



IN THE TULALIP TRIBAL COURT
TULALIP INDIAN RESERVATION
TULALIP, WASHINGTON

In re:

ADMINISTRATIVE ORDER: 2024-04

Failure to Appear for Jury Duty

Jury Duty

- 1. Purpose.** This standing order is intended to implement the requirements of TTC 2.05.110(2)(b), which states “Persons who do not appear after proper notice of jury service shall be subject to contempt of Court.”
- 2. Policy.** In all criminal proceedings, a defendant charged with a crime for which jail is a penalty has a right to a trial by jury of six fair and impartial jurors. TTC 2.25.070(4); 25 U.S.C. 1302(a)(10). The Tulalip Tribal Court is committed to meeting this requirement by summoning enough eligible jurors to ensure a fair and impartial trial for defendants facing possible jail time if convicted of a criminal offense. Part of this commitment includes enforcing Tulalip law regarding how jurors are summoned and how to address jurors who fail to appear.
- 3. Background.** Since resuming in person jury trials in 2022, the Tulalip Tribal Court has summoned 50-150 persons in accordance with Tulalip law for each jury trial, with less than ten appearing for service.
- 4. Right to a Jury Trial.** Jury trials are an essential and necessary component of the Tulalip Tribes Justice System. Jurors who are summoned become part of the justice system and must share the Court’s commitment to defendants charged with crimes against the Tulalip community.

According to the Tulalip Court of Appeals, “Traditionally, wrongdoing within the community needed to be addressed quickly, so the wrongdoer could change his behavior, make reparations to the injured, and be accepted again into the group. In that way wrongs could be healed, rather than festering and leading to revenge and more disruption.” *Jones v. Tulalip Tribes*, 6 NICS App. 187 (2004). Tulalip law “must be interpreted to fulfill its purposes of fairness, reliability, and accountability. Longer delays frustrate all these purposes, so the length of delay is a key factor. Promoting accountability requires that we also consider who is to blame for the delay and whether it was justifiable or manipulative. Fairness requires that we show greater vigilance for the right where we find greater prejudice from its possible denial.” *Id.* at 188-189.

When jurors are summoned and fail to appear, the defendant’s right to a fair and speedy trial is jeopardized through no fault of the Tribes or the defendant.



5. **Accountability.** The Tulalip Court of Appeals previously held “It is within the sound discretion of the trial court to find contempt and order sanctions.” *In re the welfare of C.H.*, 5 NICS App. 105, 111 (1999) (upholding the trial court’s order finding a party in contempt of court with a sanction of a fine and jail time). Under TTC 2.05.070(2)(b), this Court is specifically empowered to hold summoned jurors who fail to appear as ordered in contempt of court and order sanctions. The Court has rarely exercised its contempt power, but given the increase in jury trials and the mandates of the Indian Civil Rights Act and the Violence Against Women Act, which governs special tribal criminal jurisdiction over non-Natives, the Court can no longer afford to ignore the impact of jurors who fail to appear when summoned.
6. **Orders to Show Cause Description.** An Order to Show Cause is a notice to an individual that the Court has scheduled a hearing to give the individual an opportunity to appear and explain why they should not be held in contempt of court for failing to obey a court order or engaging in disrespectful behavior toward the Court, its officers, or employees.
7. **Show Cause Hearing Description.** A show cause hearing is a proceeding before the Court in which an individual has the opportunity to explain why they should not be held in contempt of court and subject to sanctions.
8. **Sanctions Description.** Sanctions are issued when an individual is found in contempt of court, and include a fine, jail time, or other appropriate action designed to address the behavior or bring the individual into compliance with the Court’s order.
9. **Process.** The following process applies when a juror does not appear when summoned for jury duty and is not excused by the Court for good cause shown prior to the first day the juror should have reported to court.
 - a. **Audit of Summoned Jurors.** The Court Clerk shall compile the list of jurors who were summoned and failed to appear for jury duty and review the following:
 - Correct name and date of birth;
 - Address provided by the entity that submitted the juror data to the Court;
 - If there was a timely hardship request that was not reviewed by a judge;
 - Returned mail;
 - Whether the summoned juror is still an eligible juror under TTC 2.05.110(1).
 - b. **List of Jurors Not Subject to Orders to Show Cause.** The Court Clerk shall remove from the list of jurors who failed to appear those names in which there is:
 - An incorrect address evidenced by returned mail;
 - A hardship request that was received prior to the jury trial but not approved by a judge by the start of the trial date, but who would have been approved the request;



- Proof that the juror is no longer eligible to serve on a jury for the following reasons:
 - currently a defendant in a pending criminal matter, serving a sentence, on probation, stipulated order of continuance, deferred sentencing, or deferred prosecution in the Tulalip Tribal Court;
 - no longer an employee of the Tulalip Tribes or its entities;
 - no longer a resident of the Tulalip Indian Reservation;
 - a tribal member no longer residing on or near the Tulalip Indian Reservation; or
 - the juror is the subject of a legal guardianship in any tribal or state jurisdiction or has been found by a court to be legally incompetent or incapacitated.
- c. **Order to Show Cause Issued.** The Court shall issue an Order to Show Cause to those jurors who failed to appear except for those who were excused by the Court or whose names were removed for above-stated reasons. The Order to Show Cause shall inform the summoned juror of the reason for the order and shall provide a hearing date and time at least 30 days from the date the order to show cause was entered.
- d. **Service.** The Court Clerk shall deliver the order to show cause to the juror by first class mail to the address of record. The Court may also order the Court Clerk to publish a notice of show cause hearing listing each juror who failed to appear in the See-Yaht-Sub. The notice shall be published once a week until the date of the show cause hearing and shall constitute proper notice.
- e. **Purging Contempt.** Persons issued an Order to Show Cause for the first time may purge the contempt by submitting an agreement to voluntarily appear for jury duty at the next scheduled jury trial, which shall be written on the agreement by the Court Clerk. The form must be completed and submitted prior to the show cause hearing. Persons who agree to voluntarily appear are not eligible for hardship requests. Upon receipt of the agreement to appear voluntarily, the Court Clerk shall strike the show cause hearing.
- f. **Finding of Good Cause.** Upon a finding that the summoned juror demonstrated good cause for failing to appear for jury duty, the Court shall not hold the individual in contempt of court and issue an order that directs them to appear for the next scheduled jury trial.
- g. **Finding of Contempt.** Upon a finding that the summoned juror did not show good cause for failing to appear when summoned, the Court shall issue an order holding the individual in contempt of court and shall order sanctions.
- h. **Sanctions.** One or more of the following sanctions may be ordered in the Court's discretion after holding an individual in contempt for failing to appear for jury duty:



- A fine not to exceed \$200 if the individual has not previously been found in contempt for failing to appear for jury duty;
- A fine not to exceed \$400 if the individual has previously been found in contempt for failing to appear for jury duty;
- Other appropriate sanctions designed to hold the individual accountable for failing to comply with Tulalip law and court order.

Other contents of letters of apology may be ordered by the Court depending on the circumstances.

- Failure to Appear.** If a summoned juror fails to appear at the show cause hearing, the Court shall find the individual in contempt of court and order the maximum fine as sanctions.
 - Order after Hearing.** All decisions by the Court shall be entered in writing and include a due date to complete sanctions.
 - Future Eligibility for Jury Duty.** All persons subject to Orders to Show Cause shall be placed back in the jury pool to be summoned in the future unless the Court finds they are not eligible for jury duty.
- 10. Appeals.** An order issued after a show cause hearing is a final order for purposes of appeal.
 - 11. Deferrals allowed.** A juror may request a deferral, which means that they would be excused from jury service for the current summons, and will be placed on the list of jurors to summon in the future.
 - 12. Applicability.** This standing order applies only to individuals summoned under TTC 2.05.110(2) and not to individuals called to serve as emergency additions under TTC 2.05.110(7).
 - 13. Effective Date.** This order shall take effect beginning January 1, 2024 until amended or withdrawn.

SO ORDERED THIS January 9, 2024.

Meredith Drent, Chief Judge