

LAW AND ORDER CODE
ARTICLE II
COURTS AND PROCEDURES

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ARTICLE II. COURTS AND PROCEDURES

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**LAW AND ORDER CODE
ARTICLE II
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[NOTE: Except as otherwise noted, the provisions of Article II of the Law and Order Code were enacted on June 22, 1974 by Ordinance No. 26. As amended on December 5, 1974 by Ordinance No. 26B; July 30, 1980 by Ordinance No. 26H; October 7, 1981 by Ordinance 26J; December 28, 1981 by Ordinance 26K; May 8, 1982 by Ordinance No. 26O; June 23, 1982 by Ordinance No. 26N; and December 14, 1999 by Ordinance 99-3.]

CHAPTER A. TRIBAL COURT

Section 201. General Provisions.

a. There shall be a Tribal Court consisting of a Chief Judge and at least two Associate Judges. By ordinance the Tribal Council may increase the number of Associate Judges and, subject to the requirement that there always be at least two Associate Judges, it may by similar action decrease the number of Associate Judges; provided, however, there shall be no reduction in the number of Associate Judges if it would have the consequence of removing any incumbent Associate Judge prior to the expiration of his term of office, or prior to his removal by death, resignation or for cause.

b. Each Judge of the Tribal Court shall hold office for a term of two (2) years and shall be eligible for reappointment to successive terms of two (2) years each. A person appointed to fill an existing vacancy created by the death, resignation or removal for cause of a judge shall be appointed initially only for the unexpired portion of the term for which the appointment is made, subject to eligibility for reappointment for the next full term. The first term of the initial judges of the Tribal Court shall commence on the date on which the Code becomes effective, and those terms shall expire two (2) years thereafter. All subsequent terms of judges of the Tribal Court shall expire on the first day of the same month biannually thereafter. If the number of Associate Judges is increased pursuant to an ordinance, to be effective on some date other than the commencement of judicial terms as prescribed by this Code, the additional offices shall be filled by initial appointments as though they were vacancies, for the period of time prior to the commencement of the next full judicial term. Notwithstanding the foregoing, the Tribal Council may temporarily appoint any individual, otherwise eligible to serve as a judge under this Code, as a Chief Judge or Associate Judge of the Tribal Court, for a period of time not to exceed one hundred and eighty (180) days where any emergency situation exists necessitating the appointment of a Tribal Court judge for an interim period to maintain and conduct Tribal Court operations.

[As amended, December 5, 1974, Ord. No. 26B; July 30, 1980, Ord. No. 26H.]

c. All judges of the Tribal Court shall be appointed by the Tribal Council, with the Chief Judge specifically appointed by it to that office. By enactment of this Code, the individuals

serving immediately prior to its effective date as Chief Judge and Associate Judges of the Tribal Court, as constituted prior to the effective date of this Code, are appointed as Chief Judge and Associate Judges, respectively, of the Tribal Court under this Code.

[As Amended, December 5, 1974, Ord. No. 26B.]

d. A Tribal member, a member of another federally recognized tribe, or other person twenty-five (25) years of age or older shall be eligible to serve as a judge of the Tribal Court, provided that such person should possess substantial legal education or experience; except the following:

- (1) Members of the Appeals Court, subject to Subsection (C) of Section 210; persons otherwise employed by the Courts of the Tribes; members of the Tribal Council; law enforcement officials of the Tribes; or persons who have other similar conflicting interests.
- (2) Those who have been convicted of a felony, or of a misdemeanor or other criminal offense involving dishonesty or moral turpitude within the last five years, in any Federal, Tribal or State Court.

[As Amended, June 23, 1982, Ord. No. 26N.]

e. The Associate Judges in addition to their general judicial duties, may serve as Juvenile Court Judges. The designation of a Juvenile Court Judge from among the Associate Judges shall be made by the Chief Judge. An incumbent Associate Judge serving as Juvenile Court Judge shall not be relieved of the duties of the latter during his term as Associate Judge, except upon his request to the Chief Judge or upon his removal for cause from the Tribal Court. The Juvenile Court shall be a division of the Tribal Court but it shall conduct its functions and proceedings separately from all other functions and proceedings of the Tribal Court.

f. The Chief Judge and the Associate Judges shall be paid a salary to be determined by the Tribal Council. The salary of any Chief Judge or Associate Judge shall not be reduced during his term of office.

g. No judge shall officiate in any proceeding in which he has any personal interest, or in which any party, witness or counsel is related to him by blood or marriage within the third degree, or in which any party, witness or counsel stands in the relationship to the judge of ward, attorney, client, employer, employee, landlord, tenant, business associate, creditor or debtor. For these purposes, service as a judge for the Tribes shall not constitute disqualification by virtue of such employment by the Tribes.

h. The Tribal Council by resolution, with the approval of the Chief Judge of the Tribal Court, may appoint additional persons as Deputy Judges of the Tribal Court, except that a

member of a recognized Indian Tribe may be appointed to serve as a Deputy Judge. Each appointment shall be personal and it shall not create an office which survives the death, resignation or removal of the appointee. After appointment Deputy Judges shall be responsible to the Chief Judge for the performance of such duties as may be assigned to them by him, and they shall serve during his pleasure, subject to termination of appointment by him in his discretion. A Deputy Judge may be removed from office by the Tribal Council over the objection of the Chief Judge only pursuant to the provisions of this Code for removal of a judge of the Tribal Court for cause.

- (1) A Deputy Judge shall perform the duties and functions of a judge of the Tribal Court as may be delegated to him by the Chief Judge, subject to any restrictions or limitations prescribed by the Chief Judge; provided, however, no matter shall be submitted to a Deputy Judge for trial, hearing or other disposition over the prior objection of any party to that matter. The findings, rulings, opinions, and orders of a Deputy Judge in matters properly submitted to him shall have the same force and effect as if made or entered by the Chief Judge or an Associate Judge.
- (2) Subject to any restrictions or limitations imposed by the Chief Judge, a Deputy Judge shall have all of the prerogatives and authority of office of an Associate Judge.
- (3) The Tribal Council shall prescribe the compensation for each Deputy Judge when he is appointed, which may be by salary, by per diem allowance while he is performing judicial duties, or by other appropriate formula. The rate of compensation for an individual Deputy Judge shall not be reduced during his tenure in that office without the approval of the Chief Judge.
- (4) The eligibility of a person to serve as Deputy Judge shall be the same as that prescribed by this Code for any other judge of the Tribal Court, except that a member of a recognized Indian Tribe may be appointed to serve as Deputy Judge, and the provisions of g. of this Section shall be applicable to Deputy Judges.

i. Each person prior to assuming the office of judge of the Tribal Court shall take the following oath before the Chairman of the Tribal Council:

"I swear (or affirm) that I will support and defend the Constitution of the United States, and the Constitution and By-Laws of the Colorado River Indian Tribes, and that I will faithfully diligently perform the duties of [Chief Judge, Associate Judge, Deputy Judge, as applicable] of the Tribal Court of the Colorado River Indian Tribes, to the utmost of my ability, with impartiality and without improper favor, to the end that justice may be fully served."

j. The Tribal Council may remove any judge of the Tribal Court for cause based upon any

of the following grounds:

- (1) Misconduct or incompetence in the performance of his duties as a judge.
- (2) Personal conduct, including that which is not in the performance of his duties as a judge, which involves moral turpitude or which brings the prestige of his office or that of the Tribes into public disrepute.
- (3) Habitual neglect of his duties as a judge.
- (4) Persistent illness or other disability which renders him incapable or otherwise unable to regularly perform his duties as a judge.

Such removal shall be by an affirmative vote of two-thirds (2/3) of the number of members of the Tribal Council present at a valid meeting called for the purpose of considering such removal, provided that the subject judge shall be given a full and fair opportunity to present testimony and evidence in his behalf, and to cross-examine and rebut all witnesses and evidence considered by the Tribal Council in support of removal. The subject judge shall be given not less than five (5) days written notice in advance of the hearing, which notice shall include an itemization of the charges or grounds for removal which are to be considered. Such notice shall be served by registered or certified mail, or delivered personally to him by a party duly authorized by the Tribal Council.

[As Amended, December 5, 1974, Ord. No. 26B.]

Section 202. Procedure.

- a. The Tribal Court shall have exclusive jurisdiction for the trial or other original determination of all civil and criminal cases, matters and proceedings, submitted to the courts of the Tribes.
- b. Subject to the provisions of this Code for jurisdiction of the Juvenile Court, the Chief Judge shall be responsible for assignment of cases and other matters for determination or disposition to the respective judges of the Tribal Court.
- c. The Chief Judge and Associate Judges of the Tribal Court may establish and promulgate rules of procedure for the conduct of its proceedings which are not inconsistent with this Code or other governing and applicable law.
- d. All civil and criminal cases shall be commenced by the filing of a written complaint, petition or application with the Judicial Clerk, who shall promptly advise the Chief Judge of its filing. That instrument shall be signed by the party making it, and it shall contain a certificate by that person that the statements and allegations in it are true to the best of his knowledge and belief. Service of process shall be accomplished and jurisdiction of the court over the subject

and the other parties named in the instrument shall attach when notice has been served upon each of them, signed by the Judicial Clerk or an Assistant Judicial Clerk, stating when the instrument was filed, accompanied by a copy of the instrument. Written answers, replies or other responses to any such instrument may be filed with the Tribal Court, and served upon the complainant, petitioner, or applicant, but such filing and service shall not be required unless ordered by the Court.

e. The Tribal Court shall hold regular sessions of court at least one (1) day of each week, commencing at 10:00 a.m. Such regular sessions shall be held at the designated courtroom of the Tribes. Special sessions of the Tribal Court may be called by the Chief Judge at any time or, in his absence, by any Associate Judge. Individual judges may conduct trials or other proceedings for individual cases assigned to them at such times as they may designate, and such trials or proceedings may be recessed and reconvened from time-to-time by the judges until they are completed.

f. Except as may be inconsistent with other provisions of this Code, or are otherwise locally inapplicable because they refer to special federal procedures having no counterpart in the Courts of the Tribes, the Federal Rules of Civil Procedure are hereby adopted as, and shall be known as, the "Tribal Rules of Civil Procedure," and shall govern the procedure in the Tribal Court in all suits of a civil nature whether cognizable as cases at law or in equity. Said rules shall be construed to secure the just and speedy determination of every action.

[As Amended May 8, 1982, Ord. No. 26 O.]

Section 203. Juries.

a. All members of the Tribes of the age of eighteen (18) years or older shall be eligible to serve as jurors in all trials before the Tribal Court, except the following:

- (1) Judges of the courts of the Tribes, the Judicial Clerk, Assistant Judicial Clerks, members of the Tribal Council, members of the Tribal Police Department, and tribal game wardens.
- (2) Those who have been convicted by a court of the United States or of any state of the United States for a felony as a felony is defined by the laws of that jurisdiction.
- (3) Those who have been convicted by the Tribal Court for an offense under this Code or any other ordinance of the Tribes for which the penalty could have been imprisonment for sixty (60) days or more, whether or not the sentence included such imprisonment, and whether or not the sentence was suspended.

Upon application of an individual subject to the disqualifications set forth in (2) and (3) above of

this Section, the Tribal Council by resolution may permanently waive such disqualification as to the conviction or convictions which were subject to the application and consideration by the Tribal Council. Thereafter the individual shall not be disqualified for service as a juror as a result of those convictions only.

b. The Judicial Clerk shall maintain a current roster of all persons eligible to serve as jurors before the Tribal Court. When requested by any judge of the Tribal Court in preparation for a trial or trials, the Judicial Clerk shall prepare a list of not less than twelve (12) persons from the jury roster to constitute a jury panel. If the number of persons selected to serve on a jury or juries is less than the number required pursuant to Subsection h. of this Section, whether pursuant to Subsections f. and g. of this Section or otherwise, upon being so notified by the Court, the Judicial Clerk shall designate additional persons to the jury panel. If the number of additional jurors required pursuant to Subsection h. of this Section is one (1), the number of additional persons designated by the Clerk shall be six (6). One additional person more shall be so designated for each additional juror in excess of one (1) that is required pursuant to Subsection h. of this Section. Those designated for the jury panel shall be drawn by random lot or chance by a means designed to insure that no person or group of persons included on the jury roster is either deliberately or consciously excluded from or included on the jury panel. The process of designation of a jury panel shall be conducted by the Judicial Clerk and witnessed by at least two (2) other persons who are eighteen (18) years of age or older.

[As Amended, December 28, 1981, Ord. No. 26K.]

c. Upon a showing satisfactory to the Judicial Clerk, the following persons upon their request may be excluded from the jury roster and jury panels:

- (1) Persons who reside outside of the Reservation and more than fifty (50) miles from the nearest exterior boundary of the Reservation.
- (2) Employees of the Tribes and the United States.
- (3) Persons of such advanced age, or such permanent infirmity or illness, that would cause jury service to be an undue hardship upon them.
- (4) Persons burdened by such other circumstances or subject to such other demands that jury service would cause extraordinary hardship for them. Such hardship shall be substantially greater than would be experienced ordinarily by other persons serving as jurors.

d. Each member of a designated jury panel shall be served with a summons, signed by a judge of the Tribal Court, indicating the place and time that he is first to appear for jury service. The notice shall be served by the Judicial Clerk, an assistant Judicial Clerk, a member of the Tribal Police Department, or any other person who may be designated in writing by the Tribal Court. The notice shall be served not less than seventy-two (72) hours prior to the designated

time for initial appearance. After such initial appearance, the times and places for attendance by those persons included on the designated jury panel shall be as prescribed by the court.

e. A person summoned to serve as a juror who has not been excused pursuant to any provision of this Code, or by order of court, who fails to appear where and when summoned, or who having so appeared absents himself therefrom without the permission of the Tribal Court, or who renders himself unfit to commence or continue his duties as a juror, shall be in contempt of court. In addition to the penalties for contempt of court prescribed by this Code, he may be charged by the Tribal Court with any costs incurred by the court and any other persons which resulted from his failure to be present or his misconduct.

f. Each party to a trial which is scheduled shall have the right to obtain a copy of the designated jury panel from which the jury for that trial will be selected not less than five (5) days prior to the commencement of the trial. Any juror may be challenged by any party to a case to be tried on any of the grounds set forth below, and if the challenge is sustained by the Tribal Court, that juror shall be excused from that trial. Each party may question the prospective jurors under oath at the commencement of the trial, subject to such reasonable restrictions as may be imposed by the court in the interests of justice and the expeditious trial of the case. In addition to challenges by parties to a trial, the judge before whom the trial is conducted, on his own motion, may excuse any juror or prospective juror. The grounds for challenge are that a juror:

- (1) Is ineligible or disqualified from service as a juror under the provisions of this Code; or
- (2) Is of unsound mind, or has such a defect in the abilities of the mind or body as to render him incapable of performing the duties of a juror; or
- (3) Is related by blood or marriage within the third degree to any party to the trial, or to any person likely to be called as a witness for any party, or to the counsel for any party; or
- (4) Stands in the relationship of guardian, ward, attorney, client, employer, employee, landlord, tenant, creditor, debtor, or business associate of any party in the trial or the counsel for any party; or
- (5) Is or has been a party, witness or juror in any other civil or criminal judicial proceeding in which any party or likely witness in the present trial is or has been a party, witness, or juror; or
- (6) Has served as a juror or participated as a witness or party in any other trial in which any other person has been subject to trial for the offense or complaint which is the subject of the present trial, or any related offense or complaint; or

- (7) Has been a member of a jury formerly sworn to try the same case and whose verdict was set aside or reversed, or which was discharged without a verdict, after the case was submitted to it; or
- (8) Is a surety or guarantor of any bond or undertaking of any party or likely witness, or engaged in business with any party or likely witness, or with the person alleged to be injured by the offense charged or on whose complaint the trial was instituted, or with the counsel for any party; or
- (9) Is a witness on behalf of any party, or has any personal knowledge of the subject of the trial beyond that which is held generally by the members of the Tribes which may influence his decisions as a juror.
- (10) Has a state of mind, knowledge or belief in reference to the subject matter of the trial, or to any party, or to the counsel for any party, or to any person alleged to have been injured by the offense charged or on whose complaint the trial was instituted, which will prevent him from acting with objectivity, impartiality and without prejudice to the substantial rights of any party.

g. In addition to challenges for cause in f. of this Section, at the completion of the qualification of a jury for a trial, prior to any opening statements or presentation of testimony or evidence, each party may pre-emptively excuse not more than three jurors. The persons replacing them as prospective jurors shall be subject to challenge for cause, and questioning with regard thereto, in the same manner as those originally participating as prospective jurors.

h. All trials of criminal matters shall be by a jury unless a jury has been waived in writing prior to commencement of the trial by the defendant, or by all defendants at a common trial. All trials of civil or non-criminal matters shall be without a jury unless any party to the trial requests a jury not less than five (5) days prior to the scheduled commencement of the trial. Not less than six (6) days prior to the scheduled commencement of any civil or noncriminal trial the Tribal Court shall advise each party to that trial who has not requested a jury and who is not represented by a professional attorney as counsel of his right to request a jury. A jury for any trial shall consist of three persons, and at least one designated alternate juror who shall participate in any findings or decisions of the jury only in the event a regular juror is excused by the Tribal Court after commencement of the trial; provided, however, upon written demand of any party to a jury trial filed with the Court not less than five (5) days prior to trial, that trial shall be conducted with six (6) jurors in lieu of three (3), with one (1) designated alternate juror.

i. No person may be convicted of a criminal offense other than by the unanimous decision of all jurors hearing the trial. In each trial of a civil case all findings and decisions of the jury shall be with the concurrence of at least one (1) more than half of the jury if it is composed of six (6) jurors, and of at least two (2) if it is composed of three (3) jurors.

[As Amended December 5, 1974, Ord. No. 26B.]

Section 204. Arrest, Search and Seizure, and Pre-Sentence Confinement.

a. No member of the Tribal Police Department or other law enforcement officer of the Tribes shall arrest or apprehend any person for an alleged criminal offense except under the following circumstances:

- (1) When such offense shall occur in the presence of the arresting officer; or
- (2) When the arresting officer shall have probable cause to believe that the person to be arrested has committed such offense; or
- (3) When the arresting officer acts pursuant to warrant executed by the Tribal Court commanding him to arrest such person.

b. The Tribal Court shall have the authority to issue Warrants for Arrest. Such warrants may be issued ex parte, without a hearing, but only upon satisfaction of the issuing judge that there is probable, lawful cause for the arrest. Such a warrant may be issued only upon a written complaint filed with the court, bearing the signature of the complainant or complaining witness, based upon reliable information or belief, which charges the commission of a criminal offense. Service of Warrants for Arrest shall be made only by a member of the Tribal Police Department or other duly authorized law enforcement office of the Tribes.

c. No member of the Tribal Police Department nor any other law enforcement officer of the Tribes shall search the person or property of any person, without the consent of that person, unless the search is incident to a lawful arrest or pursuant to a Warrant for Search and Seizure issued by the Tribal Court. If the search is incident to a lawful arrest the arresting officer may search the person so arrested, and his property then under his direct, immediate control, to locate and prevent the use of weapons and to prevent the destruction of evidence of the commission of a criminal offense.

d. The Tribal Court shall have the authority to issue Warrants for Search and Seizure applicable to the physical person and the premises and property within the Reservation of any person. Such a warrant may be issued ex parte, without a hearing, but only upon satisfaction of the issuing judge that there is probable, lawful cause for the search and seizure. Such a warrant may be issued only upon a written complaint filed with the court, bearing the signature of the complainant or complaining witness, based upon reliable information or belief, which charges the commission of a criminal offense. No warrant for Search and Seizure shall be valid unless it bears the name and description of the person, premises or property to be searched, and describes the articles or property to be seized.

e. Service of Warrants for Search and Seizure, and the conduct of the search and seizure pursuant thereto, shall be only by a member of the Tribal Police Department or other duly

authorized law enforcement officer of the Tribes.

f. No person shall be detained, confined, jailed or imprisoned for more than thirty-six (36) hours under the authority of the Tribes and this Code unless pursuant to an order of commitment issued by the Tribal Court. However, if any person is arrested for the alleged commission of a criminal offense and the arrest is made on a Friday, Saturday, Sunday, day before a legal holiday, or legal holiday, he may be held in custody pending commitment until noon of the next regular business day. The Tribal Court shall prescribe forms for temporary commitment for persons held for trial or pending appeal, and for final commitment pursuant to sentence of imprisonment.

Section 205. Bail.

a. Any person charged with a criminal offense may be admitted to bail by the Tribal Court at any time prior to final judgment on the charge, or pending appeal on the final judgment to the Appeals Court, in accordance with the provisions of this Section.

b. A person may be admitted to bail by:

- (1) Posting a cash or surety bond in an amount not to exceed One Thousand Dollars (\$1,000.00) which, in the opinion of the Tribal Court, will insure his appearance at all times and places lawfully required; or
- (2) In the discretion of the Tribal Court promising in writing to appear before that court or the Appeals Court, as applicable, at all times and places lawfully required; provided, however, the Tribal Court shall not admit a person to bail upon such promise if the court is not reasonably satisfied that the person seeking bail will appear when and where so required.

c. In admitting any person to bail, the Tribal Court may set such terms and conditions therefor as the court, in its discretion, may deem necessary or appropriate.

d. A person shall not be admitted to bail when he is in an intoxicated condition.

e. Violation by any person of any of the terms and conditions of his bail, or his failure to appear when and where lawfully required by them, shall be contempt of court which shall be punished by the court in the manner prescribed by this Code. In addition, the court may order the bond to be forfeited and may issue a warrant for the arrest of the violator.

f. Any cash or surety bond which has not been ordered to be forfeited shall be returned upon final judgment on the charge, including completion of any appeal by the Appeals Court.

Section 206. Judgment and Sentencing in Criminal Cases.

a. Upon a verdict of not guilty of all charges upon which a defendant has been tried in a

criminal case, the court shall forthwith order him released from custody, and the return of any cash or surety bond for his bail which has not been forfeited. Upon any verdict of guilt on any offense so tried, the court shall pronounce judgment and sentence within a reasonable time thereafter.

b. Prior to adjudging a sentence for conviction of a criminal offense, the court shall afford a reasonable opportunity to the convicted person to present information or matters of extenuation and mitigation which may not have been disclosed at the trial, including statements by any other persons. The court may also request and receive pertinent reports, advice and recommendations from any other person or agency which may assist it in adjudging an appropriate sentence; provided, however, prior to sentencing the convicted person shall be advised of the content, identity, and source of any such report, advice or recommendation and he shall be afforded a reasonable opportunity to comment upon or rebut it.

c. Upon a judgment sentencing a convicted person to imprisonment, he shall be given signed copies of the judgment and of the order of commitment. The person taking custody of the convicted person shall receive similar copies, and he shall sign a receipt acknowledging custody which shall be filed in the records of the Tribal Court.

d. Upon judgment sentencing a convicted person to a fine, he shall be given a signed copy of the judgment, which shall direct him to make payment to the Judicial Clerk in accordance with the terms of payment to be prescribed by the court. The court may order the fine to be paid in installments of a schedule to be specified by the court. Willful or negligent failure to pay a fine in accordance with the terms of the sentence shall be contempt of the Tribal Court which shall be punished by the court in the manner prescribed by this Code. In support of enforcement and satisfaction of its judgments of fines, the Tribal Court shall have the authority to order any other persons within its jurisdiction to deliver or surrender to the Judicial Clerk or the Tribal Police Department any money, goods or other property in their possession or under their control owned by or subject to the claim of a defaulting party to any judgment; provided, however, that such orders shall be issued only following notice to the defaulting party and a hearing at which he is determined to have been in default. The provisions of this Section shall be subject to any restrictions which may exist under the laws of the United States.

e. In addition to any sentence, the court may order a convicted person to pay the reasonable costs incurred by the Tribal Court, Judicial Clerk, Tribal Police Department, and any other tribal agency, which is directly attributable to the case in which he was convicted, but not to include any part of the general expense of operation of such offices or agencies.

f. At the time of adjudging a sentence, or at any time thereafter prior to the completion of satisfaction of a sentence, whether of a fine, imprisonment or both, the Tribal Court may suspend all or any unsatisfied portion of that sentence. Such suspension shall be upon such reasonable terms and conditions as seem necessary or appropriate to the court.

- (1) The period of suspension of all or any portion of a sentence shall not be longer than six (6) years from and after the date of original sentence, and if at that time the convicted person has complied fully with all of the terms and provisions of the suspension, the sentence shall be considered satisfied and discharged. The Tribal Court shall then issue a Certificate of Discharge to that effect.

- (2) Appropriate considerations for suspension of a sentence include, but are not limited to, the prior record of a convicted person, his background and character, his financial condition, his family and employment obligations, facts of extenuation or mitigation of the offense for which he was convicted, the severity of the offense and the degree to which any other person was injured or damaged by it, the apparent permanence of his residency within the Reservation, his sense of pertinence, and other relevant circumstances. As conditions of suspension of a sentence, the court may require, among other things, that the convicted person conduct himself in any one or more of the following ways, as appropriate:
 - (a) Satisfactorily meet his responsibilities for the care and support of his family;
 - (b) Perform labor or services for the benefit of the Tribes;
 - (c) Undergo available medical or psychiatric treatment;
 - (d) Satisfactorily participate in a rehabilitation program; such as driver education or Alcoholics Anonymous;
 - (e) Not have in his possession any firearm or other dangerous weapon;
 - (f) Make restitution or reparation for any damage, loss or injury caused by his offense;
 - (g) Not associate with individuals or groups of individuals designated by the court;
 - (h) Place himself under the supervision and report to such other person as may be designated by the court;
 - (i) Restrict himself to or from such areas or places as may be designated by the court;
 - (j) Not commit any offense under this Code or the ordinances of the Tribes, nor under the criminal or traffic laws of the United States, any state, or any subdivision thereof;

- (k) Not operate a motor vehicle;
- (l) Maintain a daily schedule as specified by the court.

g. Any convicted person whose sentence has been suspended, while that suspension remains in effect, who is accused of violating any of the terms or conditions of the suspension shall, upon notice, be given a hearing before the Tribal Court. If the court finds that the terms and conditions of the suspension have been violated, it may revoke the suspension and order the sentence immediately reinstated with payment of the fine or imprisonment as applicable. No sentence may be increased in severity nor may its nature or character be changed as the result of the revocation of its suspension.

h. All decisions of the Court, including those made prior to enactment of this provision, are memorandum decisions that shall not be regarded as opinions of binding precedent in any other cases.

[As amended on December 14, 1999, by Ordinance 99-3.]

Section 207. Judgments in Civil Cases.

a. Upon a finding of liability by a jury or the Tribal Court a judgment based upon the law and facts established at the trial may include an award of money damages, an order to surrender property, an order to make restitution, an order to perform acts or to refrain from designated conduct, or an order granting such other remedies or relief which may be appropriate and legally permissible.

b. The Tribal Court may assess reasonable court costs of civil litigation against any one or more of the parties to a case as seems appropriate in the discretion of the court. Such an assessment shall be limited to those costs representing the actual expenses incurred by the court, Judicial Clerk, or other tribal agency directly attributable to that case, and the direct, reasonable expenses of the parties incurred for the litigation.

c. Failure of a party to comply with a civil judgment directed against him shall entitle the party intended to be benefited by the judgment to an order of the Tribal Court, upon notice and hearing, directing the Judicial Clerk of the Tribal Police Department to take into custody any money, goods, or other property of the defaulting party and, in accordance with court order, to deliver the same to the party entitled to the benefit of the judgment, but not to exceed in value any amount owed under the judgment. The willful or negligent failure of a party to comply with the terms of a judgment directed against him, with which he is able to comply, shall be contempt of the Tribal Court which shall be punished by the court in the manner prescribed by this Code. In support of enforcement and satisfaction of its judgments, the Tribal Court shall have the authority to order any other person within its jurisdiction to deliver or surrender to the Judicial

Clerk or the Tribal Police Department any money, goods or other property in their possession or under their control owned by or subject to the claim of a defaulting party to any judgment; provided, however, that such orders shall be issued only following notice to the defaulting party and a hearing at which he is determined to have been in default. The provisions of this Section shall be subject to any restrictions which may exist under the laws of the United States.

d. All decisions of the Court, including those made prior to enactment of this provision, are memorandum decisions that shall not be regarded as opinions of binding precedent in other cases.

[As amended on December 14, 1999, by Ordinance 99-3.]

Section 208. Property.

a. All money or other property received by the Tribal Court or the Judicial Clerk for payment of their costs or for payment of fines shall be the property of the Tribes and shall be the subject of such accounting procedure and disposition as may be designated by the Tribal Council.

b. The disposition of all other money, goods or property of any person taken into the custody of the Tribal Court, Judicial Clerk or Tribal Police Department pursuant to this Code or any other ordinance of the Tribes shall be determined by the Tribal Court, with hearing and notice to parties who may have any interest therein if appropriate.

- (1) Upon satisfactory proof of ownership entitlement thereto, the court shall order such property to be delivered to the owner or persons entitled thereto except in the following circumstances:
 - (a) If such property is required as evidence in any case pending before the Tribal Court or the Appeals Court, such property shall be retained by the Judicial Clerk or Tribal Court, or by the Tribal Police Department subject to the direction of the court, until final judgment and determination of the case, including appeal.
 - (b) If possession of such property is unlawful, it shall be declared by the court to be tribal property and transferred to the Tribal Council for disposition.
- (2) Any property the possession of which, or the manner of its possession, constitutes a criminal offense under any provision of this Code or any other ordinance of the Tribes, upon conviction of any person of such an offense and a determination that the property is owned by him, shall become the property of the Tribes. Upon a final determination of such case the property shall be transferred to the Tribal Council for disposition.

c. Any property to which the owner or other person is lawfully entitled to possess, which is in the possession of the Tribal Police Department, the Judicial Clerk, or the Tribal Court but which is not claimed by the owner or such person within six (6) months after it has been determined that he is entitled to it, and he has been given notice thereof, shall become the property of the Tribes. Such property shall be transferred to the Tribal Council for disposition.

d. The Judicial Clerk shall keep records of all property taken into the custody of the Tribal Court and the Judicial Clerk, including receipts for transfer relinquishment of it.

Section 209. Extradition.

a. Any person residing, located or present within the Reservation for whose arrest a warrant has been issued by any court of any state of the United States or by the duly constituted tribal court of any other organized Indian tribe or reservation, for the alleged commission of an offense beyond the jurisdiction of the courts of the Tribes, may be extradited to the jurisdiction of that other court as provided herein.

b. A verified copy of the warrant for arrest, under the signature and seal of the authorities of such other court, may be presented to the Judicial Clerk, and upon the information stated in the warrant a request for extradition shall be prepared, with the assistance of the Judicial Clerk, and signed by an authorized representative of the jurisdiction seeking extradition. The Judicial Clerk shall present the request to the Tribal Court.

c. The Tribal Court shall promptly examine the warrant and request, and shall consider such other relevant information as may be presented to the court by any person. The Tribal Court shall make a preliminary determination of the apparent validity of the warrant.

d. Upon preliminary determination by the Tribal Court of the apparent validity of the warrant, the Tribal Court shall issue a Warrant for Arrest of the alleged offender. Upon arrest of that person pursuant to the Warrant for Arrest issued by the Tribal Court, that person shall be brought before the Tribal Court for a hearing not less than five (5) days after the arrest. Bail may be allowed pending hearing. The court shall conduct a hearing to determine the validity of the warrant issued by the jurisdiction seeking extradition and whether the person who has been arrested is the same person charged in that warrant, and to consider such other relevant circumstances as may be presented to the court. Upon a determination that the warrant from the jurisdiction seeking extradition is valid and that the person in custody before the Tribal Court is the person charged in that warrant, and after considering all other matters presented to the Tribal Court, the court may execute an order, authorizing and directing the removal of the alleged offender by the appropriate officials of the jurisdiction seeking extradition. If the Tribal Court executes such an order, the Judicial Clerk shall then notify the jurisdiction seeking extradition that the alleged offender is in custody, and that he may be removed within five (5) days. If an appropriate official of the jurisdiction seeking extradition does not appear within the allotted

time the person in custody shall be released, and he shall not be taken into custody again for the same charge except upon the issuance of a new warrant by the jurisdiction which originally sought extradition.

e. In no case shall a warrant for arrest from the court of another jurisdiction be honored if that jurisdiction, by its laws, rules, or practices, prohibits or refuses to provide reciprocal extradition of persons who may be subject to Warrants for Arrest issued by the Tribal Court.

f. If an order of the Tribal Court authorizing extradition is entered, and, upon appeal to the Appeals Court that order is approved or confirmed, the Tribal Council in its discretion shall have the authority upon the vote of not less than two-thirds (2/3) of its total membership, to direct that the order for extradition be stayed indefinitely, or for such time as may be prescribed by the Tribal Council. Bail may be allowed during such stay, in such amount and on such terms as may be prescribed by the Tribal Court.

CHAPTER B. APPEALS COURT

Section 210. General Provisions.

a. There shall be an Appeals Court consisting of a Chief Judge and two Associate Judges.

b. The Chief Judge of the Appeals Court shall be appointed by the Tribal Council. He shall hold office for a term of two (2) years and shall be eligible for reappointment to successive terms of two (2) years each. The term of office shall commence on the first day of June of even numbered years, and shall end at the last day of May of even numbered years. A person appointed to fill an existing vacancy created by the death, resignation or removal for cause of a Chief Judge shall be appointed initially only for unexpired portion of the term for which the appointment is made, subject to eligibility for reappointment for the next full term. Whenever the office of Chief Judge shall be vacant, or the Chief Judge shall be disqualified to sit on a particular case, the Tribal Council may appoint an acting Chief Judge to sit until the vacancy is filled, or some other lesser term, and shall appoint an acting Chief Judge to sit on the case with respect to which the Chief Judge is disqualified.

c. Associate Judges shall be designated by the Chief Judge of the Appeals Court for each case presented to the Appeals Court as follows:

- (1) Judges of the Tribal Court shall be designated if they did not preside over or participate in the case under appeal, and have no prior knowledge of the case.
- (2) If the number of Judges designated pursuant to subsection c. (1) is insufficient, Deputy Judges of the Tribal Court shall be designated if they did not preside over or participate in the case under appeal, and have no prior knowledge of the case.

- (3) If the number of Judges designated pursuant to subsections c. (1) and c. (2) of this section is insufficient, the Tribal Council shall appoint as Auxiliary Judges that number more judges as are required to be designated. Such Auxiliary Judges shall thereupon be so designated by the Chief Judge of the Appeals Court. Such appointment as an Auxiliary Judge shall be only for the case under appeal, unless the Council shall state a longer time, not to exceed two years.

d. The eligibility and qualification of a person to serve as a member of the Appeals Court shall be the same as those prescribed for judges of the Tribal Court, except for the exclusion of members of the Appeals Court itself, and except further that such judges may be required to have graduated from an accredited law school.

- (1) Prior to the existence of a vacancy, through disqualification or otherwise, the Tribal Council may designate those persons who shall be appointed as acting Chief Judge or as Auxiliary Judges pursuant to subsection b., and c. (3) of this section. Upon the creation of a vacancy, such persons shall automatically be deemed to have been appointed pursuant to subsections b., or c. (3), as the case may be. If a person has been so designated to sit as acting Chief Judge, the Chief Judge of the Appeals Court shall notify such person each time he is required to sit.
- (2) The eligibility and qualification of a person to serve as a member of the Appeals Court shall be the same as those prescribed for judges of the Tribal Court, except for the exclusion of members of the Appeals Court itself, and except further that such judges shall be required to have graduated from an accredited law school.

e. The judges of the Appeals Court shall be paid a salary or otherwise compensated in such amounts and in such manner as may be determined by the Tribal Council. Compensation may be by salary, by per diem allowance while they are performing judicial duties, or by other appropriate formula. The rate and method of compensation of the judges of the Appeals Court shall not be reduced during their term of office.

f. The Tribal Council may remove any judge of the Appeals Court for cause on any of the grounds and in accordance with the procedure prescribed in this Code for removal of a judge of the Tribal Court.

g. No judge of the Appeals Court shall participate in any proceeding if he has any interest therein, or any relationship with any person, of the nature which would constitute disqualification of a judge of the Tribal Court from officiating in any proceeding before him, as specified in this Code.

[As Amended October 7, 1981, Ord. No. 26J, §§ 1-5; May 8, 1982, Ord. No. 26N, §§ 1-2; June 23, 1982, Ord. No. 26N, § 2(d)(2).]

Section 211. Procedure.

a. The Appeals Court shall have only appellate jurisdiction over criminal and civil matters. Any party to any final order or final judgment of the Tribal Court shall have the right to petition for appeal of that order or judgment to the Appeals Court.

- (1) A party wishing to appeal shall file a petition for appeal with the Judicial Clerk within twenty (20) days after entry by the Tribal Court of the final order or final judgment from which he seeks appeal. The petition shall be accompanied by a filing fee as may be designated unless there is submitted an affidavit by the appealing party that he is without funds to pay the filing fee. In that event the filing fee shall be waived pending appeal. The Appeals Court, if it finds that the appellant is without funds to pay the filing fee, shall order that it be permanently waived.
- (2) The petition for appeal shall state the reasons for the appeal which shall be limited to the following:
 - (a) Lack of jurisdiction of the Tribal Court.
 - (b) Irregularities or improprieties in the proceedings, or by the Tribal Court, the jury, any witness, or any party substantially prejudicial to the rights of petitioner.
 - (c) Any ruling, order, decision of abuse of discretion which prevented a fair hearing or trial.
 - (d) Newly discovered material evidence which could not, with reasonable care, have been produced at the trial or hearing.
 - (e) Insufficient evidence to support the verdict, decision, order or judgment of the jury or Tribal Court.
 - (f) An error of law substantially prejudicial to the rights of the appellant.
- (3) Upon receipt of a petition for appeal, the Judicial Clerk shall promptly notify the Appeals Court, which shall convene en banc to review the petition. If it appears to the Appeals Court, acting unanimously, that the petition for appeal on its face, under a liberal review in favor of the petitioner, has no merit or fails to state any cause for a hearing, the petition shall be denied. The Appeals Court shall state in writing its order of denial and the reasons therefore, which order shall direct that the order or final judgment of the Tribal Court be executed. Copies of the order of the Appeals Court shall be served by the Judicial Clerk upon all parties to the

proceeding in the Tribal Court. If it appears to one or more members of the Appeals Court that the petition may have merit, it shall grant the petition and set the matter for hearing, on a date no sooner than will permit all parties to the proceeding in the Tribal Court to have at least twenty (20) days notice of the hearing and no later than forty-five (45) days after the petition is granted:

- (a) Upon petition for appeal being granted and set for hearing, the Judicial Clerk shall give notice of that hearing to all persons who were parties to the proceeding in the Tribal Court, such notice to be given not less than twenty (20) days prior to the hearing. The notice to each party other than the appellant will include a copy of the petition for appeal;
- (b) Any party to an appeal shall be permitted, but not required, to file a written brief with the Appeals Court prior to the hearing, pertaining to any matter or issue included within the petition for appeal. However, if any such brief is filed, copies of it shall be served upon all other parties to the appeal not less than two (2) days prior to the hearing. It shall be served upon such parties in the same manner as prescribed in this Code for the giving of notices.

b. At any hearing of an appeal, the Judicial Clerk will make available to the Appeals Court all records and materials in the file of the Tribal Court in the case from which the appeal is taken, and the Appeals Court shall consider them. In addition, each party to the appeal shall be granted an opportunity to present an argument on all issues raised by the petition for appeal, and to discuss and comment upon all evidence presented to or considered by the Tribal Court and all orders and findings of the Tribal Court, insofar as they pertain to those issues. The Appeals Court shall not conduct a new trial; witnesses shall not appear before it to give testimony; no new evidence shall be presented to it; and the appeal shall be limited to those issues raised by the petition for appeal.

c. In deciding any appeal, the Appeals Court shall prepare a written opinion and decision, setting forth its conclusions and orders, and the reasons therefor. Its decisions shall be in the form of an order of one of the following:

- (1) That the order or judgment of the Tribal Court be affirmed.
- (2) That the decision of the Tribal Court be reversed, as a matter of law, and the case dismissed.
- (3) That the sentence in a criminal case be reduced, for the reason that it exceeds the legally permissible sentence or is so excessive as to constitute an abuse of discretion.
- (4) That the form or amount of damages or relief awarded in a civil case by the Tribal

Court be reduced, increased, or modified for the reason that the award constitutes an error of law.

- (5) That the order or judgment of the Tribal Court be reversed and the case remanded to the Tribal Court for the correction of errors, deficiencies, irregularities, improprieties, or abuse of discretion, or for a new trial on each issue which was the subject of such a defect.

d. All decisions of the Appeals Court, including those made prior to enactment of this provision, are memorandum decisions that shall not be regarded as opinions of binding precedent in any other cases.

e. The Chief Judge and the Associate Judges of the Appeals Court may establish and promulgate rules of procedure for the conduct of its proceedings, which are not inconsistent with this Code or other governing and applicable law.

f. The Appeals Court shall hear, consider and rule upon all appeals en blanc, except for those judges who are disqualified. Except for the granting of a petition for appeal as provided in this Code, all orders, opinions and decisions of the Appeals Court shall be made upon the concurrence of a majority of the judges of that court hearing the appeal. If by reason of vacancies or disqualification the Appeals Court hearing an appeal consists of an even number, or if by ordinance of the Tribal Council the number of judges of the Appeals Court is increased and consists of an even number, an even division of opinion shall be affirmative of the order or judgment of the Tribal court.

g. Except as may be inconsistent with other provisions of this Code, or are otherwise locally inapplicable because they refer to special federal procedures having no counterpart in the Courts of the Tribes, the Federal Rules of Appellate Procedure are hereby adopted as, and shall be known as the "Tribal Rules of Appellate Procedure," and shall govern the procedure in the Appeals Court. Said rules shall be construed to secure the just and speedy determination of every appellate proceeding.

[As amended on December 14, 1999, by Ordinance 99-3.]
