

COLORADO RIVER INDIAN TRIBAL COURT
LOCAL RULES OF CRIMINAL PROCEDURE "LRCRP"

I. LRCRP, SCOPE

LRCRP 1

Scope. These Rules apply to adult criminal cases in the Courts of the Tribes.

ANNOTATIONS

II. PLEADING AND FILING

LRCRP 2

General Rules of Pleading in Criminal Cases. Each filing in a criminal case shall bear a caption identifying the Colorado River Indian Tribes as plaintiff, which shows the case is in the name and for the benefit of the Colorado River Indian Tribes.

ANNOTATIONS

LRCRP 3: L&O 104 (b)(5)

LRCRP 3

(a) **Complaint or Citation and Criminal Arrest or Search Warrants, Limitation of Action.** A Complaint shall be signed and filed with the Tribal Court, per the L&O, including, but not limited to, L&O 202 (d), and prior to issuance of a search or arrest warrant per L&O 204 (b) and (d), and, in all cases, not later than the time and date of arraignment. Criminal complaints must be filed for purposes of limitation of action within One (1) year from thereof, per L&O 303.

(b) **Search or Arrest Warrants After Business Hours.** A Tribal Court Judge hearing or executing any application for any search or arrest warrant when the Tribal Court is closed may accept such in person or telephonically, after administering an appropriate oath, and such application or complaint shall be deemed filed as of that time and date although not filed with the Court until the next business day thereafter.

ANNOTATIONS

LRCRP 43 (a)(All Proceedings Taped); Cf. LRCRP 4

LRCRP 4

Summons by Citation, Cite and Release or Arrest, Arrest Without Warrant. When the Tribal Police may arrest a person for a criminal offense without an arrest warrant under L&O 204 (a)(1) & (2), the Tribal Police may summons the defendant by citation, cite and release or arrest that person, whichever per Tribal Prosecutor or Police Department Rules, procedures, or practice; provided, however, that in all cases commenced by the Tribal Police by citation, a Tribal Police Officer shall complete the citation and its summons information per LRCRP 6 (a)(2), serve a copy on the defendant, and file the original citation with the Court.

ANNOTATIONS

LRCRP 5

Complaint and Citation, Amendment. Except per LRCRP 6 (a), at arraignment, amendment to complaints proceeds under the language of Federal Rules of Criminal Procedure, Rule 7 (e), to the extent applicable, and as interpreted by the Court, and any summons information per LRCRP 6 (a)(3)

ANNOTATIONS

See Federal Rule of Criminal Procedure, 7, pp. 181

III. ARRAIGNMENT PROCEDURE, TIME AND DATE

LRCRP 6

(a) Criminal Case, Arraignment. Arraignments in criminal cases shall generally be per LRCRP 38 (c), except per LRCRP (b) and (c).

(b) Arraignment, Driving Under the Influence, L&O 600-6. Persons subject to the special provisions of L&O 600-6, Article VI "Traffic Control and Operation of Vehicles," shall be immediately taken before a Tribal Court Judge for arraignment, if and when a Judge of the Tribal Court is available, and if not available and not released per LRCRP 9, shall be arraigned per LRCRP 38 (c).

(c) Arraignment, Traffic Offense, Appearance by Mail. For any Article VI, "Traffic Control and Operation of Vehicles" violation, excluding Driving Under the Influence per L&O 633, Reckless Driving per L&O 634, Racing per L&O 641, and Failure to Give Information and Render Aid per L&O 621 or L&O 623, the Clerk may mail or deliver a notice of traffic hearing allowing appearance and/or entry of default judgment by mail, and if not paying the fine by mail prior to the time and date on the citation shall appear and be arraigned per LRCRP 38 (c).

ANNOTATIONS

LRCRP 38 (c); See Bench Book for Standard Adult Criminal Arraignment and Advice of Rights Order; L&O 304 (Pleas)

LRCRP 7

(a) **Attorney Appearance, Plea and Bail at Arraignment.** At arraignment, the Judge shall, upon request of the defendant, grant a brief continuance so the defendant may consult with, and/or have speak for him or her, on entry of the plea and/or initial conditions of release, any attorney from the Tribal Public Defender's Office, with or without prior or subsequent filing of a notice of appearance in the case, which is required for any attorney to represent any defendant thereafter, except per LRCRP 11 (d).

(b) **Trial Setting, Preliminary Hearing Setting.** Upon entry of a plea of not guilty, the Judge shall set the first trial date on the trial/status hearing of the Judge assigned to the case approximately Two (2) months from arraignment, at or after which, the second trial date shall be set for the status hearing of the judge then assigned to the case approximately One (1) month from the first status hearing, except that other dates may be set upon the stipulation of the parties. The first and second trial dates required to be set under this Rule shall not be continued, absent failure to appear or the most compelling and completely excusable reasons. In addition, if the Judge requires bail, the Judge shall set a preliminary hearing per LRCRP 11.

ANNOTATIONS

See Bench Book for Standard Adult Criminal Arraignment and Advice of Rights Order Read to Defendants and the Supplemental Advice for Sentence Imposition and OSC Proceedings also Read to Defendants Summoned to Court at 10:00 a.m.

IV. GUILTY PLEA, NO CONTEST PLEA

LRCRP 8

Plea of Guilty, Plea of No Contest, Findings. Prior to entry of any guilty or no contest plea, the Judge shall find the defendant understands the charge(s) and possible penalties therefor, and has voluntarily, knowingly and intelligently waived his or her rights, and shall, unless waived by the Defendants find a factual basis to support that plea.

ANNOTATIONS

L&O 304

LRCP 9

Judgment and Sentence Hearing. Upon entry of a plea of guilty or no contest, or conviction after trial, the Court shall set a later judgment and sentence hearing per L&O 206 (b), but may pronounce judgment and sentence at the time of entering the plea or conviction, if there is no objection from either party present, and the Judge, in his discretion, so permits, which may include consideration of whether or not any alleged victim should be notified or present.

ANNOTATIONS

L&O 206 (b)(Right to Sentencing Hearing); 02/23/94 Sentencing Guidelines, pp. 296-309; L&O 302 (a)(Sentence of Labor with Concurrence of Defendant); L&O 206 (f)(Conditions of Suspension of Sentence); 25 U.S.C. § 1302 (7)(Amended to Preempt More than One (1) Year Imprisonment or a Fine Exceeding \$5,000 for a Single Offense); See Colorado River Indian Tribes v. Dailey, Colorado River Indian Tribal Court, Case No. _____ (199_) (Defendant Sentenced to _____ Years Consecutive Imprisonment in Tribal Jail)

V. RELEASE

LRCP 10

All persons arrested and taken into custody by the Tribal Police shall be held or released:

(a) by the Tribal Police of persons arrested on an arrest warrant on such other terms as set forth in the arrest warrant. If no terms are stated in the warrant, the person shall be held and delivered to the Court for arraignment per LRCP 38 (c).

(b) by the Tribal Police under the 01-06-95 Standing Release, Commitment and Arraignment Order, or

(c) by the Court at arraignment, or thereafter, on such terms or conditions as, in its discretion, it may order, including, but not limited to, bail or other conditions per LRCP 36.

ANNOTATIONS

01-06-95 Standing Release, Commitment and Arraignment Order, pp. 284-285; L&O 204 (f); LRCP 36 and L&O 205 (Bail)

VI. PRELIMINARY HEARING

LRCP 11

(a) **Preliminary Hearing, Available by Right.** Defendants not released per LRCP 10 from custody on a criminal offense or returned to custody after changed conditions of release shall be afforded a preliminary hearing set per Insert B and held not more than Six (6) business days after arraignment, which hearing shall not be continued or waived without the defendant's or his attorney's consent, except such hearing may be vacated, in the discretion of the Court, if the defendant is lawfully released from custody on such criminal offense prior to the hearing.

(b) **Preliminary Hearing, Available by Motion.** A preliminary hearing in case(s) in which the defendant is not in custody may upon motion of a party, in the discretion of the Court, be set upon not less than Twenty (20) business days prior notice to both parties.

(c) **Procedure.** A preliminary hearing shall be conducted under the language of Rule 5.1 of the Federal Rules of Criminal Procedure, to the extent applicable, and as interpreted by the Court.

(d) **Attorney Appearance.** Consistent with the notice of appearance requirement for all appearances except at arraignment and initial appearances, per LRCRP 7 (a), any attorney representing the defendant shall file a notice of appearance prior to or at a preliminary hearing, with the sole exception of at a preliminary hearing held when the defendant is in custody on the charges shall an attorney located by the Court and identified by minute order or other order be allowed to represent the defendant at that hearing without filing of a notice of appearance either at or prior to the hearing, or even subsequent to the hearing, whether or not the attorney represents the defendant thereafter.

(e) **Conditions of Release.** At the preliminary hearing, the Court may change or set appropriate conditions of release pending trial.

ANNOTATIONS

See Federal Rule of Criminal Procedure 5.1, p. 180

VII. DISCLOSURE

LRCRP 12

(a) **Availability and Disclosure of Police and Witness Statement.** Not later than the close of business on the Fifth (5th) business days after arraignment, the Tribal Prosecutor shall make available, and promptly thereafter upon a request disclosed to the Tribal Prosecutor per LRCRP 19, disclose to the defendant or the defendant's attorney:

(1) all written or recorded police reports and witness statements in Tribal Prosecutor's possession, and

(2) a written report by at least one Tribal Police Officer directly involved in the case, which means, a Tribal Police Officer who primarily, or substantially, whether alone or along with other officers or witnesses, participated in the investigation leading to the arrest of, or complaint against, the defendant.

(b) Special Disclosure for Preliminary Hearing. Unless the Court orders otherwise, only in the event a defendant is not released from custody at arraignment, and still remains, or will remain, in such custody by the close of business on the Fifth (5th) business days after the arraignment, shall a written request prior to that time not be required for disclosure, in which event, prior to the close of business on the Fifth (5th) business day after arraignment, the Tribal Prosecutor shall deliver to the defendant's attorney who has filed a notice of appearance or has been identified by minute order or other order, all disclosure per LRCRP 12 (a).

ANNOTATIONS

LRCRP 13

(a) Filing and Disclosure of Witness and Evidence List by Prosecutor. Not later than the time and date of the First (1st) trial setting held in the case(s), the Tribal Prosecutor shall file with the Court and make available, and either promptly thereafter disclose upon a request per LRCRP 19 disclosed to the Tribal Prosecutor or bring to Court a copy for disclosure, to the defendant or the defendant's attorney, a list of all witnesses and evidence it seeks to have admitted at trial in its case in chief.

(b) Filing and Disclosure of Witness and Evidence List by Defendant. Not later than the time and date of the Second (2nd) trial setting held in the case(s), the defendant shall file with the Court and make available, and either promptly thereafter disclose upon a request per LRCRP 19 disclosed to the defendant or defendant's attorney of record, or bring to Court a copy for disclosure, to the Tribal Prosecutor, a list of all witnesses and evidence it seeks to have admitted at trial in its case in chief.

ANNOTATIONS

LRCRP 14

(a) Availability of Evidence on List by Prosecutor. Not later than the time and date of the First (1st) trial setting held in the case(s), the Tribal Prosecutor shall make available or promptly thereafter disclose upon a request per LRCRP 19 disclosed to the Tribal Prosecutor, to the defendant, or the defendant's attorney, all evidence identified on the Tribal Prosecutor's witness and evidence list required by Rule 13(a) of these Rules, which shall include reasonably adequate written reports or supplements by each police officer, of any jurisdiction, listed on such list and in the possession of the Tribal Prosecutor.

(b) Availability of Evidence on List by Defendant. Not later than the time and date of the second trial setting held in the case(s), the defendant shall make available or promptly thereafter disclose upon a request per LRCRP 19 disclosed to the defendant or defendant's attorney of record, to the Tribal Prosecutor, all evidence identified on the defendants witness and evidence list per LRCRP 13 (b).

ANNOTATIONS

LRCRP 15

Filing and Availability of Rebuttal Witness and Evidence List by Prosecutor. Not later than the close of business Ten (10) business days after the time and date of the Second trial setting held in the case(s), the Tribal Prosecutor shall file with the Court and make available or promptly thereafter disclose upon a request per LRCRP 19 disclosed to the Tribal Prosecutor, to the defendant, or the defendant's attorney, all evidence all witnesses and evidence it seeks to have admitted at trial in rebuttal as would be required per LRCRP 13 (a) AND including a written statements for each new witness or evidence specifically stating the substance of the rebuttal evidence and witness testimony, how each relates to rebuttal, and why this was not required to be made available or disclosed per LRCRP 13 (a).

ANNOTATIONS

LRCRP 16

Disclosure of Special Defenses by Defendant. Upon discovery by the defendant or the defendant's attorney, and in any event not later than the time and date of the second trial setting held in the case(s), the defendant shall file with the Court and disclose to the Tribal Prosecutor a notice of any defense based upon insanity, lack of mental competence to stand trial, corpus delicti, mistaken identity or alibi, which may be responded to by the Tribal Prosecutor and may be specially scheduled by the Court for briefing or hearing.

ANNOTATIONS

LRCRP 17

Disclosure of Exculpatory Evidence by Prosecutor. Upon discovery by the Tribal Prosecutor, the Tribal Prosecutor shall promptly disclose to the defendant, or the defendant's attorney, at the best address of record therefor, all material, information or witnesses that tends to mitigate or negate the defendant's guilt as to the offense charged, or that would tend to reduce the defendant's punishment therefor, including all prior convictions the Tribal Prosecutor seeks to use at trial and all test or laboratory results for the case that may, in any way, tend to mitigate or negate the defendant's guilt.

ANNOTATIONS

LRCRP 18

(a) Disclosure by Both Prosecutor and Defendant, Supplement or Amendment. Upon receipt or discovery by either party of the existence of any witnesses or evidence that would have been subject to being made available or disclosed earlier had such been received or available earlier, including, but not limited to, all tests or laboratory results, driver's license histories, records of criminal convictions, or expert reports or testimony, which has been listed on such list and identified per LRCRP 13 (a), the party shall promptly make available or disclose pursuant to the applicable Rule under which it was required to be made available or disclosed.

(b) Disclosure to Attorney General In Criminal Case. The parties shall make such disclosure to each other and to the Attorney General as are required to also be made to the Attorney General per LRCRP 14.

ANNOTATIONS

LRCRP 19

Form of Discovery Request, Report and List.

(a) Form of Request for Disclosure. Requests for disclosure shall be in writing and identify the correct address of the person and place to which disclosure may be made. A single request may include a request all disclosure.

(b) **Form of Report.** Written police reports shall be reasonably adequate and identify the names of witnesses pursuant to Tribal Prosecutor or Police Department Rules, procedures, or practice.

(c) **Form of Witness and Evidence List.** Witness and evidence lists shall reasonably identify the witnesses and evidence listed, including the names (aka's), and when known the addresses and phone numbers of witnesses, except that the Tribal Prosecutor may, but need not, disclose the address of victim (s) of the charged offense(s), and may use John or Jane Doe identifications of custodians of records or test or laboratory result witnesses, if the expected records, test or laboratory results are identified and their department, office or company is named.

(d) **Responsibility for Knowledge of Filed List.** Each party and his attorney is responsible for, and shall be deemed to have received, all disclosures and lists filed in the Court file prior to their appearance in the case, as if properly disclosed per a request, or even after such party's appearance if such party has not furnished the other with his or her correct address.

ANNOTATIONS

See LRJP 10

LRCRP 20

Criminal Case, Court Order on Discovery and Sanction. For any violation of LRCRP 12 (b), based on the failure to make available or disclose as required therein a written police report, the Court may, and most often shall, dismiss the case(s) with prejudice. For any other for discovery violation of under these Rules, the Court may, in its discretion, upon motion or sua sponte grant recesses, continuances, order witness interviews at a time and place agreed to by the parties or as ordered by the Court, issue subpoenas not otherwise permitted without Court order under the LRSP, waive time periods, make another discovery order, and impose sanctions on any attorney or his or her client (except upon the Colorado River Indian Tribes itself), which sanctions may include dismissal of the case(s) or preclusion of the evidence in issue.

ANNOTATIONS

LRJP 19

VIII. VIOLATION OF CONDITIONS OF RELEASE PENDING TRIAL, BAIL AND BOND FORFEITURE AND EXHONERATION, AND VIOLATION OF CONDITION OF SUSPENSION OF SENTENCE AND IMPOSITION OF SENTENCE

LRCRP 21

Violation of Condition of Release Pending Trial. Violations of conditions of release pending trial shall proceed per the LRPOSC.

ANNOTATIONS

LEO 205 (a); LEO 341

LRGRP 22

Bail and Bond Forfeiture and Exoneration shall proceed per LRCP 36.

ANNOTATIONS

LRGRP 23

Violation of Condition of Suspension of Sentence and Motion to Impose, Pleading. Except for a defendant's failure to appear at Court or jail when and as ordered, which shall proceed per the LRPOSC, the alleged violation of any condition upon which all or part of a sentence was suspended shall be initiated by the Tribal Prosecutor or Probation Department filing a motion, with verified statement of facts supporting the violation and which contains a statement or notice of the possible sentence that may be imposed. The Court shall deem all such motions, however entitled, as motions for imposition of sentence per L&O 206 (g).

ANNOTATIONS

L&O 206 (g)

LRGRP 24

Violation of Condition of Suspension of Sentence and Motion to Impose, Filing, Limitation of Action.

(a) Motion to Impose, Filing, Arrest, Bench Warrant, Motion to Impose, Hearing Setting. Motions to impose sentence may be filed at any time prior to the completion of sentence or the expiration of the term of such conditions of suspension (aka probation), and upon filing, the Court may, in its discretion, issue a bench warrant or a summons or notice of hearing.

(b) Motion to Impose, Service. If initiated by summons or notice of hearing, a copy thereof and of the motion to impose and affidavit per LRGRP 23 shall be served on the defendant.

(c) **Motion to Impose, Arrest.** If initiated by arrest, upon arrest, the defendant shall have an initial appearance, which shall proceed in the substantially same time and manner as arraignments per LRCRP 6 (a) and LRCRP 38 (c), except that instead of amending a criminal complaint, the Court may amend the motion to correct misspellings or reflect the correct address of persons, or amend to notify the defendant of the judgment and possible sentence that may be imposed and inform the defendant of his rights, and the defendant has no right to release or bail, except as the Court, in its discretion may allow, and if the violation is admitted shall proceed per LRCRP 9, but upon entry of a denial shall set a hearing per Insert B.

ANNOTATIONS

L&O 206 (g); See Bench Book for Standard Adult Criminal Arraignment and Advice of Rights Order Read to Defendants and the Supplemental Advice for Sentence Imposition Proceedings also Read to Respondent/Defendants Summoned to Court at 10:00 a.m.

LRCRP 25

Violation of Condition of Suspension of Sentence and Sentence Imposition Hearing. Upon service of a summons or notice of hearing and motion and affidavit, or the hearing set per insert B, the time for hearing shall arrive and no continuance shall be granted, absent compelling reasons. A hearing to impose sentence shall be conducted per L&O 206, at which hearing, the Tribal Prosecutor bears the burden of showing a valid judgment of the Court suspending all or party of a sentence on conditions (of which the Court may take Judicial Notice), and one or more of which terms therein were violated or not fulfilled by the defendant, and the defendant shall have an opportunity to present evidence and/or testify. If the Tribal Prosecutor's burden is shown by a preponderance of the evidence, the Court shall set or hold a judgment and sentence per LRCRP 9.

ANNOTATIONS

L&O 206 (g)

IX. SPEEDY TRIAL

LRCRP 26

(a) **Speedy Trial.** The right to a speedy trial runs six (6) months from arraignment, per L&O 307 (b).

(b) **Warrants or Summons Over One Year Old.** Unexecuted warrants and unserved summons in criminal complaints shall be reviewed by the Court and Tribal Prosecutor annually and shall be dismissed and the warrants quashed unless the Tribal Court per L&O 307 (a) unless the Court finds good cause to continue the case for another year.

ANNOTATIONS

LRCRP 19 (d)(Waiver of Speedy Trial Objection if Not Timely Made); LRCRP 29 (Jury Trial); LRCRP 20 (d)(No Continuance Solely by Notice of Appearance)

X. STAY OF PROCEEDING TO ENFORCE JUDGMENT OR SENTENCE

LRCP 27

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