



# Due Process in Tribal Courts

## WHAT IS “DUE PROCESS OF LAW?”

**Due process** is the right of people to have a fair chance to participate in court cases. It doesn't guarantee a decision everyone likes, but in the end everyone should feel like they had a chance to speak their mind and have their voices heard by neutral judges.

**Due process rights** are protected by the United States Constitution, the Alaska Constitution, and the Indian Civil Rights Act.

## CORE ELEMENTS OF DUE PROCESS

### 1. Notice

The court must give everyone advance warning of court actions that may affect them. This will include:

- Copies of petitions involving a person or a person's child
- The date, time and place of every hearing, and what the hearing will be about
- Deadlines for filing written responses or other documents
- Court decisions and whether there is a way to appeal

There is no universal definition of “notice.” Some courts require certified mail or process servers. If the tribe already has a code describing how to give notice, that process must be used. Otherwise, the court will need to determine the most effective way to give notice.

An important part of court orders is explaining how the court gave notice to all parties, like this: *“Social worker Mary filed a petition for child protection on June 1. The court set a hearing for June 10. The court clerk served both parents with a copy of the petition and notice of the hearing by personal delivery at their house on June 2. The mother attended the hearing on June 10 in person. The father attended the hearing on June 10 by calling in by phone. They both participated in the hearing.”*

## 2. Opportunity to be heard

To satisfy due process, each party must be given:

- a chance to talk
- a chance to present witnesses and
- a chance to ask questions of the other party and that party's witnesses.

In an emergency, it may be necessary to issue an order without the other side having been given notice and without the court having heard both sides (legal term: "*ex parte*").

- This should only be used for DIRE emergencies, like when a child is about to be physically hurt.
- The order should only be temporary and there must be a follow-up hearing to reconsider the order after allowing both sides the opportunity to speak.
- The follow-up should happen within a couple days, or at least a couple weeks.

## 3. Neutral Judge

- A judge should not be closely related to any party, or come into the case favoring one side.
- The best way to earn respect for the court is to avoid any appearance of bias.
- It is appropriate to ask the parties if either has an objection to a particular judge, and to honor objections even when the judge believes he or she can be fair.

## BEST PRACTICES TO SATISFY DUE PROCESS

1. Write down court rules and following them in every case.  
A court that doesn't follow its own rules can't expect anyone else to follow them.
2. Keep a record. For each case, the clerk should have a file with all the parties' documents, all of the court's decisions, and tape recordings for all the court hearings. Recordings help settle disagreements over what people said and did in court.
3. Explain the decision. When the court explains why it has made its decision the way it has, the people in the case are more likely to understand and accept the decision. It also helps other people (and other courts) understand how the court works and what will be expected of them in future cases.
4. Allow appeals. Having someone ensure that the parties received due process helps guarantee fairness. It shows the court is willing to correct its own mistakes, and helps instill confidence in the court.