

Mescalero Tribal Court



Guide for Pro Se Litigants Self Help Handbook

February 2017

2nd Edition

Note: This information should not be construed as Legal Advice or a Court Order. This information is provided as a guide and for educational purposes only. All other editions are void as this is the most current information available.

Mescalero Tribal Court Self Help Handbook

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REPRESENTING YOURSELF- BASIC INFORMATION

This information guide is general in nature and is not designed to give legal advice. The court does not guarantee the legal sufficiency of this information guide or that it meets your specific needs. Because the law is constantly changing, this guide may not be current. Therefore, you may wish to seek the advice and assistance of an attorney or lay advocate.

WHO THIS GUIDE IS INTENDED TO HELP

This guide is intended to help individuals who are representing themselves, either as a plaintiff/petitioner or a defendant/respondent in a civil lawsuit or a domestic matter filed in the Mescalero Tribal Court. Parties or litigants who are not represented by an attorney and are representing themselves are referred to as *pro se* parties, *pro se* litigants or appearing *pro se*.

HOW THIS GUIDE IS INTENDED TO HELP YOU

This guide is intended to be an informative and practical resource guide to understanding the basic practices of the court and the most common procedures encountered by people representing themselves without an attorney or lay advocate. It **IS NOT** a substitute for legal advice; it will not answer all your questions about what you need to do to represent yourself.

Generally, *pro se* litigants are held to the same standards of professional responsibility as trained attorneys or lay advocates. It is a *pro se* litigant's **responsibility** to become familiar with and to comply with the rules of the court.

WORD OF WARNING – STANDARDS OF PRO SE PRACTICE

Because the law is constantly changing, the court does not guarantee the legal sufficiency of this information guide nor does it guarantee that it meets your specific needs. If you represent yourself in a court case, you are acting as your own attorney or lay advocate. That means you are expected to know and follow the law and court rules. The potential risks associated with representing yourself are not always obvious. That is why the court encourages anyone who is thinking of representing themselves to talk to an attorney or lay advocate first.

GETTING HELP

Court staff will provide general assistance with the filing of necessary papers and pleadings. However, under no circumstances can any type of legal advice be given as to what should or should not be done in any particular case. **Any legal advice by a member of the court's staff is strictly prohibited and is not be relied on in place of a Judge's decision.**

The court offers packets or forms for certain kinds of court cases, there are not forms for every issue. Sometimes you will need an attorney or lay advocate to create legal documents for you.

Many of the forms can also be downloaded from the court's website at www.mescaleroapachetribe.com or <http://mescaleroapachetribe.com/twc/>

INFORMATION ABOUT THE COURT

The Mescalero Tribal Court is located at 159 Deer Trail, Mescalero, NM 88340. The mailing address for the court is PO Box 227, Mescalero, NM 88340.

Hours of operation of the court are Monday through Friday from 8:00 am – 4:30 pm. The court is closed on holidays and weekends.

You may reach the court at 575-464-0414. The fax number is 575-464-4863

Website: www.mescaleroapachetribe.com or <http://mescaleroapachetribe.com/tcwc/>

ABOUT THE MESCALERO APACHE TRIBAL CODE AND ORDINANCES

As a person representing yourself, you should be familiar with the laws that govern the Tribal Court and the Tribe as a whole and used in your court case. But, court employees cannot help you with this.

A copy of the Tribal Code and Ordinances are available at the Mescalero Library located at 148 Cottonwood (Empowerment Building). The library phone number is 575-464-5010. The code is also available online at www.mescaleroapachetribe.com or <http://mescaleroapachetribe.com/tcwc/>. You may also purchase a copy of the Tribal Code at the Tribal Court.

RESOURCES FOR LEGAL REPRESENTATION

A list of lay advocates is available at the Tribal Court. Court staff cannot recommend a particular individual over another.

Lay Advocates are individuals who may be able to assist with your case. They are not professional attorneys. Lay Advocates will need to be sworn in at the Tribal Court.

Professional attorneys are only allowed in criminal cases.

INTERPRETER SERVICES & HEARING & VISION DEVICES

The Court offers interpretation services of the Apache language through the Mescalero Apache Language Program. Please make sure to request these services in advance so arrangements may be made.

Auxiliary devices are available to those who need assistance in hearing court proceedings. The court also has magnifying glasses and sheets available for those who are vision impaired.

If you have a disability and need assistance, notify the court as soon as possible before any hearing or trial.

JURISDICTION OF THIS COURT

Mescalero Apache Tribal Code, Chapter 2, Section 1-1

- A. Criminal Jurisdiction. The jurisdiction of the Tribal Court over criminal acts or offenses, committed within the exterior boundaries of the Reservation, shall extend to all persons, as defined by §2-1-2 of this Code, except for those matters within the exclusive jurisdiction of the federal or state Courts. In case a criminal act or offense is committed within the Reservation by any person over whom the Tribal Court has no jurisdiction, it shall be the duty of the Tribal Court to order the Reservation Law Enforcement Office or B.I.A. Police to deliver said person to the proper authorities for prosecution under appropriate laws. Should any restriction presently existing as to the exercise of jurisdiction over any class of persons or cases be removed, this provision shall be interpreted to take advantage of such expanded jurisdiction.

- B. Civil Jurisdiction. The jurisdiction of the Tribal Court over civil matters shall extend:
 - 1. To all members of the Mescalero Apache Tribe and all other persons who reside on the Mescalero Apache Reservation; and
 - 2. Over all matters of controversy which arise on the Mescalero Apache Reservation, regardless of the residency of the parties.

- C. No suit or action by a tribal member shall be brought against the Mescalero Apache Tribe, a Constitutional Entity, organized under 25 U.S.C. §476, without its consent. Damages may not be obtained without consent of council.

FORMS OF PAPERS

A paper presented for filing with the court must be on 8 ½ by 11 white, opaque, unglazed paper of good quality and be typewritten or legibly printed on one side. Except for footnotes and quotations, the text of all papers must be double spaced. The first page of each paper must have the names of the parties and case file number.

The title of a paper must clearly identify what it is – like a complaint, a motion, or a response. The title of a response or a reply must identify, by title and approximate date of filing, the paper to which it responds.

The Clerk will allow the filing of a document even if it is not in proper form. However, any paper filed without a signature will be stricken unless it is signed within 14 days after the omission is called to the party's attention. Also, the Clerk will give to the submitting party written notice of any other deficiency and a deadline for correcting the deficiency. The Clerk will also provide any applicable forms and instruction sheets or direct you where to find said forms. Failure to remedy a deficiency or to show good cause for noncompliance within the deadline may result in a dismissal of the action. If dismissed without prejudice, you may file again but, you will have to pay the filing fee and file within the time limit allowed.

All parties appearing *pro se* have a continuing duty to notify the court, in writing, of any change in their mailing address or telephone number.

FILING & MISCELLEANOUS FEES

Filing fees must be paid in the form of a money order before filing will occur. All money orders should be made payable to “The Mescalero Tribal Court”.

Fees:

Civil: \$35.00

Jury Fee: \$10.00 (Civil)

Divorce: \$50.00

Drop Fee: \$15.00

Appeal: \$25.00

Copies: \$1.00 per page

STARTING A COURT CASE

The pleading that starts a court case is called a “complaint.” Depending on the type of case, this first pleading can also be called a “petition”, an “affidavit”, or an “application.” The person who is bringing the lawsuit to court and filing the complaint is called the “plaintiff.” The person who is being sued is called the “defendant.” The person who presents a formal, written application to the court requesting action on a certain matter is called the “petitioner”. The “respondent” is the person against whom the relief is sought, or who opposes the petition. The person who applies to the higher court for a reversal of a decision made by the lower court is the “appellant”. The “appellee” is the respondent in the case that is appealed to the higher court.

The court case is started when a complaint is filed with the court. Filing a complaint requires a filing fee. The complaint begins with the case caption. The case caption includes the name of the court, the full names of all the parties (the plaintiff[s] and the defendant[s]), and a blank space for the case number. The case number will be assigned by the court. All subsequent papers filed with the court will contain the same case caption and the case number. Everything from the court about the case will have the case number on it. On pleadings, motions, and papers other than the complaint, a shortened version of the caption –i.e., only the names of the first plaintiff and first defendant – may be used.

Caption example:

MESCALERO APACHE TRIBAL COURT
MESCALERO, NEW MEXICO

FIRST & LAST NAME, Petitioner,

CAUSE NO: **YOUR CASE NUMBER**
(Ex: CV-17-0000)

VS.

FIRST & LAST NAME, Respondent.

The body of the complaint consists of numbered paragraphs. The numbered paragraphs state the legal basis for the claim, why this court has jurisdiction (or authority) to decide the claim, the facts of the claim or reasons for the lawsuit, and what relief is being sought. It is not necessary to

cite specific case law. At the end, the complaint is signed and dated. The complaint, and each paper filed with the court, will legibly state the mailing address and telephone number below the plaintiff's signature.

Once a court case is started, the plaintiff must "serve" (give notice of the complaint) each defendant with a copy of all court papers they filed. Please see the section herein titled "Serving the Summons and Complaint" for more information.

FILING MOTIONS OR AFFIDAVITS

Asking the judge to take a specific action in your case after the petition has been filed requires filing a "motion" or "affidavit". A motion is the pleading you use to tell the judge your problem and to explain what action you want the judge to take. A motion must be in writing and must specifically state the grounds for the motion and the relief sought. The Affidavit or Motion form is available in the front lobby of the court and at www.mescaleroapachetribe.com or <http://mescaleroapachetribe.com/tcwc/>

Additionally, you must send a copy of any motion or affidavit you file to all other parties (or to their lay counsel, if they have one). You must sign and file a certificate of service stating that you provided a copy of the motion or affidavit to the other party.

A motion will be decided on the information provided in the motion and any response by the other party unless the court sets it for hearing. If the court sets the motion for hearing, a notice of hearing will be sent to all parties. When a decision has been made on a motion, the court will issue a written order that grants, denies or partially grants and denies the motion. You will receive a copy of this order.

TRIAL / HEARINGS

You are entitled to a jury trial in many, but not all types of lawsuits. If you are entitled to a jury trial, you must ask for one in writing and pay a jury fee.

Right to Jury, Fees, Selection – Chapter 2 Section 2-1-18

- Criminal cases – request must be made within ten (10) days of arraignment.
- Civil cases – written request must be received within ten (10) days after the Answer has been filed and tendering a jury fee in the amount of Ten Dollars (\$10.00).

How to ask for a Hearing:

- Ask the judge to schedule a hearing requires filing a pleading called a "Request for Hearing." It is also called a "Request for Setting". The court's form titled "Affidavit" may be used.

Rescheduling a Hearing:

- Asking a judge to reschedule a hearing is called asking for a "continuance". It means continuing the hearing to another date and time.
- Asking a judge for a continuance requires filing a motion or affidavit. You must state a reason for the continuance. The judge does not have to approve the continuance. It is in

the judge's discretion to determine if the reason for the request is non-frivolous and whether granting the request will impinge upon the rights of either party or cause undue delay. A notice must be provided to the Respondent.

What happens at a trial / hearing:

- At the hearing, each party will have a chance to tell the judge their side of the issue.
- It is important to bring your evidence, witnesses, and anything else that will help you prove your case. Because there are specific rules about presenting your evidence to the judge, you may wish to consult with a lawyer or lay counsel about how to present your case.

Helpful hints about trials / hearings:

- SHOW UP – it is always important to show up to court. If you are not in the courtroom when your case is announced, you may lose your case.
- BE ON TIME – plan to be at the courthouse early. Remember that you will need to park, clear the security check and check in with Reception.
- HOW TO DRESS – dress neat and clean and appropriate. The judge and/or security may order or ask you to be removed from the courtroom if you violate the dress code.
- HOW TO ACT – court hearings are not like TV. Be respectful to the judge, court staff and to the opposing party at all times.
- TALKING to the JUDGE – stand when talking to the judge. Call the judge “your Honor”. Speak clearly and loudly enough to be heard. Do not interrupt the judge. Stay calm.
- CELL PHONES – cell phones are not allowed in the courtroom.
- CHILDREN – do not bring children into the courthouse or courtroom unless the judge has given you permission to do so. The court does not have a place where children can wait unattended.
- TAKE NOTES – bring a pad of paper and pen to the hearing. Write down any orders the judge makes.

FILING A COMPLAINT

The complaint can be filed by hand-delivering it or mailing it to the court. Whether the complaint is hand-delivered or mailed, the original must be submitted with the filing fee in the form of a money order made payable to the Mescalero Tribal Court. Filing by facsimile or by email is prohibited.

SERVING THE SUMMONS & COMPLAINT

Each defendant must be notified that a lawsuit has been filed against them through a process that is specified under the Mescalero Apache Tribal Code, Chapter 2, and Section 3-5, 3-6.

All parties **must** receive a copy of your filing. A Certificate of Service is a section of a pleading or motion that certifies that the party filing the document has sent a copy of the document to the opposing party or lay advocate.

Example of Certificate of Service:

MESCALERO APACHE TRIBAL COURT
MESCALERO, NEW MEXICO

FIRST & LAST NAME, Petitioner,

CAUSE NO: YOUR CASE NUMBER
(Ex: CV-17-0000)

VS.

FIRST & LAST NAME, Respondent.

CERTIFICATE OF SERVICE

I certify that a copy of the {name of document(s)} _____
was () mailed () faxed and mailed () emailed () hand-delivered to the person listed below
on (date) _____.

Other party or his/her lay advocate or professional attorney:

Name: _____

Address: _____

City, State, Zip: _____

Fax Number: _____

Designated E-mail Address(es): _____

Signature of Party

Printed Name: _____

Address: _____

City, State, Zip: _____

Fax Number: _____

Designated E-mail Address(es): _____

Even if you cannot find the defendant, you still have to serve them. You may have to ask the court for permission to post a Public Notice. A Summons and complaint must be served on every defendant within 20 days of the filing of the complaint. This is called “service of process” and it is the method used to notify the defendant that a lawsuit is pending. *A case can be dismissed for failure to comply with service of process.*

One thing is very important – **you** do not serve the defendant; your job is to **arrange** for someone else to serve the complaint for you. The person who serves the summons and complaint is expected to file with the court a “return of service.” The return of service is a statement, made under oath, explaining when and how service was made.

After the defendant is served with the summons and complaint, the defendant has a period of time, specified in the summons, within which to answer or respond to the complaint. The time

for filing an answer runs from the date the complaint and summons was served, not the date the summons is issued.

The Mescalero Tribal Court prohibits the filing of lawsuits that state facts that are not true or have no evidentiary support, that are clearly frivolous or filed merely to harass someone. If, after reviewing the complaint, the court determines that the lawsuit was filed for an improper or clearly unnecessary purpose, sanctions against the person filing the lawsuit may be imposed. Sanctions include, but are not limited to, payment of a fine and /or payment of the legal fees of the person or persons against who the lawsuit was filed. The Civil Procedure is covered in the Mescalero Apache Tribal Code, Chapter 2, Sections 1 and 3.

ANSWERING A COMPLAINT THAT HAS BEEN FILED AGAINST YOU

It is important to file an “Answer” or “Response” to the Complaint within 30 days from the date you are served. Otherwise, the plaintiff can ask the court for a judgment against you without you knowing anything is happening. This is called a “Default Judgment.”

An “Answer” or “Response” is a pleading. There is no fee to file an Answer. However, it is not necessary to file an Answer; instead you may show up at the Trial.

ORDERS AND JUDGMENTS

A “court order or judgment” is the judge’s instructions telling someone what they can or cannot do.

Creating an order or judgement – usually, at the end of a hearing, the judge will say whether he or she will draft the court order or judgment or whether one of the parties will do so. If you are instructed to draft the court order or judgment, the judge will tell you what the order should say. You may need to hire a lawyer or lay counsel to assist you. The judge will sign the order when he or she believes that it is what he or she ordered. The order is not effective until it is signed by the judge and filed in the court.

Enforcing an order – you may need to file a motion or affidavit to ask the judge to enforce a court order, if the “losing” party has failed to comply with the court order.

APPEALS

A final decision of the Mescalero Tribal Court may be appealed to the Mescalero Apache Court of Appeals. To file an appeal, a notice of appeal must be filed with the clerk of this court, with one copy for the court and one copy for each attorney or other parties in the case. You have twenty (20) days from the date the order is signed to file a notice of appeal and serve it on the Appellee (the other party).

TALKING DIRECTLY TO A JUDGE OR THE COURT STAFF

Communicating with a judge is not allowed unless the opposing party is present and/or there is knowledge and consent by the opposing party. This is why a judge cannot answer your calls or take appointments with you. This is called Ex-Parte communications.

The court staff can answer questions about scheduling but cannot give legal advice or tell you how a judge will rule on your case.

Attorneys and pro se parties are prohibited from all ex parte communication with the judge or the court staff. You cannot ask other individuals to speak to the judge or court staff on your behalf either.

MONITORING THE PROGRESS OR STATUS OF YOUR CASE

You may call the Court at 575-464-0414 and ask for the status of your case. Please be prepared to provide all pertinent information to the receptionist or court clerk (i.e. parties to the case, case number, date of filing, type of case). In some cases, you may need to leave a message. All phone calls will be returned within a 48-hour period.

If you do not receive a return phone call after a 48-hour period, please call and ask to speak with or leave a message for the Court Administrator. Again, you may be asked to provide all pertinent information in regards to the documents or case that you are referring to.

**Note:* In most cases, you will need to be a party to the case in order to receive information.

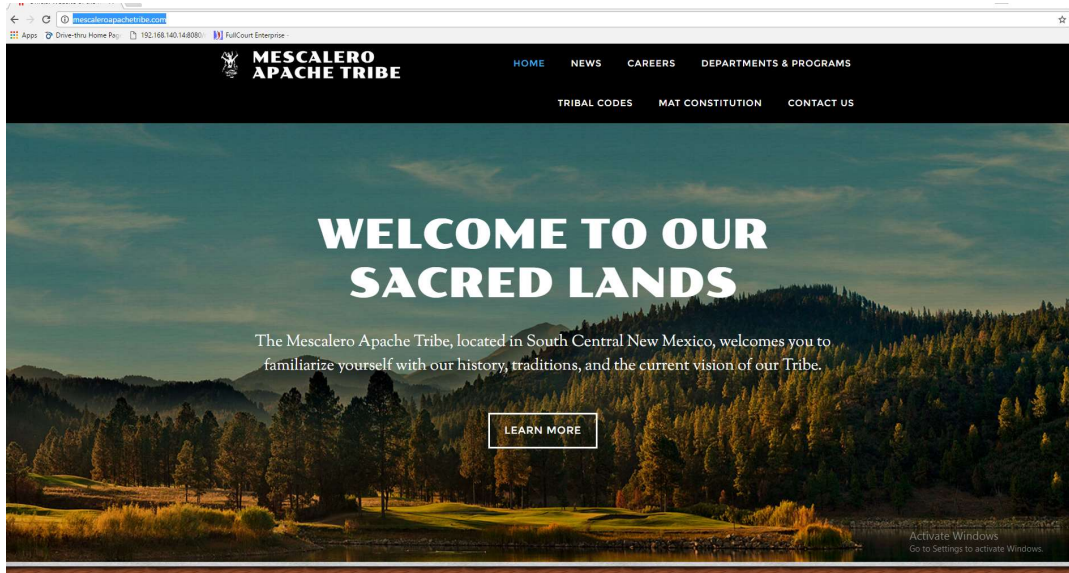
APPOINTMENT OF COUNSEL

A pro se litigant has no right to be represented by court-appointed counsel and the court has no obligation to appoint counsel. However, the court may appoint an attorney or lay counsel who agrees to appear in an exceptional case. For example, the court may appoint a Guardian Ad Litem in children's cases or may be appointed in cases involving incompetent adults.

If you decide that you can no longer represent yourself, you will have to ask your counsel to submit a Legal Representation form. You must also let the court know you no longer want to represent yourself.

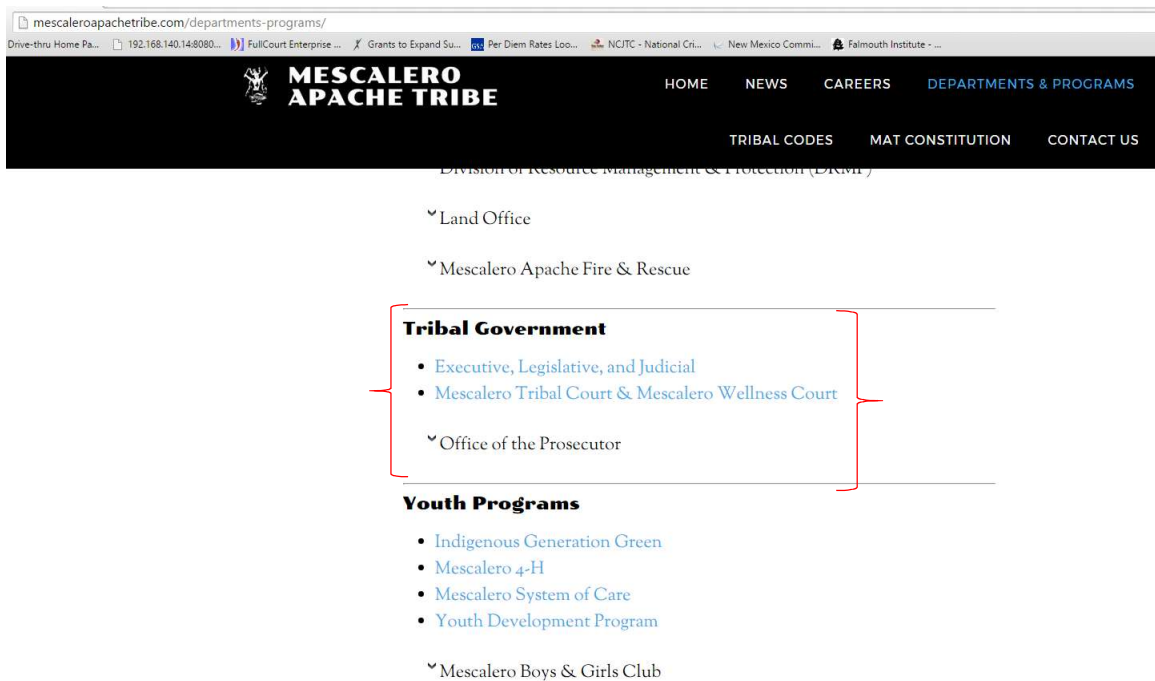
HOW TO FIND FORMS ON THE MESCALERO APACHE TRIBE WEBSITE

The Mescalero Tribal Court publishes forms and additional information online for your use at: www.mescaleroapachetribe.com or <http://mescaleroapachetribe.com/twc/>. You will also be able to access the Tribal Code.



Click on Departments & Programs and scroll down to Tribal Government and select Mescalero Tribal Court.

Click on the link for the Mescalero Tribal Court.



Domestic Violence and The Mescalero Apache Tribal Code

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For basic information about representing yourself in the Tribal Court, see also the opening section of this Self Help Handbook.

On the Mescalero Apache Tribal Reservation, there are laws that protect someone from domestic violence and domestic abuse. This section is about protection under the Mescalero Tribal Code. Chapter 30 Domestic Violence page 477-483 & 10-27-1 Domestic Violence page 135 & Section 6 Domestic Violence Sentencing page 108.

WHAT IS DOMESTIC VIOLENCE?

In general, domestic violence is abusive behavior by one person to control and dominate another person within a close relationship. It can include physical assault and psychological abuse, as well as other behaviors (like keeping close control of money or your identification documents) that are a part of a pattern of asserting power and control over an alleged victim. It also can include behaviors that cause you to fear for your safety.

The Tribal Code allows a victim of domestic violence to get an “Order of Protection” against a “household member” who committed the “domestic abuse”.

DOMESTIC ABUSE + HOUSEHOLD MEMBER = ORDER OF PROTECTION

The Tribal Code defines a household member as:

"Member of the household" or "household member" includes any individual that has or had a social relationship that is or was intimate or romantic in nature regardless of whether he or she currently resides with the perpetrator. Examples of a member of the household include: a current or a former spouse; an alleged victim who is related by blood; an alleged victim who is related by an existing or prior marriage; an alleged victim who resides or formerly resided with the alleged perpetrator; an alleged victim with whom the alleged perpetrator has a child in common; a current or a former dating partner; a current or former sexual partner; or the minor child of the alleged victim or the alleged perpetrator. 30-1-2c

WHAT IS AN ORDER OF PROTECTION?

It is an enforceable court order that requires the abuser to stop the violence and abuse.

HOW WILL AN ORDER OF PROTECTION HELP ME?

It can order the abuser to:

- Stay away from you and your children
- Stop contacting or communicating with you directly or indirectly ie: through 3rd parties
- Not have weapons or ammunition
- Move out of your house
- Obey orders about property
- Not go within ____ number of yards of you

The court is also allowed to award:

- Child custody and visitation (temporarily)
- Child support (temporarily)
- Spousal support (temporarily)

WHO CAN ASK FOR AN ORDER OF PROTECTION?

Anyone who believes they are a victim of domestic violence; or anyone who believes they experienced domestic abuse from a “household member.”

CAN I ASK FOR AN ORDER OF PROTECTION IF I’M NOT SURE THAT I QUALIFY UNDER THIS CODE?

Yes, you can always ask for an Order of Protection, but it is up to the judge to decide if it’s granted or not.

If you do think you qualify, talk to a lawyer, lay counsel, law enforcement, or to the community Domestic Violence Awareness Program at 575-464-4334.

HOW DO I ASK FOR AN ORDER OF PROTECTION?

First, you start a court case by filling out an Affidavit or Petition and filing it with the court. When you file your request, the court may ask you to wait while your request is submitted to the judge for review. Make sure to provide all of your contact information and all information about the situation and the alleged perpetrator.

HOW SOON WILL I GET THE ORDER OF PROTECTION?

Within one (1) business day, the judge may issue a temporary Order of Protection and schedules a date for all involved parties to come to the court. This is called a “court hearing.” At the court hearing, the judge decides if the temporary order will become a permanent order.

If the judge does not immediately issue a temporary Order of Protection, then the Court will set a hearing to determine whether to issue an Order of Protection. This hearing will occur within seventy-hours (72) if the other person is served immediately or within ten (10) days if the other party is not served immediately.

HOW WILL THE OTHER PERSON KNOW IF THE JUDGE ISSUES A TEMPORARY ORDER OF PROTECTION?

The other person must receive a copy of your Petition or Affidavit and a copy of the Temporary Order of Protection or Notice of Hearing. This is called “serving” your court papers. The Mescalero Apache Police Department may serve the petition.

HOW WILL THE OTHER PERSON KNOW TO COME TO THE COURT HEARING?

The date and time of the court hearing is listed in the Temporary Order of Protection or the Notice of Hearing if the Temporary Order of Protection is not issued

I’VE BEEN ACCUSED OF DOMESTIC VIOLENCE. HOW DO I TALK TO THE JUDGE ABOUT IT?

You cannot talk to the judge until the court hearing.

If you’ve received a petition and a temporary Order of Protection or Notice of Hearing, you can fill out and file a response to the petition. This is how you tell the judge your side of what happened. You can also file a counter-petition. This is how **you** ask the judge for an Order of Protection against the other person.

DO I HAVE TO GO TO THE COURT HEARING?

Yes.

Petitioner – If you do not go, your order may be dismissed.

Respondent – If you do not go, the judge may issue the Order of Protection. The judge may also issue a warrant for your arrest.

CAN I CANCEL OR CHANGE THE ORDER OF PROTECTION?

Even if you both agree to cancel or change the Order of Protection, only the judge can make that decision. And usually it means another court hearing.

You can ask the judge to cancel or change the order by filling out and filing an Affidavit.

CAN I EXTEND THE ORDER OF PROTECTION?

You can ask the judge to extend the Order of Protection by filling out and filing an Affidavit.

WHAT IF THE ORDER OF PROTECTION IS VIOLATED?

Call law enforcement if you think you are at risk. Protection Orders are enforceable off the Mescalero Apache Reservation by any law enforcement office.

Violating an Order of Protection can have serious consequences; it can be a criminal offense.

You can file paperwork to tell the court about the violation by filling out and filing an Affidavit.

WHAT IF I DON'T SPEAK ENGLISH?

When you file your documents, please let the clerk or receptionist know.

Please refer to “INTERPRETER SERVICES & HEARING & VISION DEVICES” on page 4

NOTES: _____

DISSOLUTION OF MARRIAGE

This information guide is general in nature and is not designed to give legal advice. The court does not guarantee the legal sufficiency of this information guide or that it meets your specific needs. Because the law is constantly changing, this guide may not be current. Therefore, you may wish to seek the advice and assistance of an attorney.

For basic information about representing yourself, see also the opening section of this Self Help Guide.

WHAT IS “DISSOLUTION OF MARRIAGE?”

Dissolution of Marriage, also called Divorce, is the legal process used to end a legal marriage and make decisions about the division of property and debts, spousal support, child custody, time sharing, visitation and child support.

WHO CAN FILE FOR DIVORCE?

Either person, legally married, residing on the Mescalero Apache Reservation when one of the parties is an Indian who has lived on the Reservation for at least six(6) months before filing a Petition.

HOW DO I FILE FOR DIVORCE?

You start a divorce proceeding by filing a petition with the court. A divorce proceeding can be a very complicated legal process, and you may wish to talk to a lawyer or lay advocate before trying to do it yourself. If you decide to file for divorce without a lawyer or lay advocate, the court has approved specific forms that you are required to use. The forms have specific instructions that should be followed very carefully. The forms are known as Domestic Relations Forms.

The Dissolution of Marriage Packet includes the following forms:

1. Check List
 - a. You must provide all documentation on this checklist
2. Coversheet
 - a. All personal information must be included.
3. Affidavit
 - a. Provide your reasons for your request
4. Petition for Dissolution of Marriage
 - a. Fill in all applicable sections

WHERE DO I GET THE FORMS I NEED TO FILE FOR A DIVORCE?

Forms may be picked up at the Mescalero Tribal Court in the reception area or found online at www.mescaleroapachetribe.com or <http://mescaleroapachetribe.com/tcwc/>.

WHAT DO I DO IF I AM SERVED WITH A DIVORCE PETITION?

When you are served with a divorce petition, you have 30 days to file a response. A divorce proceeding can be a very complicated legal process and you may wish to talk to a lawyer or lay advocate before trying to do it yourself. If you do decide to file a response without a lawyer or lay advocate, please use the Affidavit form.

If you do not appear at court for the hearing, the court can grant your spouse the divorce and award some or all of what your spouse asked for in the petition.

NOTES: _____

GUARDIANSHIP

This information guide is general in nature and is not designed to give legal advice. The court does not guarantee the legal sufficiency of this information guide or that it meets your specific needs. Because the law is constantly changing, this guide may not be current. Therefore, you may wish to seek the advice and assistance of an attorney.

For basic information about representing yourself, see also the opening section of this Self Help Guide.

The Tribal Court may, on the court's own Motion, or upon the Petition of any interested member of the Mescalero Apache Tribe over the age of twenty-one (21) years, or upon the Petition of any interested agency of the B.I.A. or the Tribe, appoint a legal Guardian for any child under the age of eighteen (18) years, or for any person who is found by the Court to be mentally incompetent. (6-1-1. COURT AUTHORITY)

The Tribal Court shall also have the power to appoint Guardians for mental incompetents, illegitimate children, for children whose relatives are unable to care for them, and all other cases when it appears that a Guardian is necessary for the welfare of a minor. (6-1-2. SCOPE)

Read more at: The Mescalero Tribal Code - Appointment of Guardians - Chapter 6

Since there are other laws that govern the care of a child, you may wish to talk to a lawyer to make sure this is the right procedure for your situation.

WHAT IS A GUARDIANSHIP?

An adult can ask the court to create a legal relationship between them and the child. This is called a guardianship.

A guardianship suspends most of the rights and duties of a child's parents and transfers those rights and duties to another adult, who is called the "legal guardian." There are some things the legal guardian cannot do, like agree to the child's adoption or take over any parental rights or duties that a court orders the parents to keep.

This is different from a case where the Court "places" a child with someone that is not the child's parents in an abuse and neglect proceeding. However, this type of placement could lead to a guardianship.

HOW DO I BECOME A GUARDIAN?

To become a child's legal guardian, you must file an Affidavit to open a court case for guardianship in the Mescalero Tribal Court. Forms are available at the court and online at <http://mescaleroapachetribe.com/>.

HOW LONG BEFORE I GET A HEARING?

You should get a hearing on the petition between 30 and 90 days from when you filed the guardianship request. If you also request a temporary guardianship, you should have a hearing on that request within 20 days of filing it.

I THINK THIS IS AN EMERGENCY – CAN I GET GUARDIANSHIP RIGHT AWAY?

Under certain circumstances, you may be able to file for guardianship on an emergency basis. Once you file for guardianship then you can file for temporary guardianship. The judge may or may not grant the motion for temporary guardianship with or without a hearing. You will use the Affidavit form for your request.

In most cases, however, if there is an emergency-then you should notify law enforcement or social services immediately.

I'VE BEEN GIVEN A PETITION FOR GUARDIANSHIP – HOW DO I TALK TO THE JUDGE ABOUT IT?

You cannot talk to the judge until you go to the court hearing but, you can file a Response to the Petition within 30 days after service of the Petition.

If you do not file a response and do not appear at the hearing, a “Judgment by Default” may be entered against you.

CAN I CANCEL GUARDIANSHIP?

Canceling the guardianship is called “revoking” the guardianship. You will have to prove to the judge that circumstances have changed and that revoking the guardianship is in the best interests of the child. If you believe that it is time to revoke the guardianship, you will fill out and submit an Affidavit.

NAME CHANGE

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For basic information about representing yourself, see also the opening section of this Self Help Guide.

Any member of the Mescalero Apache Tribe over the age of eighteen (18) years of age, may upon Petition to the Tribal Court of the Mescalero Apache Tribe, have his name changed or established by Order of said Court, provided that he shall file the Notice hereinafter required:

- A. provide for the publication; and
- B. provided that no sufficient cause be shown to the contrary.

(5-1-1. OVER EIGHTEEN)

Any member of the Mescalero Apache Tribe eighteen (18) years of age or under, may upon Petition of his parents or legal guardian, and if he be fourteen (14) years or over, joined by the applicant, have his name changed or established by Order of said Court, provided that the petitioner shall file the Notice hereinafter required:

- A. provide for the publication; and
- B. provided that no sufficient cause be shown to the contrary.

(5-1-2. UNDER EIGHTEEN.)

Read more at: The Mescalero Tribal Code - Change of Name - Chapter 5

WHAT IS A NAME CHANGE?

In general, a name change is when someone changes their legal name to a different name. Changing your name or a child's name requires a court order.

I AM 14 YEARS OLD OR OLDER – HOW DO I FILE FOR A NAME CHANGE?

To get started, you will need these forms:

- Petition for Name Change – This is the form that starts the court process.
- All documents listed on the Name Change Check List
- Affidavit – provide the reason for the name change

You will complete all forms, provide all documentation and bring to the court for filing.

I AM 14 YEARS OLD OR OLDER – WHAT HAPPENS AFTER I FILE THE PETITION? DO I HAVE TO DO ANYTHING ELSE?

YES. In any name change case, the Notice must be published. When you file your petition, the court will write the court date on the Notice.

At the hearing, the judge will either approve or deny your name change.

MY CHILD IS 13 YEARS OLD OR YOUNGER – HOW DO I FILE FOR A NAME CHANGE?

- Petition for Name Change – This is the form that starts the court process.
- Because the child is under 14 years old, you have to give notice to the child’s non-signing parent or guardian. If the non-signing parent or guardian **agrees** to the name change, they can sign a consent form. Otherwise, they will need to be served a copy of the Summons and Petition.

MY CHILD IS 13 YEARS OLD OR YOUNGER – WHAT HAPPENS AFTER I FILE THE PETITION? DO I HAVE TO DO ANYTHING ELSE?

YES. Because the child is under 14 years old, you will have to give notice to the child’s non-signing parent or guardian. **PLUS**, the “Notice” **must** be published.

At the hearing, the judge will either approve or deny your name change.

THE JUDGE APPROVED THE NAME CHANGE. AM I DONE?

NO. You are responsible for notifying the public that you have changed your or your child’s name. A stamped copy of the Order for Name Change will need to be mailed to Creditors, Department of Vital Records and etc.

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ESTATE / HEIRSHIP / PROBATE

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When a member of the Mescalero Apache Tribe or any other person residing on the Mescalero Apache Reservation dies, the heirs to the property of the decedent and the distribution of such property shall be determined by the Mescalero Apache Tribal Court in accordance with procedures established in this chapter. The jurisdiction or authority of the Court in such cases shall cover all of the decedent's property that is on the Reservation, including any such funds that may be held for the decedent in the Mescalero Apache Trust Funds and not restricted or held in trusteeship by the federal government. The jurisdiction of the Court will not cover any of the decedent's property that is not on the Mescalero Apache Indian reservation unless the laws of the Reservation or state where such property may be located will recognize ancillary proceedings.

The Mescalero Apache Tribal Court does not have jurisdiction over real estate or other property held in trust by the United States, nor over any property subject to restrictions upon alienation under the laws of the United States. (7-1-1. JURISDICTION)

Court action to determine heirship will begin with the filing of a Petition for Determining Heirs. The Petition may be filed by the Court upon its own Motion, or with the Court by any relative of the decedent or by any other interested person. The Petition must be affirmed to be true to the best of the petitioner's knowledge and contain as much of the following information as may be known:

- A. name of decedent;
- B. place and date of decedent's death;
- C. names of probable heirs and their relationship to decedent;
- D. items of property left by decedent and the location of such property; and
- E. names of all known creditors of the estate. If the decedent left a Will, the original Will, or a certified copy of it, shall be filed along with the Petition for Determining Heirs. The Petition in such a case will list all persons named in the Will.

(7-1-2. PETITION REQUIRED.)

Read more at: The Mescalero Tribal Code - Heirship - Chapter 7

FORMS

The Estate packet is available at the Court in the reception area or online at <http://mescaleroapachetribe.com/>.

- Checklist – Make sure to provide all requested information
- Affidavit – Explain the reason for your filing
- Petition for Estate – Complete all information

WHO WILL BE THE EXECUTOR / ADMINISTRATOR OF THE ESTATE?

The court will appoint an Administrator of the Estate. This person must be:

Only a person who is of sound mind, and has not been convicted of a felony shall be selected Administrator of an estate. A qualified person selected as an Administrator shall be given Letters of Administration by the Court, setting forth the appointment and duties of the Administrator. (7-2-1. QUALIFICATIONS.)

WHAT IS PROBATE?

Probate is the legal process through which a court grants a person the legal authority to handle the legal affairs of a person who has died. The person who has died is called the “decedent”.

WHEN IS PROBATE NECESSARY?

Probate is necessary when a person dies leaving property titled in his/her name (real estate, accounts, vehicles, stocks and bonds, etc.) This property is called the “decedent’s estate”.

WHEN IS PROBATE NOT NECESSARY?

Probate is necessary to transfer property that is not “titled” such as personal items including furniture, jewelry, artwork and other personal effects.

Probate is not necessary if the decedent has arranged for a non-probate transfer of title property. Examples of non-probate transfers are: real estate held as Joint Tenants, real estate with a recorded Transfer on Death Deed, bank accounts with Payable on Death designations, brokerage accounts with death beneficiary designations, etc.

WHERE AND WHEN TO FILE A PROBATE/ESTATE CASE

If probate is necessary, the probate case must be filed with the Mescalero Tribal Court at the time of his/her death.

Note: In some cases, it may be necessary to file the probate case with BIA, in New Mexico, or in other states as well depending on the type and location of property.

Probate can be filed any time 2 years after the decedent’s death.

Note: A probate case may be filed after the 2-year period for the limited purpose of transferring title to real property from the decedent’s name to the decedent’s heirs.

FILING A PROBATE CASE WITH A WILL

If the decedent left a valid Will, the person filing the probate case must submit the original Will and a certified copy of the decedent's death certificate with all the required documents. The court will appoint the person(s) designated in the Will as "Executor or Administrator" of the decedent's estate.

FILING A PROBATE CASE WHERE THERE IS NOT A WILL

People who die without a Will are said to have died "intestate".

A spouse has the highest priority for being appointed the Administrator, followed by the decedent's children. A person who wishes to be appointed the Administrator must have the written consent of all the other people with the same or higher priority for appointment.

The person filing the probate must submit a certified copy of the decedent's death certificate and copies of the written consent of other people with the same or high priority for appointment, along with the required probate forms.

DUTIES OF THE EXECUTOR/ADMINISTRATOR

When the court appoints a person to be the executor/ administrator of the decedent's estate, the court gives the appointed person a document called "Letter of Administration". This document gives the appointed person the legal authority to transact business on the decedent's behalf.

The executor/administrator must take an Oath of Office and Bond and is responsible for:

- Notifying all the heirs of the decedent's estate;
- Gathering and inventorying the decedent's assets;
- Identifying and paying the decedent's debts (to the extent that funds are available in the estate to do so);
- Distributing the decedent's assets in accordance with the decedent's Will or the intestacy laws if there is no Will; and
- Closing the probate case by filing a sworn statement with the court stating that all duties are complete.

The executor/administrator is **not** allowed to use funds from the estate for the executor/administrator's personal benefit. The executor/administrator may use estate funds to pay for costs of administering the estate (i.e. postage, filing fees, copies, etc.)

APPEALS & SUPREME COURT

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Read more at: The Mescalero Tribal Code - Appellate Courts - Chapter 2, Section 4

WHERE AM I TO APPEAL FROM AND WHERE SHOULD I APPEAL TO?

All appeals will be heard by the Mescalero Apache Court of Appeals. The court will consist of 3 judges.

You will start the procedure by filling out and filing the Appeals form located at the Court or online at www.mescaleroapachetribe.com or <http://mescaleroapachetribe.com/tcwc/> You must state specific grounds for the appeal.

WHO CAN APPEAL?

If you think the Tribal Court was in error when deciding your case, you have the right to appeal the decision. An appeal can be a complicated, time-consuming process, and you may wish to hire an attorney or lay advocate to handle your case.

WHAT CAN I APPEAL?

In general, you may only appeal a final, written order or judgment from the court. An order or judgment is considered final for purposes of appeal when it has decided all of the issues in the case and there is nothing left for the court to do. If you appeal from an order that is not final or appealable, the appellate court may dismiss your appeal, but you will not lose your right to appeal. Once a final, written order is filed by the trial court, you can file a new appeal with the appellate court.

NOTICE OF APPEAL- WHEN SHOULD I APPEAL?

Any party who is aggrieved by a final order or final judgment of the Mescalero Tribal Court may appeal to the Mescalero Court of Appeals by filing a written Notice of Appeal with the Court Clerk within twenty (20) days from the entry of the final order of judgment. The party filing the appeal must pay the Court Clerk a \$25.00 filing fee at the time of filing the Notice of Appeal.

In some cases, you may be able to get an extension of time from the Court to file your appeal. It is very important that you file your appeal on time. If you file your appeal late, you may lose your right to appeal forever.

HOW DO I APPEAL?

You will start the procedure by filling out and filing the Appeals form located at the Court or online at www.mescaleroapachetribe.com or <http://mescaleroapachetribe.com/tcwc/>. You must state specific grounds for the appeal.

You will also need to pay a filing fee.

The court will review the notice and make a decision as to whether the proper grounds have been asserted for an appeal within seven (7) working days of the filing of the Notice of Appeal. A written notice of the decision will be provided to the appealing party. The appealing party will also receive a notice of his/her right to amend the Notice of Appeal. The allowable timeframe to re-file is within three (3) working days. No additional filing fee will be charged.

If the Court of Appeals fails to rule within seven (7) working days, the Tribal Court's decision shall be deemed summarily affirmed.

GROUND FOR APPEAL NOTICE (2-4-4)

The Notice of Appeal must state specific grounds for appeal. Legal grounds for an appeal to be considered on the merits by the Court of Appeals consists of the following:

- A. No evidence or insufficient evidence is in the record to support the Trial Court's Order of Judgment;
- B. The Trial Court made a legal error in interpreting or applying the law;
- C. There is no basis in the laws, customs, or traditions of the Tribe for the Trial Court's decision;
- D. In a criminal case, the evidence presented at trial did not show that the defendant was guilty of the offense charged beyond a reasonable doubt;
- E. The Trial Court erred in admitting illegally-seized evidence or inadmissible testimony, the decision of the Court was based upon this evidence or testimony, and the Court's decision could not be supported on the legally-admitted evidence alone;
- F. The Trial Court erred in denying or granting an objection or motion which fundamentally affected the fairness of the trial;
- G. The Court had no jurisdiction to hear the controversy or no jurisdiction over the parties; or
- H. The Trial Court legally erred in its decision.

CHILDREN’S COURT - APPEALS PROCEDURE (11-6-2)

Appeals from the Children’s Court may be made in the same manner as other appeals. An appeal must be made within 30 days from the entry of the original order or decree.

FINAL DECISION

All judgments of the Court of Appeals shall be final unless overturned or otherwise modified by the Mescalero Apache Tribe Supreme Court.

The Court of Appeals shall issue a written decision containing the reasoning for the decision. A decision is reached when at least two (2) of the three (3) judges agree.

SUPREME COURT

The Tribal Council shall sit as the Supreme Appellate Court with the President as presiding officer but without vote. (2-4-13)

PETITION OF APPEAL TO THE MESCALERO APACHE SUPREME COURT (2-4-14)

The filing of a Petition of Appeal with the President of the Mescalero Apache Tribe begins the process of appealing to the Mescalero Apache Tribe Supreme Court.

The Petition of Appeal must be filed within ten (10) working days of the decision of the Court of Appeals. The President will present the petition to the Council within twenty (20) calendar days of being received. If the Supreme Court fails to rule within twenty-five (25) days of filing of the petition, the decision of the Court of Appeals shall be deemed summarily affirmed.

All decisions of the Mescalero Apache Supreme Court shall be final. (2-4-19)

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