

# PONCA TRIBAL COURT

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## External Manual

The Ponca Tribal Court enforces the Constitution of the Ponca Tribe of Nebraska and the Law and Order Code of the Ponca Tribe of Nebraska. The following is not intended as a manual for court staff, but rather an overview of the Tribal Court system.

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## I. SEPARATION OF POWER

In accordance with the Ponca Tribe of Nebraska Law and Order Code Section 1-2-10 “There shall be a separation of power between the Tribal Court and the Tribal Council. Decisions of the Trial Court may be appealed to the Court of Appeals, but shall not be subject to review by the Tribal Council.”

Consistent with the separation of powers between the Council and the Court, the Court Administrator will be under the administrative supervision of the Executive Director of Tribal Affairs (EDTA) for routine time management and Tribal Personnel policies. The Court Administrator will for all other purposes be under the supervision/direction of the Tribal Court Judge to perform official Court functions. In no instance will this separation of administrative oversight and Court function be breached.

## II. COURT TERMS

Answer	Written response of the Defendant to the complaint
Bailiff	Court Officer that keeps order during court session
Complaint	Original paper to start action (often used interchangeably with Petition)
Contempt of Court	Disobeying court order, or any act that hinders the process of justice
Cross Claim	Defendant's request or complaint against the Petitioner
Defendant	Person that the Petition is against (often used interchangeably with Respondent)
Filed	Giving papers to Court, so that it can be recorded, delivered to all parties, and saved
Jurisdiction	Authority to decide a case, there are several different types
Jurisdiction - Concurrent	Shared jurisdiction of two courts - usually who files & is served first hears the matter
Jurisdiction - Personal	Authority of the Court over a person
Jurisdiction - Subject Matter	Authority of the Court to deal with the subject of the court case
Jurisdiction - Territorial	Land boundaries of Court - generally the Petitioner must be within land boundaries of the Court
Law & Order Code	Laws for the Ponca Tribe of Nebraska, cases in court should follow the Law & Order Code
Motion	Written request to the Court to make a decision (after complaint has been filed)
Notarized	Having a paper signed in front of a notary public
Notary Public	Public Official who ensure signatures are authentic
Party/Parties	Person involved in court process (Petitioners, Respondents, etc)
Personal Service	Hand delivering papers to the Defendant by a neutral party – usually by Law Enforcement
Petition	Formal written request requesting judicial action on a certain matter (often used interchangeably with Complaint)
Petitioner	Person who starts the action in Court (often used interchangeably with Plaintiff)
Plaintiff	Person who starts the action in Court (often used interchangeably with Petitioner)
Pre-trial Conference	A hearing before the Judge that determines what the parties disagree on
Respondent	Person that the complaint is against (often used interchangeably with Defendant)
Stipulation	Written agreement of the parties
Subpoena	Ordering a person to appear at a certain time and place to testify
Subpoena Duces Tecum	Ordering a person to come to court with a certain document
Summons	Form that the Court uses to notify a Defendant that a case has started against them and that they must answer within a certain amount of time (usually 30 days for Ponca Tribal Court)

### III. RULES OF CONDUCT FOR THE PONCA TRIBAL COURTROOM

In accordance with the Ponca Tribe of Nebraska Law and Order Code, the Judge has the power to “Preserve and enforce order in their immediate presence, and in proceedings before them, when engaged in the performance of their judicial duties”. In order to maintain order, the following rules have been adopted by the Ponca Tribal Court and shall be posted in the court room.

1. ALL PEOPLE MUST PASS THROUGH SECURITY WHEN ENTERING THE COURTROOM IF A SECURITY GUARD IS AVAILABLE.
2. PEOPLE ARE REQUIRED TO STAND WHEN THE JUDGE ENTERS THE COURTROOM, BE SEATED WHEN REQUESTED TO DO SO, AND REMAIN SEATED THROUGHOUT THE ENTIRE PROCEEDING.
3. ONLY THOSE WHO HAVE BEEN REQUESTED TO SPEAK BY THE JUDGE MAY SPEAK. OTHERS ARE REQUESTED TO REMAIN QUIET.
4. NO FOOD OR DRINK IS ALLOWED IN COURTROOM, UNLESS THE JUDGE ALLOWS.
5. NO CHEWING GUM OR CHEWING TOBACCO IS ALLOWED IN THE COURTROOM.
6. HEADGEAR MUST BE REMOVED PRIOR TO ENTERING THE COURTROOM.
7. NO SUNGLASSES ARE ALLOWED IN THE COURTROOM.
8. ALL CELLULAR PHONES AND BEEPERS MUST BE SILENCED AND MAY BE SUBJECT TO CONFISCATION IF THEY CAUSE A DISRUPTION.
9. NO CAMERAS, VIDEO EQUIPMENT, TELEVISIONS OR TAPE RECORDERS ARE ALLOWED IN THE COURTROOM.
10. ANYONE REFUSING TO GIVE THE PROPER RESPECT TO THE PROCESS OF JUSTICE MAY BE REMOVED FROM THE COURTROOM.

#### IV. INSTRUCTIONS FOR VIDEOCONFERENCE AND/OR TELEPHONIC APPEARANCES

**You may appear by videoconference or by telephone for hearings in the Ponca Tribal Court if you have received prior permission from the Court to do so, or if the hearing for which you will be appearing will not require evidence (such as testimony from witnesses, documents, or other physical evidence) to be taken. Parties at the following types of hearings may always appear by videoconference or telephonically, unless the Court orders otherwise:**

- Pretrial conferences
- Temporary hearings by affidavit (sworn written statements) only
- Status hearings
- Any other hearings where the Court has specifically allowed videoconference or telephonic appearances

**To appear by videoconference, you must go to the nearest tribal office:**

**Ponca Tribe of Nebraska Administration Building, 1800 Syracuse Avenue, Norfolk, NE 68701**

**Fred LeRoy Health and Wellness Clinic, 2602 J Street, Omaha, NE 68107**

**Ponca Tribe of Nebraska Office, 1701 E Street, Lincoln, NE 68508**

**Ponca Tribe of Nebraska Office, 125 Sixth Street, Sioux City, IA 51103**

**Ponca Tribe of Nebraska Headquarters, 2523 Woodbine Street, Niobrara, NE 68760**

You must notify the tribal office coordinator that you are there to appear for Court by videoconference. You must check in within fifteen (15) minutes of your scheduled hearing time. You will be escorted to the Videoconference room. You will be expected to stay in that room and follow the Rules of Conduct for the Ponca Tribal Court. As stated in the Rules of Conduct, "Anyone not giving the proper respect to the process of Justice may be removed from the Courtroom".

Your hearing may not happen at the scheduled time, as the Court will frequently schedule a number of hearings for the same time and take them in order. The Order of the hearings will be determined by the Tribal Court Judge and the Tribal Court Administrator and be based upon: 1. Time of Arrival of the parties. 2. Representation by counsel. 3. Nature of the Hearing. 4. Anticipated length of the hearing. 5. Any other factors that need to be considered.

**To appear by phone, you must call the Court to check in within 15 minutes of your scheduled hearing, and provide to the Court a telephone number where you can be reached when your telephonic hearing is ready to begin. The numbers to call are as follows:**

- **If the Court is being held in Norfolk: 402-371-8834**
- **If the Court is being held in Omaha: 402-734-5275**
- **If the Court is being held in Lincoln: 402-438-9222**

Your hearing may not happen at the scheduled time, as the Court will frequently schedule a number of hearings for the same time and take them in order as listed above. Thus, you should be prepared for a short delay prior to your hearing.

**If you choose, you may check-in for your telephonic hearing by e-mail to [tribalcourt@poncatribene.org](mailto:tribalcourt@poncatribene.org). This e-mail check-in must be made within 15 minutes of your scheduled hearing, and provide a telephone number where you can be reached when your hearing is ready to begin.**

**FAILURE TO APPEAR BY VIDEOCONFERENCE OR TO CALL AND CHECK IN , OR FAILURE TO ANSWER AT THE NUMBER PROVIDED AFTER THE CHECK-IN, WILL BE TREATED BY THE COURT AS A FAILURE TO APPEAR AFTER PROPER NOTICE.**

V. **FILING FEES FOR THE PONCA TRIBAL TRIAL COURT**

A filing fee shall be charged to bring an action before the Ponca Tribe of Nebraska Tribal Court. In accordance with Rule 15, Title II of the Code, the Judge has the ability to waive the filing fee, based upon the Petitioner’s income and expenses. These fees are as follows:

- |  |                  |
|--|------------------|
| 1) Civil Action  | \$60.00          |
| 2) Domestic Relations  | \$60.00          |
| 3) Divorce   | \$100.00         |
| 4) Motions to Modify Current Order   | \$25.00          |
| 5) Marriage License *  | \$25.00          |
| * Fee unable to be waived as Code specifies amount                         |                  |
| 6) Protection Orders   | <b>NO CHARGE</b> |
| 7) Admission for Attorneys to Practice before the Ponca Tribal Court **    | \$100.00         |
| ** Fee waived for attorneys representing Tribe or by Tribal Resolution     |                  |
| 8) Admission for Lay Counsel to Practice before the Ponca Tribal Court *** | \$100.00         |
| *** Fee may be waived by Law & Justice Committee                           |                  |

**FILING FEES FOR THE PONCA APPELLATE COURT**

- |                              |         |
|------------------------------|---------|
| 1) Petition for Appeal       | \$60.00 |
| 2) Motion to Appellate Court | \$25.00 |

Filing fees to the Ponca Appellate Court may be waived following the same process for the Tribal Court, which is based upon an affidavit and the Petitioner’s income and expenses.

**PURSUANT TO TRIBAL COUNCIL DIRECTIVE, FILING FEES MAY ONLY BE WAIVED FOR MEMBERS OF THE PONCA TRIBE.**

## VI. COPIES REQUESTED

### POLICY

The Tribal Court Administrator in accordance with Section 1-2-12 of the Ponca Tribe of Nebraska Law and Order Code is to keep a written or electronic record of all proceedings of the Court. Copies of these records are to be disbursed according to the following procedure.

### PROCEDURE

1. Involved parties are allowed one (1) free copy of all information filed in the Court. If a party requests a copy of their complete file, this shall be provided at no charge one time only. If the same party makes the same request, then only the new information filed will be provided to the party at no charge. What has already been provided to the party will be charged at the rate mentioned below.
2. Individuals not involved in a case will be charged a fee of thirty-five cents (\$0.35) per page. Payment may be paid at the time of pickup unless the copies are to be mailed, then payment must be made before the copies can be mailed.
3. There will be a charge of \$1.50 to certify a copy. A certified copy consists of the certification stamp and the court seal being recorded and completed on the last page of the document.
4. Postage may be charged to the person requesting the copy(ies).
5. No copies will be given of Juvenile cases, unless so ORDERED by the Court.
6. Attorneys working for the Ponca Tribe of Nebraska will not be charged for copies requested.
7. Employees of the Ponca Tribe of Nebraska will not be charged to obtain copies, if the copies are necessary to carry out their job-related duties for the Ponca Tribe of Nebraska. Copies for personal use will be charged at the rate mentioned above.
8. The Court reserves the right to charge ten dollars (\$10.00) per hour for the Clerk to research and obtain the copies, if a large volume is requested.
9. If a party is not involved in a case, they must complete the "Request for Copies" form and pay the required fees, before any copies may be mailed to the party.

## VII. CIVIL CONTEMPT

In accordance to the Ponca Tribe of Nebraska Law and Order Code Section 1-3-2 **Civil Contempt**. The following rules apply to civil contempt:

1. A civil contempt is prosecuted to preserve, protect, enforce or restore the duly adjudicated rights of a party to a civil action against one under legal obligation to do or refrain from doing something as a result of a judicial decree or order.
2. Relief in a civil contempt proceeding may be coercive or compensatory in nature as to the complaining party and may include a fine payable to the court or to the complaining party.
3. Relief for civil contempt shall be in the form of a civil judgment and may be enforced by the court or the complaining party, if relief is payable to the complaining party, through wage garnishment or other means available for the enforcement of civil judgments.

**Section 1-3-3. Contempt Procedures.** The following rules apply to contempt procedures:

1. A direct contempt is one committed in the presence of the court or so near thereto as to be disruptive of the court proceedings, and such may be adjudged and punished summarily.
2. All other contempts shall be determined by a hearing at which the person accused of contempt is given notice and an opportunity to be heard.

### **Also, in compliance with Section 1-5-9**

Any judge who finds legal counsel admitted to practice before the Tribal Court to be in contempt of Court may, in addition to any other sanction imposed, order the legal counsel to appear within thirty (30) days or the next scheduled court date and show cause why he should not be suspended from practicing before the Tribal Court.

## VIII. ATTORNEY

In accordance to the Ponca Tribe of Nebraska Law & Order Code **Section 1-5-2. Right to Representation.** Any person appearing as a party in any action before the Tribal Court shall have the right to be represented by legal counsel of his own choice at his own expense; provided, however, that the Tribe has no obligation to provide or pay for such legal counsel; provided further, that any such legal counsel appearing before the Tribal Court shall have first obtained admission to practice before such Courts in accordance with the procedures set forth herein.

### 1. Attorney

- a. Section 1-5-1 to 1-5-7 of current Code addresses requirements for attorneys, basically
  1. They must be an active member in good standing of the Nebraska Bar, or certified and eligible to practice before the highest court of any other state or of the Supreme Court of the United States
  2. They must never have been disbarred, suspended, censured, or received a reprimand pertaining to his conduct or fitness to practice before any court or administrative body;
  3. They must pay the \$100 admission fee - or be employed by Tribe or have fee waived by Tribal Council Resolution
  4. They must take the required oath.
- b. If the Judge denies the Application, the attorney is notified of their right to a due process hearing before the Appellate Court as stated in Section 1-5-5 of the Ponca Tribe of Nebraska Law & Order Code.

### 2. Lay Counsel

- a. In accordance to the Ponca Tribe of Nebraska Law and Order Code Section 1-5-2 #2. A person who retains the services of a lay advocate in his defense of a criminal charge against him thereby exercises his rights to the assistance of counsel. Any person who retains the services of a lay advocate does so at his own risk regarding the competence of the advocate.
- b. Any person who is not an attorney is eligible to be admitted to practice before the Tribal Court as a lay advocate. Lay advocates shall be held to the same standards of knowledge and ability as are expected of attorneys.
- c. The Application Fee of \$100.00 for lay advocates may be waived by the Law and Justice Committee, subject to input and recommendations from the Tribal Court.

### 3. Disbarment and/or Discipline of Legal Counsel

- a. Whenever it is made to appear to the Chief Judge that any legal counsel admitted to practice before the Tribal Court has been disbarred or suspended from practice in any jurisdiction where such legal counsel is admitted to practice, such legal counsel shall immediately be given notice at his last known address that he shall be suspended from practice before the Tribal Court for an indefinite period unless he files a written reply within fourteen business days and shows good cause why such order should not be made. Legal counsel may appeal the Chief Judge's decision to the Court of Appeals.
- b. Any judge who finds legal counsel admitted to practice before the Tribal Court to be in contempt of Court may, in addition to any other sanction imposed, order the legal counsel to appear within thirty (30) days or the next scheduled court date and show cause why he should not be suspended from practicing before the Tribal Court.
- c. The Chief Judge may, upon receiving a written complaint, signed under oath or affirmation, which indicates that legal counsel admitted to practice before the Tribal Court has acted in an unethical or otherwise improper manner while functioning as legal counsel, order such legal counsel to appear and defend himself at a hearing, to hear all evidence relevant to the matter, and may order the suspension of such legal counsel if such appears reasonably necessary or appropriate. If the Chief Judge is the complainant, another Judge shall hear and decide the matter.
- d. All suspensions from practice before the Tribal Court shall be for an indefinite period unless the Judge specifically orders otherwise. Legal counsel suspended for an indefinite period, or one suspended for a specific period, may petition the Tribal Court for permission to re-apply for permission to practice at the end of one year or the specific period of suspension, and such permission shall be granted if it is made to appear, at a hearing or otherwise as the Court shall direct, that he has been adequately reprovved and now appears willing to conduct himself in a proper manner, and that the petitioner has been reinstated to practice if previously disbarred or suspended in another jurisdiction.
- e. Attorneys for the State Court for Nebraska that have been sanctioned is found at the Nebraska Supreme Court website under professional ethics for lawyers, currently: <https://supremecourt.nebraska.gov/attorney-sanctions>

**IX. APPOINTING, REMOVING & DISQUALIFYING JUDGES**

**1. Appointing a Judge (Section 1-2-5)**

- a) A Judicial Nominating Committee, consisting of five (5) members appointed by Ponca Tribal Council shall be formed. The court staff will assist with the procedure if requested by the Judicial Nominating Committee and/or Tribal Council.
- b) The appointed Judges shall serve a six year term.
- c) The Court Staff shall give the EDTA and the Tribal Council Secretary a notice that the Judge's contract will expire in one (1) year.
- d) The committee shall select qualified applicants to serve as the Judge(s) in the Court.
- e) The committee shall certify to Tribal Council all qualified applicants.
- f) The Tribal Council shall conduct an open hearing for each nominated person and shall select the Chief Judge and Associate Judges.

**2. Removal of Judges (Section 1-2-7)**

- a) During tenure in office, a justice or judge may be removed from office for any one of the following reasons: Habitual neglect of duties of office; Oppression in office for personal gain or advantage; or Conviction in any court of competent jurisdiction of a felony or crime involving moral turpitude.
- b) Removal shall be by petition, signed by at least twenty-five percent of the number of votes cast in the last tribal election. The Petition for removal shall be filed with the Tribal Council.
- c) Any justice or judge subject to removal shall be entitled to a hearing before the Tribal Council and the right to due process of the law. A two-thirds affirmative vote of the full Tribal Council shall be required to remove the justice or judge from office.

**3. Disqualification of Judges (Section 1-2-9 AND Title 2, Rule 58)**

- a) A judge shall disqualify himself from hearing any matter where:
  - i. the judge has been engaged as counsel in the matter prior to appointment as judge;

- ii. the judge is otherwise interested in the matter;
  - iii. either party to the matter is a member of the judge's immediate family;
  - iv. the judge is a material witness in the matter; or
  - v. there is cause to believe that on account of bias, prejudice, or interest of the judge he will not be able to provide a fair and impartial trial or render a just decision.
- b) Any party to a legal proceedings may request a change of assignment of judges to hear the proceedings by following the rules in Title 2, Rule 58 which states
1. A party or his legal counsel shall file and serve an affidavit alleging the grounds for disqualification
    - i. The affidavit must be filed and served within twenty days after discovery that grounds exist for disqualification of the judge.
    - ii. The affidavit shall state the facts and the reasons for the belief that the judge is disqualified with sufficient specificity to allow the matter to be properly determined
    - iii. The affidavit shall include a certificate of legal counsel of record, or by the party personally if the party is unrepresented, that such affidavit is presented in good faith based upon a reasonable investigation of the facts and the law and is not presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation.
    - iv. Unsupported or general allegations shall not be considered sufficient to disqualify a judge.
  2. No party shall be permitted to file more than one affidavit in any action.
  3. The judge against whom the affidavit is directed may summarily deny the request for disqualification if the affidavit does not include any facts or reasons to support the basis for disqualification.
  4. Otherwise, if the judge determines that cause exists to disqualify him, the judge shall proceed no further in the action except to make such temporary orders as may be absolutely necessary to prevent immediate and irreparable injury, loss or damage from occurring before the action can be transferred to another judge.
  5. If the judge against whom the affidavit is directed does not find that cause exists to disqualify him or otherwise does not find the affidavit sufficient, the judge shall certify the affidavit for assignment to another judge for determination.
  6. The Tribal Court Administrator shall then refer the affidavit to another judge for decision.
  7. The assigned judge shall decide the issues by the preponderance of the evidence. The sufficiency of any "cause to believe" shall be

determined by an objective standard, not by reference to any party's or legal counsel's subjective belief. The assigned judge may conduct or provide for a hearing to determine the issues connected with the affidavit if necessary for proper determination, but shall attempt to decide the matter without hearing so as to preserve the dignity of the Court and avoid the hint or appearance of impropriety.

8. Following determination of the disqualification, the assigned judge shall expeditiously reassign the action to the original judge or make a new assignment, depending on the findings of the assigned judge.
9. A denial of disqualification may be appealed to the Court of Appeals after final order or judgment in the action.

#### **4. Disability of Judges (Title II, Rule 58)**

- a) 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 decision is made 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
- b) but if such other judge determines that he cannot perform those duties because he did not preside at the trial or for any other reason, he may in his discretion grant a new trial.

- X. **Powers and Duties of Judges.** (Section 1-2-8) All justices and judges shall have the power to:
- a) Preserve and enforce order in their immediate presence, and in proceedings before them, when engaged in the performance of their judicial duties;
  - b) Compel obedience to their lawful orders
  - c) Compel the attendance of persons to testify in proceedings before them as provided by the laws of the Tribe;
  - d) Administer oaths to persons in proceedings before them and in any other case where such shall be necessary in the exercise of their powers and duties; and
  - e) Impose civil contempt by fine or other means as provided under the laws of the Tribe to assure the effectual exercise of these powers.

In the absence of the Tribal Court Administrator, a justice or judge may perform the Tribal Court Administrator's duties in addition to his own. The Chief Judge shall be responsible for the administration of the Trial Court, including assignment of cases and the management of the Trial Court's calendar and business. The Chief Justice shall be responsible for the administration of the Court of Appeals, including the management of the Court of Appeals' calendar and business.

## **XI. CHANGES MADE TO THIS MANUAL**

- A. Added Instructions for phone/videoconference on 1-16-15.
- B. Updated correct website for attorney sanctioned by State of Nebraska 1-16-15.
- C. Changed filing fees on 1-23-15.
- D. Updated References to comply with most recent Code on 6-13-16.