

Chapter 3
Pokagon Band of Potawatomi Indians
Court Rules for Civil Infractions

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Chapter 3

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Court Rules for Civil Infractions

Section 1. Scope, Purpose, and Definitions.

- A. **Scope.** These rules apply to any person who commits a civil infraction of the Pokagon Band of Potawatomi Indians tribal law on Reservation land.
- B. **Purpose.** The purposes of this Chapter of Court Rules are:
1. To enforce the standards of the community by establishing practice and procedure for the citation of civil infractions and the enforcement of associated judgments; and
 2. To develop practice and procedure for the fair treatment of respondents in hearings, appeals, and enforcement of judgments.
- C. **Definitions.** The following terms have the following meanings:
1. "*Band*" and "*Tribe*" are synonymous and mean the Pokagon Band of Potawatomi Indians.
 2. "*Chief Judge*" means the Chief Judge of the Pokagon Band Tribal Court.
 3. "*Court*" and "*Tribal Court*" are synonymous and mean the trial level court of the Band.
 4. "*Court of Appeals*" means the appellate level court of the Band.
 5. "*Day*" means a calendar day.
 6. "*Designated Offense*" means a civil infraction for which a civil penalty has been assigned by the Court and is listed on the envelope accompanying the civil infraction uniform citation.
 7. "*Non-Designated Offense*" means a civil infraction for which a civil penalty has not been previously assigned.
 8. "*Reservation land*" means, pursuant to 25 U.S.C. § 1300j-5 or other applicable federal law:(i) all lands, the title to which is held in trust by the United States for the benefit of the Pokagon Band of Potawatomi Indians;

and (ii) all lands proclaimed by the Secretary of the Interior to be part of the Tribe's reservation. The term Reservation includes any rights-of-way running through the Reservation.

9. "*Respondent*" means an individual who has been cited for a civil infraction.

Section 2. Citation Issued for Designated Offense.

- A. **In the Officer's Presence.** A respondent may admit responsibility for a designated offense by signing the civil infraction uniform citation on the backside of the uniform citation in the presence of the citing officer. A respondent may pay the designated civil penalty to the officer in full upon an admission of responsibility. If the Respondent does not pay the designated civil penalty in full, the citing officer may require the posting of bond.
- B. **Response by Mail.** A respondent may admit or deny responsibility for a designated offense by signing the civil infraction uniform citation in the appropriate location on the backside of the uniform citation and delivering it to the Court by mail or in person within 14 days from the day it was issued. If the Respondent admits responsibility, the Respondent may send any required payments with the citation. If the Respondent denies responsibility, the Court may require the posting of bond. Failure to respond within 14 days will result in a default judgment according to Section 5.
- C. **Admission of Responsibility.** Admission of responsibility will result in the entry of a civil judgment against the Respondent. The Respondent must pay the civil penalty and any restitution associated with the civil infraction that is imposed by the Court.
- D. **Payment.** Payment in full of any civil penalty and restitution will result in the issuance of satisfaction of judgment. An installment payment schedule may be established, according to Section 9, if the Respondent is unable to pay the entire judgment in full.
- E. **Denial of Responsibility.** Denial of responsibility will result in the scheduling of an initial appearance, which will proceed according to Section 6.
- F. **Second or Subsequent Offense.** If the Respondent was previously found responsible for the same offense, the Court may exercise its discretion in deviating from the designated civil penalty.

Section 3. Citation Issued for Non-Designated Offense.

- A. **Initial Appearance Assigned.** A respondent cited for a non-designated offense will be assigned an initial appearance date by the citing officer.

- B. **In the Officer's Presence.** A respondent may admit responsibility for a non-designated offense by signing the civil infraction uniform citation in the appropriate location on the backside of the uniform citation in the presence of the citing officer. The Respondent or his/her attorney shall appear on the initial appearance date assigned by the citing officer.
- C. **Response by Mail.** A respondent may admit or deny responsibility for a non-designated offense by signing the civil infraction uniform citation in the appropriate location on the backside of the uniform citation and delivering it to the Court by mail or in person within 14 days. The Respondent or his/her attorney shall appear on the initial appearance date assigned by the citing officer unless otherwise ordered by the Court.
- D. **Judicial Discretion Upon Respondent's Admission.** If the Respondent admits responsibility for the civil infraction and the Court deems it proper, the Court will impose an appropriate penalty, enter a civil judgment, and the initial appearance will be dismissed.

Section 4. Rights of Respondents. Respondents have the following rights:

- A. To be informed of each civil infraction allegation and to receive a copy of the law allegedly violated;
- B. To be presumed not responsible of each offense unless proven responsible by a preponderance of the evidence;
- C. To enter a plea;
- D. To have a hearing;
- E. To have the assistance of an attorney. If represented by an attorney, a respondent must arrange and pay for his/her representation;
- F. To see, hear, and question all witnesses at the hearing; and
- G. To call witnesses to testify at the hearing. A subpoena may be acquired to compel the appearance of a witness at trial.

Section 5. Default Judgment.

- A. **Entry of Default Judgment.** The Court will enter a default judgment when a respondent fails to: (1) respond to a civil infraction uniform citation regarding a designated offense within 14 days; (2) appear in court as directed by the uniform citation; or (3) appear in court as ordered by the Court.

- B. **Content of Order.** An order containing the following will be sent to the Respondent in the event of a default judgment: (1) finding of responsibility; (2) civil penalty and any restitution owed; and (3) imposition of additional court costs.
- C. **Request to Set Aside Default Judgment.** Within 14 days after entry of a default judgment, the Respondent may request, in writing, that the Court set aside the default judgment.
1. **Content of the Request.** The request must include the Respondent's reason for not responding or appearing and a meritorious defense or explanation to the charged civil infraction.
 2. **Determination by the Court.** For good cause, the Court may set aside a default judgment and schedule a hearing on the charged civil infraction, or schedule a hearing on the request to set aside the default judgment.
 3. **Judgment Stands.** If the Court denies a respondent's request to set aside a default judgment, the judgment must be paid. Failure to pay will result in the enforcement of unsatisfied judgments according to Section 8.

Section 6. Initial Appearance.

- A. **Purpose.** Unless a respondent has admitted responsibility, the Respondent or his/her attorney must appear at an initial appearance. At an initial appearance, the Court will inform the Respondent of the offense, advise the Respondent of his/her rights, and take a plea to the offense.
- B. **Respondent Must Appear.** Failure of a respondent or his/her attorney to appear at an initial appearance will result in a default judgment according to Section 5.
- C. **Request to Reschedule for Good Cause.** An initial appearance may be rescheduled for good cause. The Respondent must submit a request to reschedule an initial appearance to the Court in writing.
- D. **Respondent's Plea.** At the initial appearance, the presiding judge will take the Respondent's plea to the charged civil infraction.
1. **Admission of Responsibility.** If the Respondent admits responsibility, the Court will impose a penalty and enter a judgment, or schedule a sentencing hearing.
 2. **Denial of Responsibility.** If the Respondent denies responsibility, the Court will schedule a pretrial conference or set the matter for hearing. A hearing date will be set following the completion of a pretrial conference.

A pretrial conference may occur immediately after the initial appearance if the Court finds it proper.

Section 7. Hearing and Appeal.

A. Hearing Process.

1. **Judge as Fact-Finder.** All hearings under these *Rules* shall be conducted before the Court without a jury. Since civil infractions may result only in civil penalties and do not carry the potential for incarceration, a respondent has no right to a hearing before a jury. The trial judge shall serve as fact-finder.
2. **Conduct and Order of Hearing; Decision by Court.** In all hearings commenced by the Court:
 - a. **Witnesses.** Witnesses shall be sworn.
 - b. **Conduct of Hearing.** The Judge shall conduct the hearing so as to do substantial justice according to the law and the *Rules of Evidence* of the Pokagon Band.
 - c. **Order of the Hearing.** In all civil infraction hearings, presentations shall be made in the following order unless otherwise agreed to by the parties or determined at a pretrial conference: (1) opening statements; (2) Presenting Officer's case-in-chief (witnesses and evidence); (3) Respondent's case-in-chief (witnesses and evidence); (4) motions of either party that are based on events at the hearing may be raised at different stages of the hearing; and (5) closing arguments by both parties.
 - d. **Decision by the Court.** The Court may announce a decision at the close of the hearing or may take the matter under advisement and issue a written decision at a later time. The Court shall endeavor to issue its ruling within 30 days of submission of briefs or completion of hearing.
3. **Consolidation; Separate Hearings.**
 - a. **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 law or fact relating to actions or if doing so will tend to avoid unnecessary cost or delay.

- b. **Separate Hearings.** The Court, in furtherance of convenience or to avoid prejudice, may order a separate hearing of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue, or of any number of claims or issues.

B. **Possible Outcomes.** The following outcomes may result from a hearing:

1. **Admission of Responsibility Prior to or at a Hearing.** If a respondent admits responsibility to a civil infraction prior to or at a hearing, the Court will impose an appropriate penalty and enter a civil judgment.
2. **Respondent Found Not Responsible.** If the Respondent is found not responsible for a civil infraction, the case will be dismissed and any bond posted will be refunded.
3. **Respondent Found Responsible.** If the Respondent is found to be responsible for a civil infraction, the Court will impose an appropriate penalty and enter a civil judgment.
4. **Case Dismissed by Court or Upon Motion from Presenting Officer.** Upon dismissal, any posted bond will be refunded to the Respondent.
5. **Default Judgment.** If the Respondent fails to appear, the Court will enter a default judgment according to Section 5.

C. **Restitution Hearing.** If the Respondent admits responsibility or is found responsible, a hearing to determine restitution will be held if the Court deems it necessary.

D. **Appeal.** Within 7 days after entry of the Tribal Court judgment, the Respondent or the Presenting Officer may appeal the outcome of a hearing on the grounds stated below. The appeal shall be submitted to the Court of Appeals. Appeals shall be governed by the *Court Rules of Appellate Procedure*.

1. **Grounds for Appeal.** Grounds for an appeal shall include: (1) the result is not in conformity with Tribal law; and/or (2) the findings are clearly erroneous.
2. **Bond.** An appealing party may be ordered to post bond at the discretion of the Trial Judge. If a party who has posted bond defaults by failing to appear for a hearing on the appeal, or if the appeal is dismissed, or the judgment is affirmed, the bond may be applied to payment of the judgment.

Section 8. Enforcement of Unsatisfied Judgments.

- A. **Order to Show Cause.** If a respondent fails to pay as ordered, an order to show cause will be issued by the Court and a hearing will be scheduled. An administrative fee shall be imposed against the Respondent. The order to show cause and notice of the hearing date will be sent to the Respondent. If the judgment and additional administrative fee are paid prior to the hearing date, the hearing on the order to show cause will be cancelled and a satisfaction of judgment will be issued to the Respondent.
- B. **Show Cause Proceeding.** If a respondent fails to pay as ordered, the Respondent must appear before the Court to explain why the Respondent should not be held in contempt for failure to obey the Court's order.
1. **Respondent Fails to Appear.** If the Respondent fails to appear, the Respondent may be held in contempt. Upon review of the file, a civil bench warrant may be issued. The Court may impose additional court costs to compel the appearance of the Respondent.
 2. **Respondent Appears and is Found in Contempt.** If the Respondent appears and is found in contempt at the proceeding and the judgment remains unsatisfied, the Court will impose an appropriate penalty for the contempt.
 3. **Respondent Appears and is Found not in Contempt.** If the Respondent appears and is not found in contempt, the order to show cause will be dismissed.
 4. **Respondent Appears, is Found not in Contempt, and Judgment is Suspended.** If the Respondent appears and good cause is shown, the Court may suspend the judgment.
- C. **Civil Bench Warrant.** A civil bench warrant may be issued by the Court upon a finding of contempt for failure to satisfy an order of the Court. If full payment of the bond indicated in the civil bench warrant is received from the Respondent prior to enforcement of the bench warrant, the civil bench warrant will be recalled and a satisfaction of judgment will be issued. If full payment of the bond is not received, the civil bench warrant will remain active to be acted upon by law enforcement. If the Respondent shows good cause for the lack of payment of the judgment, the Court may suspend the judgment.

Section 9. Request for Installment Payments.

- A. **General.** A respondent may request to pay a penalty and any associated restitution by installment payments. A request must state reasons why a

respondent cannot afford to pay the full amount owed and state an amount that the Respondent reasonably believes can be paid by installments.

- B. **Request in Writing or Verbally.** A request for installment payments must be submitted to the Court in writing or presented verbally to the Court at a hearing.
- C. **Determination by Court of Installment Schedule.** The Court shall determine an appropriate amount and time period for installment payments or may deny the request as justice requires.
- D. **Order for Installment Payments.** If a request for installment payments is granted by the Court, an order for installment payments will be entered by the Court and mailed to the Respondent by first-class mail.
- E. **Adherence to Installment Schedule.** Payment of the entire judgment pursuant to an installment schedule will result in the issuance of satisfaction of judgment. Failure to adhere to the installment schedule will result in the enforcement of unsatisfied judgment process according to Section 8.

Section 10. Short Title, Effective Date, Citation Format and Certificate of Adoption.

- A. **Short Title.** These *Rules* are titled “Rules for Civil Infractions.”
- B. **Effective Date.** These *Rules* become effective when adopted by the members of the Court of Appeals of the Pokagon Band of Potawatomi Indians.
- C. **Citation.** The official abbreviated citation form to these *Rules* is: PBCR Chapter 3.
- D. **Certificate of Adoption.** The Justices of the Court of Appeals unanimously adopted the above *Rules* on August 11, 2011.

JUDICIAL HISTORY

On August 11, 2011: The *Court Rules for Civil Infractions* were unanimously adopted by the Justices of the Court of Appeals.

On January 3, 2013: Section 7(D) was amended to provide appellate review by the Court of Appeals [consistent with Article XII, Section 5(b) of the *Constitution*] rather than the non-involved trial level judge. Section 1(C) was amended to include a definition of the Court of Appeals.