

CHAPTER 2
JUDICIARY

2-1 ESTABLISHMENT

2-1.01 The Kootenai Tribe of Idaho hereby establishes a court to be known as the Tribal Court of the Kootenai Tribe of Idaho and reserves the right to establish such other courts as may be allowed by law.

2-2 JURISDICTION

2-2.01 The Tribal Court shall have exclusive jurisdiction over all judicial matters occurring on the Reservation involving Indians and non Indians to the full extent allowed by federal law.

2-2.02 The Tribal Court shall have exclusive jurisdiction over offenses committed by members in the exercise of off-reservation rights within the Tribe's aboriginal territory.

2-2.03 The Tribal Court shall have concurrent jurisdiction over matters subject to its jurisdiction, where jurisdiction has been granted to State or Federal courts under federal law, including Major Crimes defined in 18 USC 1153 where the defendant is Indian. The Kootenai Tribal Court shall not exercise jurisdiction over a defendant charged with a Major Crime until such time as the matter has been referred to the federal prosecutor and the federal prosecutor has declined to prosecute the defendant under federal law.

2-2.04 Any other tribal court or Court of Indian Offenses established pursuant to this chapter shall have its jurisdiction defined at the time of establishment.

2-3 MEANS TO CARRY JURISDICTION INTO EFFECT

2-3.01 In the event that a necessary procedure is not established by this Code, any suitable procedure may be adopted by the Court, provided it does not violate applicable laws and is consistent with tribal law and custom.

2-4 JUDGES

2-4.01 Judges. The Tribal Court shall be composed of a Chief Judge, who shall preside over all matters unless precluded from doing so by law or

circumstance. In such event, the Chief Judge or Council shall call an Associate Judge into service. At the Council's discretion, an alternate Associate Judge may also be appointed, who shall serve at the discretion of the Chief Judge. Any judge appointed shall be empowered to hear and decide all matters properly brought before the Court.

2-4.02 Appointment, Compensation, and Term. All judges shall be appointed by the Tribal Council during a regularly scheduled meeting at which all Council members are present and the basis for compensation shall be determined by the full Council at the time of appointment. Each judge so appointed shall hold office for a period not to exceed two years or such other term as may be determined by the Council and shall be eligible for reappointment.

2-4.03 Eligibility. To be eligible to serve as a judge of the Tribal Court, a person must:

(1) be over twenty-five years of age,

(2) never have been convicted or found guilty of a felony, or within one year, convicted of a misdemeanor involving moral turpitude,

(3) satisfy the Tribal Council that he or she is familiar with Tribal, federal, and state laws, applicable to the Reservation and members.

(4) be bonded in an amount determined by the Council.

In addition, preference for appointment shall be given to enrolled members of federally recognized Indian Tribes.

2-4.04 Removal. The Tribal Council may, by a majority vote of the Council's full membership, suspend, with or without pay, or remove any judge for cause. A written statement of such cause shall be served upon the judge at least ten (10) days prior to a public hearing to be held before the full Council. Any judge charged shall be given an adequate opportunity to answer all charges at the hearing. Causes sufficient for removal shall be such conduct determined by the Council to demonstrate the judge's inability to properly perform the duties assigned, including, by way of example and not

limitation: failure to uphold the law of the Tribe, excessive use of intoxicants, immoral behavior, conviction of any offense involving moral turpitude, use of official position for personal gain, desertion of office or failure to perform duties.

2-4.05 Unexpired Terms. In the event a Tribal Judge leaves office before the expiration of the judge's term, the Tribal Council shall appoint a successor to fill the unexpired term in the manner provided in Section 2-4.02 of this Code.

2-4.06 Disqualification. No judge shall preside over any action or proceeding to which the judge, or any relative by marriage or blood in the first degree, is a party or has a personal or monetary stake in the outcome, or any proceeding in which the judge has a bias against any party. Further, any party to any proceeding before the Tribal Court may, at any time, move to disqualify a judge that party believes is unable to fairly and impartially preside. A motion to disqualify a judge shall be accompanied by an affidavit stating the reasons supporting the motion. The Chief Judge, or a neutral judge if the Chief Judge is challenged, shall grant or deny the motion upon notice and hearing.

2-4.07 Duties. The judge(s) shall administer justice and discharge all duties imposed by law and shall hear and decide cases and enter judgments of orders disposing of each case. The judge(s) shall further make recommendations to the Tribal Council for the enactment or amendment of this Law and Order Code to improve judicial procedure.

2-4.08 Additional Duties of the Chief Judge. The Chief Judge shall be responsible for the Court's administration. In the absence of a court clerk, the Chief Judge shall also perform the clerk's duties.

2-4.09 Visiting Judges. If, for any reason, no judge is available to hear a case, the Chief Judge may request that a judge from a neighboring tribe hear the matter before the Court. Such request shall be in writing and approved by the Tribal Council. Compensation of a visiting judge shall be determined by agreement between the judge and the Tribal Council.

2-4.10 Request for Opinions. Whenever a judge is unable to resolve questions regarding jurisdiction or involving the meaning of laws applicable to a proceeding before the Court, a legal opinion may be

requested from the Tribal Attorney, the Superintendent, or the regional solicitor's office.

2-4.11 Legal Training. The Tribal Council may establish training requirements and programs for Tribal judges. Refusal of a judge to participate in any required training may be grounds for suspension or removal pursuant to Section 2-4.04.

2-5 OFFICERS OF THE COURT

2-5.01 Clerk of the Court. Subject to the availability of funds, and sufficient workload to justify the appointment, the Council may appoint a clerk of the Tribal Court. The clerk shall assist the Tribal Court, law enforcement officials, and with any document incidental to the lawful functions of the Court. The clerk shall attend and keep written records of all Court proceedings, administer oaths to witnesses, collect all fines paid, and pay out all fees required by this Code and make an accounting thereof to the appropriate Tribal officials. The clerk must be bonded in an amount established by the Council.

2-5.02 Legal Representative. Any person appearing in Tribal Court shall, at his or her own expense, have the right to be represented by a person licensed to practice before the Court. Persons are eligible to be licensed to practice before the Court if they meet the following qualifications:

(1) They are a member of the Kootenai Tribe of Idaho twenty-one years of age or older; or

(2) They are at least twenty-one years of age and take an oath that they are familiar with the laws and customs of the Kootenai Tribe of Idaho and have never been convicted of a felony and who pay a fee of twenty-five dollars (\$25.00).

2-5.03 Professional Attorneys. Professional attorneys may represent parties before the Courts of the Kootenai Tribe of Idaho provided they are admitted to practice before the Court. Any attorney who is an active member in good standing of any bar of any United States court or of the highest court of any State, Territory, or insular possession of the United States is eligible to be admitted to practice before the Tribal Courts. To be admitted, an attorney must certify that he or she is a member in good standing of one or more of the above-described bars, will abide by this Law and Order Code, the Rules of the Tribal Court, and any orders

issued by the Tribal Court and pay a fee of a twenty-five dollar (\$25.00).

2-6 COURT ADMINISTRATION

2-6.01 Records. The Tribal Court shall keep a record of all proceedings of the Court, including the title of each case, the names of the parties, the substance of the complaint, the names and addresses of all witnesses, the date of the hearing or trial, by whom conducted, the findings of the trier of fact and its verdict or judgment and any other facts or circumstances deemed important to the case. Subject to the availability of funds and equipment, the Court shall record by electronic, mechanical, or stenographic means all proceedings. Such recordings shall be preserved and kept by the Court Clerk.

2-6.02 Copies of Laws. The Tribal Court shall maintain a copy of the Law & Order Code of the Tribe and, subject to the availability of funds, such other books and publications as are necessary for the proper administration of justice. All ordinances and regulations enacted or promulgated by the Council shall be appended to this Law & Order Code, which shall be available for inspection and copying.

2-7 JURIES

2-7.01 Rules Governing Jury Trial.

(1) In any criminal case where there is a possible jail sentence, a trial by jury shall be granted upon request by either party at the preliminary hearing or arraignment or by written application to the Court within three (3) days thereafter.

(2) The jury shall consist of six (6) persons and one (1) alternate seated by the judge from a list of members of the Tribe residing within a twenty-five (25) mile radius of the Tribal headquarters.

(3) The Prosecutor, defense attorney, or defendant may remove jurors for just cause, as determined by the presiding judge under procedures established by agreement of the parties or ordered by the judge.

(4) When the jury has been seated, the jurors shall take an oath administered by the judge to try the case to the best of their ability under the directions and law given them by the judge.

(5) Each juror, including the alternate, shall be entitled to a fee for each one-half day of service plus mileage for travel to and from the Court payable by the Kootenai Tribe of Idaho pursuant to a schedule established by the Tribal Council.

(6) A party to a civil case involving a claim in excess of \$750.00 may request a jury trial if done so within three (3) days of filing the action. No right to a jury exists in domestic relations cases, adoptions, probates, juvenile cases, cases in equity, contempt proceedings, and cases on appeal.

2-7.02 Substitution of Jurors. The Court may order the discharge of a juror who becomes sick or is otherwise unable to perform duties and substitute an alternate juror. In the absence of an alternate and the failure of the parties to agree to continue the trial with five (5) or less jurors, the jury shall be discharged and a new jury shall be ordered.

2-7.03 Jury Instructions and Jury Verdict.

(1) The judge shall fully and completely instruct the jury in the law governing the case. The judge shall consider jury instructions submitted by each party and shall give instructions that accurately reflect the law to be applied to the case.

(2) In a civil action, the verdict shall be a majority for the plaintiff or the defendant.

(3) In a criminal action, the verdict shall be guilty or not guilty. A guilty verdict shall be by unanimous vote.

2-8 WITNESSES

2-8.01 Subpoenas. The judges of the Tribal Court shall have the power to issue subpoenas to compel the attendance of witnesses at any proceeding before the Court on the Court's own motion or at the request of law enforcement or any party to the proceeding. Each subpoena shall bear the signature of the judge issuing it.

2-8.02 Compensation of Witnesses.

(1) Each witness answering a subpoena shall be entitled to a fee and expenses in accord with the Rules of Court.

(2) Witnesses who testify voluntarily may be paid by the party calling them.

2-9 APPELLATE PROCEEDINGS2-9.01 Appellate Court.

(1) Appeals from decisions from the Tribal Court shall be heard before one judge, who shall not be a judge who heard the case in the original instance. If it is not possible for any reason to assign the case to a judge of the Tribal Court, then the services of a judge from the Northwest Tribal Court Judges Association or other competent judge shall hear the case.

(2) Appeals shall be limited to issues arising under the Indian Civil Rights Act.

(3) The decision of the Appellate Court shall be final and the Court shall have the power to take any of the following actions:

- (a) Deny the appeal;
- (b) Grant the relief sought;
- (c) Remand the case to the court below for further proceedings consistent with the order of the Court of Appeals; and
- (d) To take what ever other action shall ensure justice is served.

2-9.02 Who May Appeal.

(1) A party may appeal to the Appellate Court upon filing a Notice of Appeal and general reason for the appeal in writing with the Clerk of Tribal Court or Judge within five (5) working days after the final judgment.

(2) The party appealing shall give proper assurance to the Tribal Court, through the posting of a bond or in any other manner as required by the presiding judge, that the party will satisfy the judgment if it is affirmed.

(3) In any case where the party has perfected his/her right to appeal, the judgment of the Tribal Court shall not be executed until after final disposition of the case by the Appellate Court.

2-9.03 Hearings. Hearings on appeals shall be held not less than ten or more than 30 days following the filing of the appeal. The judge will hear

only arguments on the issues related to alleged violations of the Indian Civil Rights Act. No evidence shall be presented or considered.

2-10 CONTEMPT

2-10.01 Criminal Contempt. A presiding judge may punish persons for contempt for disobeying any lawful order or process of the Court or wilfully disrupting the proceedings of the Court. If contempt is committed before a judge, the judge may impose punishment, including fines and imprisonment, without a hearing. In all other cases, a hearing must be granted before imposition of the punishment.

2-10.02 Civil Contempt. A judge may compel an act that has been ordered by the Court through the civil contempt power by fines that continue to accrue or imprisonment until the person obeys the Court's order.

2-11 REPRESENTATION OF THE TRIBE AND COUNCIL

2-11.01 The Tribal Council, as the representative of the Tribe, may use a tribal official, the tribal attorney or other qualified person approved to practice before the Tribal Court to represent it in any proceeding to which it is a party.