

Chapter 2.05

GLOSSARY OF TERMS – RULES OF COURT

Sections:

2.05.010 Definitions.

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“Actual notice” means that notice actually received by, or information actually known to, a person.

“Advocate” is one who writes and speaks for or in behalf of another. One does not have to be a graduate of a law school but must be admitted to the Yurok Tribal Bar Association.

“Answer/response” means a responsive pleading in which the defendant/respondent denies or responds to the allegations/charges of the plaintiff/complainant.

“Attorney/counsel” means a person whose profession is to advise or act for clients in legal matters; a person who may or may not be a graduate of a law school, may or may not be licensed by a state to practice law, but is admitted to the Yurok Tribal Bar as an attorney having satisfied the requirements of that Bar.

“Complainant/petitioner/plaintiff” means a person who makes a complaint, usually a civil complaint, but may refer to the initial instrument charging a person with a crime.

“Complaint/petition” means the initial pleading in a case, in which the plaintiff states the facts contending their entitlement to relief and states the relief they are seeking.

“Constructive notice” means information that a person could have or should have known or information conveyed in a way that was reasonably calculated to give actual notice.

“Defendant” means a person against whom a criminal complaint or other charging instrument has been filed with a court in a criminal case; or the person against whom a lawsuit is brought.

“Deposition” means a discovery procedure in which a witness testifies in response to questions from the other side. It is done before a court reporter and cross-examination is allowed, but it normally takes place outside the courtroom and without a judge present.

“Discovery” refers to a set of procedures by which each side in a case may obtain important information, documents or other things from the other, and sometimes from a nonparty.

“Ex parte” means an action taken by or for one side of a case or dispute without notice to the other side or party.

“File/filing/filed” means to commence an action by filing a complaint/petition with the Court; to deposit a copy of each successive court paper/pleading with the Court Clerk for action as required and for placement in the court’s official file.

“Injunction” means a court order directing a person to do or refrain from doing some act. Types of injunctions include:

- (1) “Mandatory injunction” means an injunction requiring a person to do some affirmative act.
- (2) “Permanent injunction” means an injunction granted as part of the judgment at the end of a case, directing a party forever to refrain from certain conduct.
- (3) “Preliminary injunction” means an injunction granted shortly after the beginning of a case, to maintain the status quo while the case proceeds. A preliminary injunction will be issued only after a hearing.
- (4) “Prohibitory injunction” means an injunction prohibiting a person from taking certain action. This is the most common kind of injunction. Also called a restraining order.

“Interrogatories” means a set of written questions about the facts and contentions in a case submitted to an adversary as part of the discovery process.

“Judicial notice” means acceptance of a fact by a judge in a case without requiring it to be proved, requires the fact to generally be known or because it is ascertainable from standard sources.

“Notice” means the act of conveying information of legal significance to a person, or, when such information is conveyed in writing, the document itself.

“Notice by publication” means that notice achieved by publication of notice in a newspaper in the hopes of reaching persons affected by a matter who cannot otherwise be identified or located.

“Personal service” means hand delivery of a copy of the process/papers directly to the intended recipient or to an agent authorized to accept service.

“Pleading” means a formal document in which a party to a civil case sets out or responds to a claim or defense.

“Prosecutor” means a public/Tribal official whose job it is to oversee the prosecution of criminal cases in Tribal Court.

“Request for admissions” means a paper served by one party upon another in a case, demanding that an adversary admit or deny certain facts; often served shortly before a trial to narrow the issues and eliminate the need to spend court time proving things that are not in dispute.

“Respondent” means a person who must respond to a certain action or to a procedural step in a case, such as a petition, motion, or appeal.

“Restraining order” means an injunction that prohibits someone from taking some action.

“Service” means the giving of formal notice of judicial proceedings or a judicial act to a person involved by delivering a copy of legal papers (papers filed in court or to be filed in court) to the person or following some other procedure prescribed by law.

“Service by publication” means the printing of notice of an action in a newspaper in the hopes the affected person will see the notice, used when the actual whereabouts are unknown with the permission of the Court.

“Specially admitted advocate/attorney” means a person may apply for permission to appear specially as an advocate/attorney without being a member of the Yurok Tribal Bar. Permission is available by application to the Chief Judge of the Yurok Court.

“Spokesperson/representative” means a person who is speaking for another at a hearing with the approval of the Court.

“Subpoena” means a process directing a witness to appear and give testimony/evidence in a court proceeding.

“Subpoena duces tecum” means a subpoena requiring the person served not only to testify but also to produce specified documents or other physical evidence. The person is required to bring the document/evidence to court or make the document/evidence available at a specific location, time and date.

“Substitute/constructive service” means any of several methods of service permitted in place of personal service under certain circumstances, such as service by mail.

“Summary judgment” means a judgment entered without a full trial because the evidence (or lack of evidence) brought out in pretrial discovery makes it clear which side must prevail as a matter of law.

“Temporary restraining order (TRO)” means an injunction granted for a very short time, just to keep things as they are until a hearing can be held to determine whether or not it would be appropriate to issue a preliminary injunction. A TRO may be granted ex parte to avoid tipping off the person to whom it is directed and thus giving that person a chance to hurry up and do the act in question before being ordered not to.

“Third-party complaint” means an action by which the defendant/respondent in a civil case files a complaint/petition against a person who was not initially a party to the case, claiming a right of indemnity or contribution from the third party in the event that the defendant/respondent is found liable to the plaintiff/petitioner. The third-party action is an extension of the main action, and the issues in both actions are normally litigated together in one case.

Credited as a guiding source for the definitions in this glossary is the Random House Webster’s Dictionary of the Law, James E. Clapp. [Ord. 48, amended, 1/6/2017; Ord. 26, amended, 4/1/2012; Ord. 19, amended, 10/22/2008.]

The Yurok Tribal Code is current through Ordinance 74, passed August 26, 2021.

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