

Mescalero Tribal Court



Glossary of Legal Terms

Mescalero Tribal Court
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Disclaimer:

This booklet was created for the sole purpose of providing information and knowledge of common court room terminology. This information is not legal advice.

This is not an all-inclusive list of legal terminology. Source: <http://www.uscourts.gov/glossary>

A

Acquittal

A jury verdict that a criminal defendant is not guilty, or the finding of a judge that the evidence is insufficient to support a conviction.

Admissible

A term used to describe evidence that may be considered by a jury or judge in civil and criminal cases.

Affidavit

A written or printed statement made under oath.

Affirmed

In the practice of the court of appeals, it means that the court of appeals has concluded that the lower court decision is correct and will stand as rendered by the lower court.

Alternate juror

A juror selected in the same manner as a regular juror who hears all the evidence but does not help decide the case unless called upon to replace a regular juror.

Alternative dispute resolution (ADR)

A procedure for settling a dispute outside the courtroom. Most forms of ADR are not binding and involve referral of the case to a neutral party such as an arbitrator or mediator.

Answer

The formal written statement by a defendant in a civil case that responds to a complaint, articulating the grounds for defense.

Appeal

A request made, after a trial, by a party that has lost on one or more issues that a higher court review the decision to determine if it was correct. To make such a request is "to appeal" or "to take an appeal." One who appeals is called the "appellant;" the other party is the "appellee."

Appellant

The party who appeals a court's decision, usually seeking reversal of that decision.

Appellate

About appeals; an appellate court has the power to review the judgment of a lower court (trial court) or tribunal.

Appellee

The party who opposes an appellant's appeal, and who seeks to persuade the appeals court to affirm the court's decision.

Arraignment

A proceeding in which a criminal defendant is brought into court, told of the charges in an indictment or information, and asked to plead guilty, no contest, or not guilty.

Assets

Property of all kinds, including real and personal, tangible and intangible.

B

Bail

The release, prior to trial, of a person accused of a crime, under specified conditions designed to assure that person's appearance in court when required. Also can refer to the amount of bond money posted as a financial condition of pretrial release.

Bench trial

A trial, without a jury, in which the judge serves as the fact-finder.

Brief

A written statement submitted in a trial or appellate proceeding that explains one side's legal and factual arguments.

Burden of proof

The duty to prove disputed facts. In civil cases, a plaintiff generally has the burden of proving his or her case by a preponderance of the evidence. In criminal cases, the government has the burden of proving the defendant's guilt beyond a reasonable doubt. (See standard of proof.)

C

Case file

A complete collection of every document filed in court in a case.

Case law

The law as established in previous court decisions. A synonym for legal precedent. Akin to common law, which springs from tradition and court decisions.

Caseload

The number of cases handled by a judge or a court.

Cause of action

A legal claim.

Chambers

The offices of a judge and his or her staff.

Chief Judge

The judge who has primary responsibility for the docket and the supervision of the other judges. Chief Judges are appointed by the Tribal President and confirmed by a 3/4th majority of the Tribal Council.

Claim

A party's assertion of a right against another party, like a creditor's right to payment from a debtor or the debtor's property.

Court Clerk

The court officer who oversees administrative functions, especially managing the flow of cases through the court. The clerk's office is often called a court's central nervous system.

Collateral

Property that is promised as security for the satisfaction of a debt.

Common law

The legal system which relies on the articulation of legal principles in a historical succession of judicial decisions and tradition. Common law principles can be changed by legislation.

Community service

A special condition the court imposes that requires an individual to work – without pay – for a civic or nonprofit organization.

Complaint

A written statement that begins a civil lawsuit, in which the plaintiff details the claims against the defendant.

Concurrent sentence

Prison terms for two or more offenses to be served at the same time, rather than one after the other. Example: Two five-year sentences and one three-year sentence, if served concurrently, result in a maximum of five years behind bars.

Consumer debts

Debts incurred for personal, as opposed to business, needs.

Contract

An agreement between two or more people that creates an obligation to do or not to do a particular thing.

Conviction

A judgment of guilt against a criminal defendant.

Counsel

Legal advice; a term also used to refer to the lawyers in a case.

Count

An allegation in a criminal complaint, charging a defendant with a crime. A criminal complaint may contain allegations that the defendant committed more than one crime. Each allegation is referred to as a count.

Court

Government entity authorized to resolve legal disputes. Judges sometimes use "court" to refer to themselves in the third person, as in "the court has read the briefs."

Court reporter

A person who makes a word-for-word record of what is said in court, generally by using a stenographic machine, shorthand or audio recording, and then produces a transcript of the proceedings upon request.

Creditor

A person to whom or business to which the debtor owes money or that claims to be owed money by the debtor.

D

Damages

Money that a defendant pays a plaintiff in a civil case if the plaintiff has won. Damages may be compensatory (for loss or injury) or punitive (to punish and deter future misconduct).

De novo

Latin, meaning "anew." A trial de novo is a completely new trial. Appellate review de novo implies no deference to the trial judge's ruling.

Declaratory judgment

A judge's statement about someone's rights. For example, a plaintiff may seek a declaratory judgment that a particular statute, as written, violates some constitutional right.

Default judgment

A judgment awarding a plaintiff the relief sought in the complaint because the defendant has failed to appear in court or otherwise respond to the complaint.

Defendant

In a civil case, the person or organization against whom the plaintiff brings suit; in a criminal case, the person accused of the crime.

Deposition

An oral statement made before an officer authorized by law to administer oaths. Such statements are often taken to examine potential witnesses, to obtain discovery, or to be used later in trial. See discovery.

Discovery

Procedures used to obtain disclosure of evidence before trial.

Dismissal with prejudice

Court action that prevents an identical lawsuit from being filed later.

Dismissal without prejudice

Court action that allows the later filing.

Docket

A log containing the complete history of each case in the form of brief chronological entries summarizing the court proceedings.

Due process

In criminal law, the constitutional guarantee that a defendant will receive a fair and impartial trial. In civil law, the legal rights of someone who confronts an adverse action threatening liberty or property.

E

Equity

The value of a debtor's interest in property that remains after liens and other creditors' interests are considered. (Example: If a house valued at \$60,000 is subject to a \$30,000 mortgage, there is \$30,000 of equity.)

Evidence

Information presented in testimony or in documents that is used to persuade the fact finder (judge or jury) to decide the case in favor of one side or the other.

Ex parte

A proceeding brought before a court by one party only, without notice to or challenge by the other side.

Ex parte communication

Any communication between a judge or juror and a party to a legal proceeding or any other person about the case, outside of the presence of the opposing party or the opposing party's attorney.

Exculpatory evidence

Evidence indicating that a defendant did not commit the crime.

F

Federal public defender

An attorney employed by the federal courts on a full-time basis to provide legal defense to defendants who are unable to afford counsel. The judiciary administers the federal defender program pursuant to the Criminal Justice Act.

Federal public defender organization

As provided for in the Criminal Justice Act, an organization established within a federal judicial circuit to represent criminal defendants who cannot afford an adequate defense. Each organization is supervised by a federal public defender appointed by the court of appeals for the circuit.

File

To place a paper in the official custody of the clerk of court to enter into the files or records of a case.

H

Habeas corpus

Latin, meaning "you have the body." A writ of habeas corpus generally is a judicial order forcing law enforcement authorities to produce a prisoner they are holding, and to justify the prisoner's continued confinement. Pursuant to the Indian Civil Rights Act (ICRA), federal judges may receive petitions for a writ of habeas corpus from tribal prison inmates who say their tribal prosecutions violated federally protected rights in some way.

Hearsay

Evidence presented by a witness who did not see or hear the incident in question but heard about it from someone else. With some exceptions, hearsay generally is not admissible as evidence at trial

Home confinement

A special condition the court imposes that requires an individual to remain at home except for certain approved activities such as work and medical appointments. Home confinement may include the use of electronic monitoring equipment – a transmitter attached to the wrist or the ankle – to help ensure that the person stays at home as required.

I

Impeachment

The process of calling a witness's testimony into doubt. For example, if the attorney or lay advocate can show that the witness may have fabricated portions of his testimony, the witness is said to be "impeached."

In camera

Latin, meaning in a judge's chambers. Often means outside the presence of a jury and the public. In private.

Inculpatory evidence

Evidence indicating that a defendant did commit the crime.

Injunction

A court order preventing one or more named parties from taking some action. A preliminary injunction often is issued to allow fact-finding, so a judge can determine whether a permanent injunction is justified.

Interrogatories

A form of discovery in civil cases consisting of written questions to be answered in writing and under oath.

Issue

1. The disputed point between parties in a lawsuit; 2. To send out officially, as in a court issuing an order.

J

Judge

An official of the Judicial branch with authority to decide lawsuits brought before courts.

Judgment

The official decision of a court finally resolving the dispute between the parties to the lawsuit.

Jurisdiction

The legal authority of a court to hear and decide a certain type of case. It also is used as a synonym for venue, meaning the geographic area over which the court has territorial jurisdiction to decide cases.

Jurisprudence

The study of law and the structure of the legal system

Jury

The group of persons selected to hear the evidence in a trial and render a verdict on matters of fact. See also grand jury.

Jury instructions

A judge's directions to the jury before it begins deliberations regarding the factual questions it must answer and the legal rules that it must apply.

L

Lawsuit

A legal action started by a plaintiff against a defendant based on a complaint that the defendant failed to perform a legal duty which resulted in harm to the plaintiff.

Lien

A charge on specific property that is designed to secure payment of a debt or performance of an obligation. A debtor may still be responsible for a lien after a discharge.

Litigation

A case, controversy, or lawsuit. Participants (plaintiffs and defendants) in lawsuits are called litigants.

M

Mental health treatment

Special condition the court imposes to require an individual to undergo evaluation and treatment for a mental disorder. Treatment may include psychiatric, psychological, and sex offense-specific evaluations, inpatient or outpatient counseling, and medication.

Mistrial

An invalid trial, caused by fundamental error. When a mistrial is declared, the trial must start again with the selection of a new jury.

Moot

Not subject to a court ruling because the controversy has not actually arisen, or has ended

Motion

A request by a litigant to a judge for a decision on an issue relating to the case.

N

Nolo contendere

No contest. A plea of nolo contendere has the same effect as a plea of guilty, as far as the criminal sentence is concerned, but may not be considered as an admission of guilt for any other purpose.

O

Opinion

A judge's written explanation of the decision of the court. Because a case may be heard by three or more judges in the court of appeals, the opinion in appellate decisions can take several forms. If all the judges completely agree on the result, one judge will write the opinion for all. If all the judges do not agree, the formal decision will be based upon the view of the majority, and one member of the majority will write the opinion. The judges who did not agree with the majority may write separately in dissenting or concurring opinions to present their views. A dissenting opinion disagrees with the majority opinion because of the reasoning and/or the principles of law the majority used to decide the case. A concurring opinion agrees with the decision of the majority opinion, but offers further comment or clarification or even an entirely different reason for reaching the same result. Only the majority opinion can serve as binding precedent in future cases. See also precedent.

Oral argument

An opportunity for a lawyer, lay advocate, or the party, him or herself, where the party appears *pro se*, to summarize his or her position before the court and also to answer the judges' questions.

P

Petit jury (or trial jury)

A group of citizens who hear the evidence presented by both sides at trial and determine the facts in dispute.

Plaintiff

A person or business that files a formal complaint with the court.

Plea

In a criminal case, the defendant's statement pleading "guilty," "nolo contendere/no contest", or "not guilty" in answer to the charges. See also nolo contendere.

Pleadings

Written statements filed with the court that describe a party's legal or factual assertions about the case.

Precedent

A court decision in an earlier case with facts and legal issues similar to a dispute currently before a court. Judges will generally "follow precedent" - meaning that they use the principles established in earlier cases to decide new cases that have similar facts and raise similar legal issues. A judge will disregard precedent if a party can show that the earlier case was wrongly decided, or that it differed in some significant way from the current case.

Presentence report

A report prepared by a court's probation officer, after a person has been convicted of an offense, summarizing for the court the background information needed to determine the appropriate sentence.

Pretrial conference

A meeting of the judge and lawyers/lay advocates/parties to plan the trial and to establish evidence rules. Typically, the judge and the parties also discuss the possibility of settlement of the case.

Pro se

Representing oneself. Serving as one's own lawyer/lay advocate.

Pro tem

Temporary.

Probation

Sentencing option. With probation, instead of sending an individual to prison, the court releases the person to the community and orders him or her to complete a period of supervision monitored by a Tribal probation officer and to abide by certain conditions.

Probation officer

Officer of the probation office of a court. A probation officer's duties include conducting presentence investigations, preparing presentence reports on convicted defendants, and supervising released defendants.

Procedure

The rules for conducting a lawsuit; there are rules of civil procedure, criminal procedure, evidence, and appellate procedure.

Proof of claim

A written statement describing the reason a debtor owes a creditor money, which typically sets forth the amount of money owed.

Prosecute

To charge someone with a crime. A prosecutor tries a criminal case on behalf of the government

R

Record

A written account of the proceedings in a case, including all pleadings, evidence, and exhibits submitted in the course of the case.

Remand

Send back. An appellate court may remand a case to the lower court if there are factual issues that have not been resolved.

Reverse

The act of a court setting aside the decision of a lower court. A reversal is often accompanied by a remand to the lower court for further proceedings.

S

Sanction

A penalty or other type of enforcement used to bring about compliance with the law or with rules and regulations.

Sentence

The punishment ordered by a court for a defendant convicted of a crime.

Service of process

The delivery of writs or summonses to the appropriate party. There are specific rules as to service of process.

Settlement

Parties to a lawsuit resolve their dispute without having a trial. Settlements often involve the payment of compensation by one party in at least partial satisfaction of the other party's claims, but usually do not include the admission of fault.

Standard of proof

Degree of proof required. In criminal cases, prosecutors must prove a defendant's guilt "beyond a reasonable doubt." Civil lawsuits require proof "by a preponderance of the evidence" (50 percent plus)

Statute

A law passed by a legislature.

Statute of limitations

The time within which a civil lawsuit must be filed or a criminal prosecution begun. The deadline can vary, depending on the type of civil case or the crime charged.

Sua sponte

Latin, meaning "of its own will." Often refers to a court taking an action in a case without being asked to do so by either side.

Subpoena

A command, issued under a court's authority, to a witness to appear and give testimony.

Subpoena duces tecum

A command to a witness to appear and produce documents.

T

Temporary restraining order

Akin to a preliminary injunction, it is a judge's short-term order forbidding certain actions until a full hearing can be conducted. Often referred to as a TRO.

Testimony

Evidence presented orally by witnesses during trials.

Toll

See statute of limitations.

Tort

A civil, not criminal, wrong. A negligent or intentional injury against a person or property, with the exception of breach of contract.

Transcript

A written, word-for-word record of what was said, either in a proceeding such as a trial, or during some other formal conversation, such as a hearing or oral deposition

U

Uphold

The appellate court agrees with the lower court decision and allows it to stand. See affirmed.

V

Venue

The geographic area in which a court has jurisdiction. A change of venue is a change or transfer of a case from one judicial district to another.

Verdict

The decision of a trial jury or a judge that determines the guilt or innocence of a criminal defendant, or that determines the final outcome of a civil case.

Voir dire

Jury selection process of questioning prospective jurors, to ascertain their qualifications and determine any basis for challenge.

W

Wage garnishment

Where the Tribal Court orders that a portion of a party's wages be paid to satisfy the party's: 1) debt owed to a creditor; or 2) child support obligation. The employer has the responsibility to ensure that the portion owed is taken from the party's pay and paid as required in the Court's order.

Warrant

Court authorization, most often for law enforcement officers, to conduct a search or make an arrest.

Witness

A person called upon by either side in a lawsuit to give testimony before the court or jury.

Writ

A written court order directing a person to take, or refrain from taking, a certain act.