

COLORADO RIVER INDIAN TRIBAL COURT
LOCAL RULES OF PROCEDURE FOR CONTEMPT OF COURT
AND RELATED PROCEEDINGS "LRPOSC"

I. SCOPE

LRPOSC 1

These Rules apply to contempts of Court per L&O 107 and/or the inherent powers of the Court, for which the procedures are identical, including, but not limited to, the enforcement of any child support order, subpoena, domestic restraining order, or summary contempt, but do not apply to any criminal contempt per L&O 341, which is initiated by, or referred for initiation to, the Tribal Police or Tribal Prosecutor, as any other criminal offense, per LRCRP. See LRCP 1.

ANNOTATIONS

II. CONTEMPT COMMON CONTEMPT OF COURT

LRPOSC 2

Common contempts of Court arise under:

FTA (a) where a party has failed to appear, in any
CRIM criminal case, CO action, or CNC action, as ordered
PRTY by the Court or promised by the party,

FTA (b) where a party has failed, in any case or proceeding, to
CIV abide by any order of the Court or any promises made to the
PRTY Court, including, but not limited to, any failure to appear,

FTA (c) where a non-party has failed, in any case or
NON proceeding, to abide by any order of the Court or any
PRTY promises made to the Court, including, but not limited to,
any failure to appear,

FINE (d) where a party has failed, in any criminal case,
OR CO action, or CNC action, to pay to the Clerk
RESTI any fine or restitution imposed on the party,

JDMT (e) where a party has failed, in any case or proceeding, to
CIV comply with terms of a judgment directed against him or her
in a civil case, which by specific terms imposes a personal
duty on a party to do, or refrain from doing, a certain act
within a certain time, including, but not limited to, the
duty to pay child support, when and as ordered by the Court,
or as in any Court approved stipulation or agreement of the
parties,

SUMM (f) and/or where anyone commits a summary
CMPT contempt in the presence of the Court.

ANNOTATIONS

Cf. LRPC 9 and LRPC 32 (a)(No OSC for Enforcement of Usual Civil Judgment); LRCRP 21 (Failure to Appear or Violation of Release Conditions); L&O 205 (a)(Contempt); L&O 206 (d)(Failure to Pay Fine); L&O 207 (c)(Willful or Negligent Failure to Comply with Civil Judgment); DRC 1-107 (Juvenile Action Contempt); LRSP 6: In the Matter of a Juvenile, Colorado River Indian Juvenile Court, Case No. J-95-CRC-0051 (Order of 07/18/95 Holding Non-Indian School Principal in Contempt for Failure to Appear per Juvenile Court Subpoena)

III. PLEADING AND FILING, CONTEMPT

LRPOSC 3

(a) **Motion for Order to Show Cause, by Party, Pleading of Motion.** A party may initiate an order to show cause by filing with the Court a proposed form of order to show cause, along with a motion and affidavit stating under oath all facts sufficient to allege probable cause for the contempt, which includes either an original, carbon copy, or a certified copy of the promise, order or judgment allegedly violated, or of a certified copy of the Tribal Court record thereof. A motion for an order to show cause shall bear a caption identifying the plaintiff and defendant and case number of the case in which it arises, along with a bench warrant or OSC number or designation, if any, and shall:

- (1) identify a promise to, or order or judgment by, any of the Courts of the Tribes,
- (2) name the respondent/defendant who made the promise or on whom the order or judgment falls,
- (3) order that respondent/defendant to appear and show good cause why she should not be held in contempt for failing to comply therewith,
- (4) state the possible penalty for failing to show good cause or appear as ordered therein, and
- (5) reasonably identify the time, date and location of the Tribal Court where the hearing will take place.

(b) **Order to Show Cause, by Court, Pleading.** Whenever payment or appearance was to be made at, or to, the Court, or a summary contempt is done in front of a Judge or any Court staff, the Clerk or any Judge of the Courts of the Tribes, may, upon the Court's own motion, or upon information provided by a person or party in Court at the time of the proceeding where the alleged failure to pay or appear occurs, issue a Bench Warrant and upon the respondent/defendant's appearance or arrest, initiate an order to show cause, in which case the Clerk shall prepare the order to show cause in substantially similar form to LRPOSC 3(a) and attach a copy of the promise, order or judgment allegedly violated, and payment records if applicable; however, no motion, affidavit, or certified copies are required.

(c) Any substantially completed or amended Order to Show Cause is deemed to satisfy the requirements of Tribal law, including but not limited to, L&O 108 (e).

(d) **Order to Show Cause, Amendment, Amended and Supplemental Pleading.** Any Order to Show Cause may be amended or supplemented by the Court per LRCP 9.

ANNOTATIONS

LRPOSC 4

(a) **Order to Show Cause, Filing of Motion, When Required, by a Party.** A party moving for an order to show cause per LRPOSC 3(a) shall file therefor per LRPOSC 3(a), prior to its issuance.

(b) **Order to Show Cause, Filing, When Required, By a Clerk or Judge.** The Clerk or Judge issuing an order to show cause per LRPOSC 3 (b), may issue a bench warrant prior to the Clerk preparing the order to show cause per LRPOSC 3 (b).

ANNOTATIONS

IV. SUMMONS OR WARRANT, CONTEMPT

LRPOSC 5

(a) **Arrest, Bench Warrant.** Regarding the contempt identified in LRPOSC 2 (a), for which the party has already failed to appear pursuant to their promise to the Court and/or Court order and/or per L&O 205 (e), or other applicable law, the Court may immediately issue, in its discretion, either a bench warrant, civil arrest warrant, or Order to Show Cause.

(b) **Summons, Order to Show Cause, Summons.** Regarding any contempt identified in LRPOSC 2 (b)-(e), the Court shall first issue an OSC and service shall be attempted with due diligence prior to issuing any warrant. Thereafter, upon affidavit of non-service or other sworn testimony showing cause to believe the person to be served is avoiding service and/or failing to appear or respond after service or attempted service, the Judge may, in his or her sole discretion, issue a bench warrant or civil arrest warrant, regardless of the race or citizenship of such person.

(c) **Immediate Arrest, Order to Show Cause, Bench Warrant or Summons.** Regarding the contempt identified in LRPOSC 2(f), the Judge may order the immediate arrest, and/or issue a bench warrant or civil arrest warrant, or may, in the discretion of the Judge, hold the person in contempt, and order his or her arrest, and set the matter for sentencing before another Judge per LRPOSC 8, or alternatively, in the Judge's sole discretion, issue an OSC.

ANNOTATIONS

V. PROCEDURES FOR AND UPON SERVICE OR ARREST, CONTEMPT

LRPOSC 6

(a) **Order to Show Cause, Upon Service.** Upon service of an OSC, the time for hearing shall arrive and no continuance shall be granted, absent compelling reasons.

(b) **Order to Show Cause, Upon Arrest.** Upon arrest, if a contempt is initiated a bench warrant or other arrest of the respondent/defendant, that person shall be brought before the Court for initial appearance per LRPC 38 (c), and the Judge shall first proceed to examine, amend, advise, and dismiss or set bail and the Judge shall examine the records before him or her for a promise to, or order of, this Court in apparently proper form, promising or ordering the respondent/defendant to do, or not to do, the conduct alleged as a basis for contempt, AND a notice to, or evidence of notice to, that person of their promise or order allegedly violated, and if found, the Judge may order a written OSC to be typed by the Clerk and served on the respondent/defendant after the initial appearance. The Judge shall enter a plea of admission or denial for the respondent/defendant in substantially similar form, and if denied, shall set the hearing per Insert B.

(c) **Order to Show Cause, Notification of Attorney.** The Judge, Clerk, and any party filing and initiating an action for any contempt per LRPOSC shall notify any attorney of record, except where expired per LRPC 20 (c) in the case or action out of which the OSC arose of the motion and/or arrest of the respondent/defendant, whenever reasonably possible.

(d) **Order to Show Cause, Disclosure to Attorney General, in Order to Show Cause, Contempt.** The parties or the Court shall make such disclosure to each other and to the Attorney General as are required per LRPC 14.

ANNOTATIONS

VI. CONTEMPT, HEARING PROCEDURE

LRPOSC 7

Order to Show Cause, Hearing Procedure. A hearing on contempt shall proceed per L&O 107, at which hearing, the respondent/defendant bears the burden of showing good cause for the violation, including, but not limited to, the lack of wilfulness or justification, once the initial proof against him or her is found by the Judge of (1) a promise to, or order of, this Court in apparently proper form, promising or ordering the respondent/defendant to do, or not to do, the conduct alleged as a basis for contempt, (2) a notice to, or evidence of notice to, that person of his or her promise or of the order, and (3) the failure to do, or to not do, the act(s) as required by the promise or order.

ANNOTATIONS

Once the initial proof against the respondent/defendant is found, only the respondent/defendant has any facts in his or her possession to show cause for the contempt. A mere claim to have forgotten, or the assertion of a negligent cause, does not, and cannot, by itself, prove lack of wilfulness.

LRPOSC 8

Contempt, Findings, Judgment and Sentence. If good cause for the violation per LRPOSC 7 is not shown, the Judge shall set forth the factual findings for the contempt in writing and set or hold a judgment and sentence hearing per LRCP 9, but if not so found, the Court shall dismiss the action and quash the warrant, if any.

ANNOTATIONS

LRCP 2 (45) ("In Writing"), L&O 107 (An order reciting the Facts Required); LRCP 17 (Stay); LRCP 33 (Affected Non-Party May File Objection)

LRPOSC 9

Contempt, Hearing Credibility and Demeanor Evidence. Credibility and demeanor evidence shall be considered by the Judge upon the testimony of any witness, including the respondent/defendant.

ANNOTATIONS

VII. CONTEMPT, STAY OF PROCEEDING TO ENFORCE JUDGMENT OR ORDER OF CONTEMPT

LRPOSC 10

Stay. Any final order, judgment, or sentence -- whether made in the form of a minute order or not -- is immediately effective, unless the Court orders otherwise, and may be made per LRCP 17 (b) in open court, and if so made, and shall be deemed denied, unless granted at the hearing in which made, unless the moving party agrees otherwise, as any other motion for stay of proceedings.

ANNOTATIONS

LRCP 17 (Stay); TRCP 52 (Stay by Motion); LRCP 18 (Motion to Reconsider); LRCP 33 (Affected Non-Party May File Objection)