for Relief. Where no other plain, speedy and adequate remedy exists, relief may be obtained by requesting an extraordinary writ which may be granted for any one of the following grounds:

(1) Where anyone usurps intrudes into, or unlawfully holds or exercises a public office, or does or permits to be done any act which by law works a forfeiture of his office. (Form II-34)

(2) When an inferior tribunal, board, or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion. (Form II-35)

(3) When the relief sought is to compel any inferior tribunal, board or person to perform an act which the law specifically enjoins as a duty resulting from an office trust or station; to compel the admission of a party to the use and enjoyment of a right of office to which he is entitled and from which he is unlawfully excluded by such inferior tribunal, board, or person. (Form II-36)

(4) Where the relief sought is to arrest the proceedings of any tribunal, board or person, whether exercising functions judicial or ministerial, when such proceeding are without or in excess of the jurisdiction of such tribunal, board or person. (Form II-37)

Rule 35

Execution

(1) Time. If within sixty (60) days after entering of a judgment awarding money damages and/or costs against a party, or within sixty (60) days after final resolution of an appeal to the appellate court from such judgment, it is made to appear to the court that the judgment debtor has not paid the judgment amount in full or commenced making installment payments in a manner agreed to by the parties, or is not current in such payments, the court shall upon motion of the judgment creditor, heard ex-parte, order the judgment debtor to appear before the court to show cause why the personal property of the judgment debtor should not be executed upon, provided he does not abide by an order to comply with the judgment. (Form II-38)

(2) Procedure. The court shall order the judgment debtor to appear before the court and answer under oath regarding all of his personal property. The court may then determine what property of the judgment debtor is available for execution and order the seizure of as much of such property as reasonably appears necessary to pay the judgment amount. Failure of the judgment debtor to appear may be deemed a contempt of court and the court may proceed without such appearance. The Wind River Indian Police Department shall be ordered to aid the judgment creditor in the execution of the personal property, however, the judgment creditor is to assume the active role while the police assure that no breach of the peace occurs. Sale of the seized property shall be at a public auction conducted by the judgment creditor after giving at least ten (10) days' public notice posted in three (3) conspicuous places on the reservation, or published for one (1) month in a paper of general circulation. Property shall be sold to the highest bidder who shall make payment for the property at the time of sale. The person conducting to sale may postpone it if there is inadequate response, in his discretion, 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 details of the sale. (Forms II-39 and II-40)

(3) Exemption from Execution.

a) The court shall only order seizure at sale of such property of the judgment debtor to satisfy a money judgment, the less of which will not create an immediate substantive hardship on the immediate family of the judgment debtor. Only property of the judgment debtor himself may be subject to execution and not property of his family.

b) The following is considered as exempt property, seizure of which would by operation of law be considered an immediate substantive hardship:

i) clothing up to \$1,000.00;

- ii) furniture and bedding up to \$2,000.00;
- iii) tools or vehicle up to \$2,000.00; and
- iv) homestead exemption up to \$10,000.00.

Rule 36

Citation

These rules shall be known as the Shoshone and Arapaho Rules of Civil Procedure and may be abbreviated SARCP.

History: Adopted 1987. Restated Nov. 1, 2004, by the Shoshone & Arapaho Tribal Court.