

COLORADO RIVER INDIAN TRIBAL COURT
LOCAL RULES ON SUBPOENA PROCEDURE "LRSP"

I. SCOPE

LRSP 1

These Rules apply to the issuance and enforcement of subpoenas.

ANNOTATIONS

II. PLEADING AND ISSUANCE, SUBPOENA

LRSP 2

Subpoena, Pleading. Each subpoena or other pleading in any subpoena action shall bear a caption identifying the plaintiff and respondent/defendant and case number of the action or case in which it arises, and the name and address of the party or the party's attorney causing issuance, and shall, when required, contain the declaration or affidavit per LRSP 3 (a), and shall command each person to whom it is directed to attend and give testimony or to produce and permit inspection and copying of designated books, documents, or tangible things in the possession, custody or control of that person, or to permit inspection of the premises, at a time and place therein specified.

ANNOTATIONS

LRSP 3

(a) Subpoena, Issuance, Disclosure to Attorney General. Upon presentation in the form and for the purposes specified in LRSP 2, every subpoena shall be issued by and under the seal of, the Clerk, except that the Clerk shall not issue a subpoena for any government officer, employee, or agent, without a declaration or verification of contemporaneous delivery of a copy thereof to the Attorney General, with the only two exceptions of subpoenas by the Tribal Attorney General on anyone and by any other party on any Colorado River Indian Tribal law enforcement, regulatory enforcement, and probation officer(s) in the Courts of the Tribes in any criminal case, regulatory case, Section 632 action, CO Action, CNC Action OSC action or other action where the Tribal Government a party thereto.

(b) **Domestication and/or Clearance for Service, Subpoena from Other Court.** A subpoena from any court other than the Courts of the Tribes shall be presented to a Tribal Judge for clearance for service on the Reservation only, or also for domestication consistent with local rules if any, per Insert C, which subpoenas are not otherwise domesticated nor enforceable by the Courts of the Tribes, but can otherwise be domesticated only by filing a petition or complaint therefore per LRCP 6.

ANNOTATIONS

LRCP 22 (f); LRCP 5 (a)(1)(1) and footnotes

III. SUBPOENA TIME AND SERVICE, SUBPOENA

LRSP 4

(a) **Who May Serve.** A subpoena may be served in the same way as other process per LRCP 28 or by any other person who is not a party and is not less than 18 years of age. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such person and a copy to each party or their attorney in the case, and on the Attorney General when required per LRCP 3.

(b) **Proof of Service.** Proof of service of a subpoena may be made per LRCP 22 (b) or made by filing with the Court Clerk a copy of the subpoena with a statement of the date and manner of service and of the names of the persons served, certified by the person who made service.

(c) **Service, Subpoena for Trial or Hearing, Time For Service.** Except per LRSP 4 (e) subpoenas for any trial or hearing shall be served not less than Five (5) business days prior to the date of the trial or hearing, including subpoenas for Colorado River Indian Tribal law enforcement, regulatory enforcement, and probation officers, except where Attorney General notification is required per LRSP 3 (a), any other subpoenas for any other government or officer, employee, or agent shall be served not less than Twenty (20) business days prior to the date of the trial or hearing.

(d) **Service, Subpoena for Other than Trial or Hearing, Time for Service.** Subpoenas for any purpose other than for trial or hearing on any person or party shall be served not less than Twenty (20) business days prior to the date specified therein.

(e) **Service, Subpoena, Expedited Hearing, Time for Service.** Service of any subpoena, or any party or other person or entity for any expedited hearing shall be made as soon as reasonably possible, which may be less than Five (5) business days prior and at any time prior to the hearing.

(f) **Service, Subpoena, Court Ordered Exception, Time for Service.** In any other action a case not covered by the Rule, only if the compelling interests of justice necessitate a shorter time-period for service and the cause of such necessity is completely excusable may service be performed on any shorter time-periods and as ordered or approved by the Court.

ANNOTATIONS

IV. SUBPOENA PROTECTION OF PERSONS SUBJECT TO SUBPOENA

LRSP 5

(a) **Subpoena, Undue Burden.** A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The Court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include but is not limited to, lost earnings and a reasonable attorney fees.

(b)(1) **Subpoena, for Inspection and Copying.** A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(2) **Subpoena, Time for Objection.** A person commanded to produce and permit inspection and copying, or the Attorney General, may, within Ten (10) business days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who is not a party or an officer of a party from significant expense resulting from the inspection and copying commanded.

(c) (1) **Subpoena, Motion to Quash, Subpoena.** On a timely motion, the Court by which a subpoena was issued shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance;
- (ii) requires a person who is not a party or an officer of a party to travel to a place more than 50 miles from the place where that person resides, is employed or regularly transacts business in person;
- (iii) requires disclosure of privileged or other protected matter and no exception or waiver applies;
- (iv) subjects a person to undue burden; or
- (v) subjects the government of which the person is an officer, employee, or agent to undue burden.

(2) If a subpoena:

- (i) requires disclosure of a trade secret or other confidential research, development or commercial information, or
- (ii) requires disclosure of an unretained expert's opinion or information not describing specific events or occurrences in dispute and resulting from the expert's study made not at the request of any party, or
- (iii) requires disclosure a person who is not a party or an officer of a party to incur substantial expense to travel more than 50 miles to attend trial,

the Court may to protect the person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issues shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order the appearance or production only upon specified conditions.

(d)(1) Subpoena, to Produce. A person responding to a subpoena to produce documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in the demand.

(2) Subpoena, Objection on Privilege or Work Product. When information subject to a subpoena is withheld on a claim that it is privileged or subject to protection as trial preparation materials, the claim shall be made expressly and shall be supported by a description of the nature of the documents, communications, or things not produced that is sufficient to enable the demanding party to contest the claim.

(e) Sovereign Immunity. Compliance with, or appearance objecting to, a subpoena, by any government officer, employee, or agent does not, and shall not, in any way, be construed, implied, deemed or considered, as consent to personal or other jurisdiction of the Court nor as a waiver, or in any way affecting, the sovereign immunity of the Colorado River Indian Tribal government or any officer, employee or agent thereof.

ANNOTATIONS

LRCP 33 (Affected Non-Party May File Objection); LRCP 17 (Stay); LRCP 7

V. SUBPOENA, ENFORCEMENT AND SUBPOENA, STAY OF PROCEEDING TO ENFORCE JUDGMENT OR ORDER ON SUBPOENA

LRSP 6

Subpoena, Enforcement. Failure by any person without adequate excuse to obey a subpoena served upon that person may be deemed a contempt of the court from which the subpoena issued. An adequate cause for failure to obey exists when a subpoena purports to require a non-party to attend or produce at a place not within the limits per LRSP 5 (c)(1). Proceedings to enforce subpoenas shall proceed per the LRPOSC.

ANNOTATIONS

See LRPOSC 5 (a) and (b)(by Summons, Bench Warrant or Civil Arrest Warrant); LRCP 33 (Affected Non-Party May File Objection); LRCP 17 (Stay)

LRSP 7

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 62 (Stay by Motion); LRCP 18 (Motion to Reconsider)