

Policies and Procedures for the Karuk Tribe Self Help Center / Family Law



Karuk Tribal Court
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General Information:

The Karuk Tribal Court Self-Help Center (the “Center”) staff cannot provide legal advice or representation in court. Staff assists both sides of the case equally. The emphasis of the Center is to provide legal information and education, not legal strategy and advice. The staff at the Center provides information about procedure, substantive law and choices litigants may have, thereby allowing litigants to make informed decisions about their case.

When people first come in contact with the Tribal Court, how their needs are assessed and how they are directed can significantly impact their experience with the court, as well as the Court’s ability to operate fairly and efficiently. Many times people are unsure or confused about what they need. Other times, they know what they need but have no idea how to accomplish it. Effective response when people first come in contact with the court can help to direct them appropriately and ensure an efficient use of limited resources.

The following are general procedures and guidelines for attorneys, staff and volunteers providing assistance to self-represented litigants at the Center.

- 1. Familiarize yourself with the Center’s Intake Form, Information Sheet and Guidelines.** Center services for self-represented litigants are free and available to all enrolled Karuk Tribal members, enrolled Karuk Descendants and parents of Karuk Tribe children.

If not eligible for services, but has a legal issue, make appropriate referral to:

- Siskiyou County Family Law Facilitator, 500 N. Main Street, Yreka, CA 96097 (530) 842-0197 / Fax: (530) 842-0198.
- Humboldt County Family Law Facilitator, 825 5th Street, Eureka, CA 95501 (707) 269-1210 / Fax: (707) 445-7632
- Shasta County Family Law Facilitator, 1640 West Street, Redding, CA 96001 (530) 245-6900 / Fax: (530) 245-6985
- California Indian Legal Services, 324 F Street, Eureka, CA 95501 Tel: (707) 443-8397; (800) 347-2402 / Fax: (707) 443-8913 www.calindian.org
- Legal Services of Northern California: Eureka Office (Redwood Region): 123 Third Street Eureka, CA 95502 Office: (707) 445-0866 (800) 972-0002; Redding Office (Shasta Region): 1370 West Street Redding, CA 96001 Office: (530) 241-3565; Shasta Regional Senior Legal Program, 1647 Hartnell Avenue, Suite 6 Redding, CA 96002, (530) 223-6979 www.lsnr.net
- Statewide lawyer referral service: 1-866-442-2529; Northern California Lawyer Access: 530-272-5962

If not needing legal assistance, make appropriate referral to:

- Social worker for Indian Child Welfare Act cases
- Local child support agency
- Law enforcement or District Attorney for criminal matters
- Social services/behavioral health/TANF or other Tribal/community agencies

2. **However, make sure you are referring the person to the correct place before sending him or her there.** There is nothing worse than being shuffled from one place to another. We should not be adding to people's frustration by sending them to the wrong place. Make sure you understand what the person needs, or where they have to go, before sending them someplace else. Sometimes it is best to call the referred agency or department to make sure it can accommodate the person, before sending him or her there.
3. **Obtain copies of documents before providing services - ask litigants to bring to appointment**
 - All relevant court documents
 - Proof of Tribal Enrollment
 - Proof of income (paycheck, stubs, rental income, tips, social security, unemployment, workers' compensation, disability or any other money received)
4. **Set appointment for time available to Center staff**
5. **Make sure everyone reads and signs an intake form before you assist him or her.** The intake form has important disclosures about the type of services we provide. It is essential that everyone review guidelines and sign an intake form before we provide information or assistance on his or her case.
6. **Make copies of intake form and all documents for file**
7. **Request each person who has received help to complete an evaluation form.** We ask persons to evaluate our services so we know how we can improve the services. Sometimes people have to meet some other filing deadline. In these cases, it is more important that they file their papers in time, than complete an evaluation form. We should ask them to come back after filing their papers and complete an evaluation form.

8. **Center staff may not make estimates about the outcome of motions or other matters pending before the court.** Many times people will ask what their chance of prevailing on a motion may be, or they might ask about the other side's chances of prevailing. We should never estimate the chances for failure or success. We can explain the showing the court requires to grant, for example, a motion for relief from default, but we cannot state what the likely outcome will be. Doing so goes beyond providing legal information, and borders on advocacy, which is solely within the realm of private legal counsel.
9. **Center staff must not gossip or discuss what you may know about a person or case with people using our services.** You may personally know someone involved in a case, or may be asked personal questions by people using the Center about others involved in their case. Do not discuss or share your personal knowledge of other people with members of the public who use the Center. It compromises the court's impartiality, and detracts from the professionalism of the Center.
10. **Do not be afraid to tell people you do not know the answer.** Often we will be asked questions for which we do not know the answer. It is best to be honest with people and tell them we do not know. We should, however, try to find out the answer. Sometimes we can obtain the answer while the person waits. Often times we will have to wait until someone gets back to us before we can get the information that we need. Still other times we might have to research the answer ourselves. In cases such as these, it is permissible to write the person's telephone number on his or her intake form, and to get back to him or her by telephone after we have located the necessary information. If a person does not have a telephone, you can ask him or her to come back in a few days, but please leave the intake form and the answer to the person's question in a folder with staff, so they can respond to the individual when he or she returns.
11. **The Self-Help Centers works on a drop-in or appointment basis, and provides minimal information by telephone.** We are not equipped to provide detailed information, other than location and what we do, over the phone. The SHC is set up primarily as drop-in center and in order to serve the persons coming in the door, we cannot stay on the phone. Also, it is important to see what papers people have been served with in order to know the type of response they need to file. Often people give inaccurate descriptions over the phone, which can result in us giving incorrect information. It is always prudent to look at a person's papers before determining which forms they need to obtain. Finally, it is necessary for people to read and sign the disclosure statement on the intake form in the SHC before we discuss their case with them so they understand that we are not providing confidential consultations or legal advice. There will be occasions when someone calls in from out of state needing information about a pending case. Coming into the SHC is not an option for a person who resides a long distance away. Use your discretion

in answering questions, and be sure to emphasize that you cannot guarantee the accuracy of the information you are providing because you have not seen the papers. You might say: "If such and such happened, they you can do such and such", always prefacing the information you provide with "if".

12. Treat everyone with respect and patience. Many of the people coming for assistance will be irritable and frustrated because they have already been to different agencies or department and did not received the information they needed. Others will be frustrated because they discover they are unable to accomplish what they are trying to do. Even though we may not be able to tell people what they want to hear, we can always treat people with respect. Sometimes people have disabilities that make it difficult for them to speak, or be understood. It may take time to listen to them before you will understand what they are trying to say. Try to be patient, and let people express themselves; however you can help direct the conversation by asking key questions so the person will be able to get to the point, and provide the information you need to assist him or her.

13. Please do not solicit business from people using the SHC. Attorneys who volunteer may be asked for business cards from those whom they are assisting. It is vital that you do not give people your business card or refer them to your office while volunteering for the court. We must refer people to the Lawyer Referral Service, or other non-profit legal services organizations, but not to private attorneys, firms, or independent paralegals or legal document preparers.

14. Make sure you have a basic understanding of Tribal Court jurisdiction and consult an attorney if you have questions. It will be extremely frustrating for the litigant (and possibly dangerous if the issue is a protection order) to go through the trouble to seek or even obtain an order from the Tribal Court when the Court has no valid jurisdiction over the Respondent. Make sure boxes are checked alleging jurisdiction! In a nutshell:

- Personal Jurisdiction. The Tribal Court has civil jurisdiction over:
 - all persons who are members of the Tribe or eligible to be members;
 - persons who have consented to the jurisdiction of the Tribal Court or waived any objections to the exercise of personal jurisdiction in the matter by voluntarily appearing before the Tribal Court or filing a motion, response, answer or pleading in Tribal Court (other than a jurisdictional challenge); and
 - respondents who have "minimum contacts" with the Tribe (e.g. commit offenses on Tribal Lands, conduct business on Tribal Lands, etc.);
- Subject Matter Jurisdiction. The Tribal Court shall has civil jurisdiction

over all matters in law or in equity arising within Tribal Lands as defined in Articles I and II of the Tribe's Constitution and as may be more fully described in specific Tribal Codes and Ordinances covering the different Divisions of the Tribal Court. In all cases before the Tribal Court, the **Respondent** must be:

- 1) a member of or eligible for membership with the Tribe **OR**
- 2) a member of another Tribe or is a non-Indian **AND**
 - a) has entered into a consensual relationship with the Tribe or its members through commercial dealing, contracts, leases or "other arrangements" (e.g. is married to a Tribal member, has a child in common with a Tribal member, is employed by the Tribe, etc.) **OR**
 - b) the conduct of the violation threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the Tribe.

Delivery of Self-Help Center Services

Effective responses should generally be conducted and/or supervised by experienced attorneys, especially in contested matters. While a significant amount of assistance can be accomplished through self-help web sites, written materials, and basic information provided by court clerks, such non-attorney-supervised assistance is generally limited to uncontested, non-adversarial types of proceedings. To the extent courts develop materials, or have self-help centers where information is transmitted, it is a good idea to have an attorney draft or edit the materials and oversee the manner in which information is conveyed to the public so the fine line between providing neutral information and private legal advice is not breached. *Direct people to attorney for cases they cannot do themselves (medical malpractice, complex civil litigation, etc)*

There are effective responses in virtually every type of case or matter people bring to the court. The below examples highlight common types of matters, but proper responses, if used in a neutral, information-based manner, without advocacy or advice specific to an individual, can go a long way to ensuring that people have meaningful access to the court. As people can better access the court to achieve desired goals, and as expectations become more realistic, their trust and confidence in the judicial system should be strengthened.

The Center cannot recommend a particular course of action, but informing people about their options and the consequences of each can help them make informed decisions and select a course of action most suited to accomplishing their goals. Without such information, people can easily pursue a particular court action, only to find at the end that it cannot accomplish their goals, but that a different course of action could. This causes needless frustration and cost for both court staff and the people they are trying to serve.

Specific examples of effective responses in various types of cases include:

Name Change

Someone comes to the court asking for forms to change a name. The first question to ask is whether it is to change the name of an adult or a minor. If the answer is “**adult**,”

- then the next question is whether the adult wants to change her name to revert to a maiden name or prior married name following a divorce. If the answer is “**yes**,” then the person can be directed to file the request in the original divorce case.
- If the answer is “**no**” the next question is whether the name change is to protect a victim of crime. If the answer is “**yes**” the person can be directed to the victim services unit of the local District Attorney’s office.
- If the answer is “**no**,” the person can be given the forms for a change of name for an adult and instructions on how to complete and file them.

If the answer to the first question is “**minor**” then another set of questions would follow. The person needs to be asked whether both parents are petitioning for the minor’s change of name.

- If the answer is “**yes**,” the forms can be given with instructions.
- If the answer is “**no**,” the petitioning parent should be asked whether s/he knows if the non-custodial parent will consent. Since the non-custodial, non-petitioning parent needs to be served with the petition and order to show cause, if the petitioner cannot locate that person, it is possible the court may not be able to order the minor’s name to be changed. In such case, the petitioner should be asked whether the minor will reach the age of majority soon, in which case the minor could, upon reaching 18, petition on his or her own without the need for parental consent or serving parents.
- If the minor is still quite young, another question to ask the petitioning parent is whether he or she remarried, and if so, whether the stepparent might want to adopt the minor.

Guardianship of the Person

A grandmother comes to court to request guardianship forms for the grandchild for whom she is caring. She indicates that she needs to enroll the child in school and therefore requires a court order for legal custody. Appropriate questions would help to determine whether an order for legal custody is necessary, and if so, whether the person is in the proper court.

For example, if the grandparent is only going to have physical custody of the minor for a short time period, such as while the parent is on military assignment or incarcerated in jail, and the parent is otherwise fit to raise the minor, an Indian Custodian form, Caregiver's Authorization Affidavit or Power of Attorney (minor child) may work to enroll the minor in school or authorize medical care.

If, however, the parent may endanger the minor, the grandparent should be made aware that a court order awarding custody to the guardian is necessary to prevent a parent who would otherwise have legal custody from taking the minor.

Another question to ask is whether the proposed guardian is planning to stay in the county where the guardianship is being filed. If the guardian has imminent plans to move, it may be more appropriate to apply for a guardianship in the new jurisdiction, and use a Power of Attorney (minor child) or Caregiver's Authorization Affidavit until the move is complete. *Any situation in which the petitioner expresses a need for emergency orders to protect the minor need to be handled promptly by giving the additional ex parte or emergency forms needed.*

Family Law - ** Refer to Peacemaker Mediation Forum unless DV **

Dissolution of Marriage

- In order to be able to file for divorce in Tribal Court, one of the parties must be a resident within **Tribal Lands for at least six months** prior to the filing. Therefore, the first question asked of an individual seeking assistance with filing a divorce is the person's length of residence.
- A second question, and of great importance, is whether similar proceedings have already been filed in another jurisdiction. The first court to acquire jurisdiction retains jurisdiction over the matter, so the spouse who may otherwise be able to file in Tribal Court may be precluded from doing so by the other spouse's previous filing.
- A person who seeks assistance with a dissolution of marriage is often seeking to resolve an underlying issue of child custody/visitation and/or support. It is therefore important to determine what the party seeks to accomplish, because there may be limitations on what can be achieved in the divorce case. For example, a party seeking a divorce may find that the other spouse has insufficient contacts with the Tribe to be able to obtain support orders. The Tribe may have jurisdiction over the issue of the dissolution of the marriage, but may lack personal jurisdiction over the respondent so as to preclude imposing personal financial obligations on that spouse. Thus a person seeking assistance with filing for divorce should be questioned about the other party's contact with the Tribe. (See Jurisdiction outline above). Additionally, if another forum has previously issued custody, visitation or support orders, it may have acquired original jurisdiction over the subject matter.

Child Custody/Visitation - Refer to Mediation

- Child custody/visitation orders may be issued under a number of different types of petitions. Therefore, a person seeking assistance in filing a divorce petition including a request for custody orders should be asked if there are any pre-existing custody orders. Generally, once a jurisdiction exercises jurisdiction over the subject matter it retains jurisdiction until a request to transfer to another jurisdiction is successfully made to court with original jurisdiction. Although the Tribe has concurrent jurisdiction, we prefer to not have conflicting orders.
- If there are no pre-existing custody orders then it becomes necessary to determine the residence of the children **for the last 6 months**. The parent must be able to provide information as to the residence address and duration for that time period. **The jurisdiction in which the children have most recently resided for 6 months or more is often referred to as the home state of the children.** Under most circumstances, this is the state most preferred to issue custody/visitation orders. This preference does not apply when custody/visitation orders have previously been issued in another forum, in which case the person seeking assistance needs to be directed back to the original jurisdiction for modification/amendment of the prior order(s).
- A court in whose jurisdiction the children are currently present may issue custody orders, however these are generally temporary and are for the purpose of allowing the petitioning parent to file a similar petition in the “home state” of the children, or to seek a modification of the pre-existing custody orders, usually in the forum that issued the original orders. It is necessary to ask the petitioning parent detailed facts to establish if such an interim order is necessary.

Child Support - Refer to Mediation

- Child support orders may exist as part of a 1) petition for dissolution of marriage, 2) petition to establish parentage, or 3) petition to establish support. The latter is filed by the Department of Child Support Services. All of these petitions first must establish or affirm the legal relationship of the parent and child. If the individual seeking assistance is initiating a new petition then he or she must be asked to identify the other parent and the circumstances under which that determination is made. The person is first asked if there are any pre-existing child support orders. As with child custody/visitation, the forum that first exercises jurisdiction over the subject matter retains jurisdiction. Modification orders must be sought in the same forum. However, the Department of Child Support Services may elect to transfer the case to the forum where the obligor resides and may then seek to enforce and modify the orders.
- If a person is seeking to modify an order it is important to ask about the income of both parties, as well as the custodial time that each party has with the children. This information is crucial in determining what a new child support amount would be. Other factors are also considered but none weigh as heavily as the parties' income and their custodial time.
- If a party is seeking to reduce his or her child support obligation because of a wage reduction, it is important to ask the cause of the reduction. The courts can "impute" income to a party in situations in which the party has voluntarily reduced his or her wages. This occurs when a party quits employment and/or does not reasonably seek new employment. A party is questioned as to the facts that produced a change in circumstances under which child support was previously ordered.