

CHAPTER 8

TRIBAL COURT PROCEEDINGS

TABLE OF CONTENTS

Section 1.	Initiation of Proceedings.....	103
Section 2.	Docket.....	103
Section 3.	Procedure.....	103
Section 4.	Formation of Trial Jury.....	105
	A. Number of Jurors.....	105
	B. Formation of Trial Jury.....	105
Section 5.	Verdict.....	106
	A. Return.....	106
	B. Several Defendants.....	106
	C. Poll of Jury.....	106
	D. Discharge of Jury.....	106
Section 6.	Sentence and Judgment.....	107
Section 7.	Execution of Judgment.....	107
Section 8.	Appeal.....	108
Section 9.	New Trial.....	108
	A. Definitions and Effect.....	108
	B. Motion for a New Trial.....	109
	C. Alternative Authority of the Court on Hearing Motion for New Trial.....	109
Section 10.	Arrest of Judgment.....	109
	A. Definition and Effect.....	109
	B. Motion Filed-When.....	109
	C. Motion Granted-When.....	110
Section 11.	Sentence and Judgment.....	110
Section 12.	Pre-Sentence.....	110
	A. Content of Investigation.....	110
	B. Availability of Report to Defendant & Others....	111
Section 13.	Sentence.....	111
Section 14.	Withdrawal of Plea on a Deferred Imposition or Suspended Execution of Sentence.....	113
Section 15.	Statement on the Sentence.....	113
Section 16.	Entry of Judgment and Judgment Roll.....	113
Section 17.	Merger of Sentence.....	114
Section 18.	Credit for Time Served.....	114
Section 19.	Jail Work Release Program.....	115

CHAPTER 8

TRIBAL COURT PROCEEDINGS

Section 1. Initiation of Proceedings.

In Tribal Court all criminal prosecutions must be commenced by a complaint under oath. The complaint shall:

- (1) Be in writing and in the name of the Tribe;
- (2) Specify the name of the Court in which the complaint is filed;
 - a. Stating the name of the offense;
 - b. Citing in customary form the Tribal rule, regulations or other provisions of law which the defendant is alleged to have violated.
 - c. Stating the facts constituting the offense in ordinary and concise language, and in such manner as to enable a person of common understanding to know what is intended;
 - d. Stating the time and place of the offense as definitely as can be done;
 - e. Stating the name of the accused, if known, and if not known, designating the accused by name or description by which can be identified with reasonable certainty.

Section 2. Docket.

A docket must be kept by the Tribal Judge, in which must be entered each action, and the proceedings of the Court therein.

Section 3. Procedure.

(1) At the opening of the trial, after the Tribal Judge has directed that "The Court will come to order", the Clerk will read the name of the case to be heard and ask the defendant to step forward.

(2) The trial may proceed in the absence of the defendant but if his presence is necessary for any purpose, the Court may require the personal attendance of defendant at the trial.

(3) The Court will ask defendant if he desires to be represented by lay counsel and if he does, the name of such counsel shall be entered in the minutes.

(4) The Clerk will then read the charge.

(5) The Court will then ask the defendant how he pleads to the charge.

(6) If the defendant pleads "Guilty", the Court will inform defendant of the consequence of his plea. If the defendant persists in the plea of "Guilty", the Court will permit him to introduce evidence in amelioration or mitigation of the offense.

(7) If the defendant pleads "Not Guilty", the Court will ask defendant if he desires a jury trial. The prosecution may also ask for a jury trial.

(8) After a jury is waived or selected, the Court will ask defendant if he has special pleas bearing on the jurisdiction of the Court. If defendant has such a special plea, the Court will rule on the plea. If the Court sustain the special plea, the defendant will be discharged. If the Court does not sustain the plea, the case will proceed.

(9) Questions of Law shall be decided by the Court and questions of fact by jury. Where no jury sits, the Court will decide the questions of fact.

(10) The prosecution will first introduce evidence of the commission of the offense. The defendant may object to any of such evidence and may cross-examine the prosecution's witnesses.

(11) The defense will then produce evidence in defense. The prosecution may object to any such evidence and may cross-examine the defendant's witnesses.

(12) When all the evidence is in for both the prosecution and the defendant, the prosecution and the defendant, or his lay counsel, may address the jury to urge the reasons for conviction or acquittal. If there is no jury, the argument may be addressed to the judge.

(13) At any time during the trial, the defendant may change his plea to one of "Guilty", in which case the jury, if any, will be discharged, and the case will proceed as though the plea of "Guilty", had been made at the beginning of the trial.

(14) The Court may, following the plea of "Guilty", or "Not Guilty", order a recess or postponement to permit the defendant a reasonable time to prepare his case.

Section 4. Formation of Trial Jury.

A. Number of Jurors. A jury of the Tribe shall consist of six (6) persons but the parties may agree to a number less than six (6).

B. Formation of Trial Jury. In January of each year the Judge shall select at least fifty names from the jury list which is filed in the office of the Clerk of the Tribal Court. This list of names selected shall be posted in a public place and shall comprise the trial jury list for the ensuing year. Prospective trial jurors shall be summoned in an adequate number by notifying each orally that he is summoned and of the time and place at which his attendance is required.

The Judge shall question all trial jurors summoned for the trial of a case and shall determine if any of them may be challenged for any cause. All challenges for cause shall be made by the Judge. After the Judge has completed his examination of the jury panel, each defendant shall be allowed three (3) pre-emptory challenges and the Tribe shall be allowed the same number of pre-emptory challenges and all of the defendants.

Section 5. Verdict.

A. Return. The verdict of the jury must in all cases be general. It shall be returned by the jury to the Judge in open court, who must enter, or cause it to be entered in the minutes.

Two-thirds (2/3) in number of the jury may render a verdict, and such verdict so rendered shall have the same form and effect as if all jurors had concurred therein.

B. Several Defendants. When several defendants are tried together, if the jury cannot agree upon a verdict as to all, they may render a verdict as to those to whom they do agree, on which a judgment must be entered accordingly and the case as to the rest may be tried by another jury.

C. Poll of Jury. When a verdict is returned, the jury shall be polled at the request of any party or upon the Court's own motion. If upon the poll there is not a two-thirds concurrence, the jury may be directed to retire of further deliberations or may be discharged.

D. Discharge of Jury. The jury will not be discharged after the cause is submitted to them, until they have agreed upon and rendered their verdict, unless for good cause the Court sooner discharges them.

Section 6. Sentence and Judgment.

If a judgment of acquittal is rendered the defendant must be immediately discharged.

After a plea or verdict of guilty, or after the judgment against the defendant, the Court must designate a time for sentencing, which must be within a reasonable time after the verdict or judgment is rendered. The sentence must be entered in the minutes of the Court as soon as it is imposed.

If the defendant pleads guilty, or is convicted either by the Court or by a jury, the Court must impose a sentence to hard labor or to pay a fine or both, as the case may be.

The determination and imposition of sentence shall be exclusive duty of the court.

Section 7. Execution of Judgment.

The Judgment must be executed by the Tribal Policeman of the jurisdiction in which the conviction was had.

When judgment to hard labor, including imprisonment, is entered, a certified copy thereof must be delivered to the Tribal officer which shall be sufficient warrant for its execution.

If judgment is rendered imposing a fine only, without sentence to hard labor for non-payment, and the defendant is not detained for any other legal cause, he must be discharged as soon as the judgment is given.

A judgment that the defendant pay a fine may also direct that he be sentenced to hard labor until the fine be satisfied in the proportion of one (1) day's labor for every Two Dollars (\$2.00) of the fine.

When such a judgment is rendered the defendant must be held in custody the time specified in the judgment, unless the fine is sooner paid.

Any officer charged with the collection of fines, under the provisions of this Chapter, must return the execution to the Tribe within thirty (30) days from its delivery to him, and pay over to the Tribal Treasurer the money collected therefrom.

All fines imposed and collected by a Judge of Tribal Court must be paid to the Treasurer of the Tribe as the case may, within thirty (30) days after the receipt of the same, and the Judge must take duplicate receipts therefrom, one of which he must deposit with the Tribal Treasurer.

Section 8. Appeal.

All cases on appeal from Tribal Courts must be tried anew in the Appeal Court.

The defendant may appeal to the Appeal Court by giving written notice of his intention to appeal within ten (10) days after judgment. Within thirty (30) days the entire record of the Tribal Court proceedings shall be transferred to the Appeal Court or the appeal shall be dismissed. It shall be the duty of the defendant to perfect the appeal.

Section 9. New Trial.

A. Definitions and Effect: A new trial is a re-examination of the issue in the same court, before another jury, after a verdict or finding has been rendered and the granting of a new trial place the parties on the same position as if there had been no trial.

B. Motion for a New Trial:

(1) Following a verdict of finding of guilty, the Court may grant the defendant a new trial if required in the interest of justice.

(2) The motion for a new trial shall be in writing and shall be filed by the defendant within thirty (30) days following a verdict or finding of guilty. Reasonable notice of the motion shall be served upon the Tribe.

(3) The motion for a new trial shall specify the grounds therefore.

C. Alternative Authority of the Court on Hearing Motion for New Trial: On hearing the motion for a new trial, if justified by law and the weight of the evidence, the Court may:

- a. Deny the motion;
- b. Grant a new trial; or
- c. Modify or change the verdict or finding by finding the defendant guilty of a lesser degree of the crime charged, finding the defendant guilty of a lesser crime or finding the defendant not guilty.

Section 10. Arrest of Judgment.

A. Definition and Effect: A motion in arrest of judgment is an application on the part of the defendant that no judgment is rendered. The effect of granting the motion places the defendant in the same position in which he was before the indictment was found or information filed.

B. Motion Filed - When: The motion shall be filed within thirty (30) days following the entry of a verdict or finding of guilty of within such further times as the Court may fix during the thirty (30)

days following the entry or finding of guilty. Reasonable notice of the motion shall be served upon the Tribe.

C. Motion Granted - When: The Court shall grant the motion when:

(1) The indictment, information, or complaint does not charge an offense, or

(2) The court is without jurisdiction of the offense charged.

Section 11. Sentence and Judgment.

The judgment shall be rendered in open Court.

If the verdict of finding is not guilty, judgment shall be rendered immediately and the defendant shall be discharged from the obligation of his bail bond. If the verdict or finding is guilty, sentence shall be pronounced and judgment rendered within reasonable time.

Section 12. Pre-Sentence.

No defendant convicted of a crime which may result in commitment for nine (9) months or more in the Tribal Jail, shall be sentenced or otherwise disposed of before a written report of investigation by a probation officer is presented to and considered by the Court, unless the Court deems such report unnecessary. The Court may in its discretion, order a pre-sentence investigation for a defendant sentenced to a lesser period than nine (9) months at hard labor.

A. Content of Investigation: Whenever an investigation is required, the probation officer shall promptly inquire into the characteristics, circumstances, needs, and potentialities of the defendant, his criminal record and social history, and circumstances of the offense, the time the defendant has been in detention and the harm to the victim, his immediate family and the community. All local and

state mental and correctional institutions, courts, and police agencies shall furnish the probation officer on request, the defendant's criminal record and other relevant information. The investigation shall include a physical and mental examination of the defendant when it is desirable in the opinion of the Court.

B. Availability of the Report to Defendant and Others: As to defendants sentenced under this Act, the Judge may, in his discretion, make the investigation reports or parts of it available to the defendant or others, while concealing the identify of persons who provided confidential information. If the Court discloses the identity of persons who provided information, the Judge may, in his discretion, allow the defendant to cross-examine those who rendered information. Such reports shall be part of the record but shall be sealed and opened only on order of the Court.

If a defendant is committed to a state institution, the investigation report shall be sent to the institution at the time of commitment.

Section 13. Sentence.

Whenever any person has been found guilty of a crime or offense upon a verdict or plea, the Court may impose any of the following sentenced:

- (1) Release the defendant on probation;
- (2) Defer the imposition of sentence for a period not to exceed nine (9) months;
- (3) Suspend the execution of the sentence up to the maximum sentence allowed for a particular offense. However, if any

restrictions or conditions are violated, any elapsed time shall not be a credit against the sentence, unless the Court shall otherwise order;

(4) Impose a fine as provided by law for the offense;

(5) Commit the defendant to a Tribal Jail to serve at hard labor with or without a fine as provided by law for the offense;

(6) Impose any combination of the above, and the Court may also impose any restrictions or conditions on the above sentence which it deems necessary. Any judge who has suspended the execution of a sentence or deferred the imposition of a sentence of hard labor under this Section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence, or deferred imposition of a sentence of hard labor under this section, or his successor, is authorized thereafter, in his discretion, during the period of such suspended sentence, or deferred imposition of sentence to revoke such suspension or imposed sentence and order such person committed, or any in his discretion order the prisoner placed under the jurisdiction of the Tribal Board of Pardons as provided by law, or retain such jurisdiction with this Court. Prior to revocation of an order suspending or deferring the imposition of sentence, the person affected shall be given a hearing.

Subsection (2) is designed and shall be applied principally for the benefit of a young offender who has no previous criminal record, so that the fact an individual made one mistake will not plague him for the rest of his life. Subsection (3) is for application where the judge feels a credit for elapsed time will be an incentive for better behavior. The conditions which may be imposed are within the discretion of the individual judge.

Whenever the Court has deferred the imposition or suspended the execution of sentence, and after termination of the time period during which imposition of sentence has been deferred or execution of sentence has been suspended upon motion of the Court, the defendant or the Court may allow the defendant to withdraw his plea of guilty and order that the charge or charges against him be dismissed.

Section 15. Statement on the Sentence.

The sentencing judge shall, in addition to making the findings required by this Chapter, make a brief statement of the basic reasons for the sentence be forwarded to the Tribal Jail.

Section 16. Entry of Judgment and Judgment Roll.

A. When a judgment upon a conviction is rendered, the Clerk must enter the same in the minutes, stating briefly the offense for which the conviction was had, and the fact of prior convictions (if any) and must, within five (5) days, annex together and file the following papers, which will constitute the judgment roll:

(1) The indictment or information and a copy of the minutes of the arraignment, pleas and motions.

(2) A copy of the minutes of the trial.

(3) The instructions given or refused and the endorsement thereon.

(4) A copy of the judgment.

B. Information from Courts: It shall be the duty of the Court disposing of any criminal case to cause to be transmitted to the Board of Pardons statistical data in accordance with regulations issued by the Board regarding all dispositions of defendant whether found guilty or discharged.

the Board regarding all dispositions of defendant whether found guilty or discharged.

C. Review of Sentence: Every sentence shall be subject to review in accordance with the Tribal Code.

D. Sentence to be Imposed by Judge: All sentences under this Act shall be imposed exclusively by the Judge of the Court.

Section 17. Merger of Sentence.

Unless the Judge otherwise orders:

(1) When a person serving a term of commitment imposed by a Court in the Tribe, is committed for another offense, the shorter term or consecutively shorter remaining term shall be added in the other term;

(2) When a person under suspended sentence or on probation or parole for an offense committed against the Tribe is sentenced for another offense, the period still to be served on suspended sentence, probation or parole, shall be added to any new sentence of commitment.

Section 18. Credit for Time Served.

A. Where defendant has served any portion of his sentence under a commitment based upon a judgment which is subsequently declare invalid or which is modified during the term of imprisonment, such time shall be credited upon any subsequent sentence he may receive upon a new commitment for the same criminal act or acts. In calculating the time imprisoned, the person so convicted shall have the credit for all time earned in diminution of sentences as provided under Tribal Law, unless the sentencing authority in its discretion may choose to deny such credit.

B. Any person incarcerated on a bailable offense and against whom a judgment of imprisonment is rendered shall be allowed credit for each day of incarceration prior to conviction except that in no case shall the time allowed on a credit exceed the term of the prison sentence rendered.

C. Any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied on conviction such offense shall be allowed a credit of Two Dollars (\$2.00) for each day so incarcerated prior to conviction except that in no case shall the amount so allowed or credited exceed the amount of the fine.

Section 19. Jail Work Release Program.

A. A Court, after having sentenced a person to confinement in a jail, may, in its discretion, upon the request of the Tribal Jailor, or Chief of Police, and with the consent of the convicted person, order that any part of the imprisonment so imposed be served in confinement, with parole during the hours or periods the convicted person is actually employed.

B. Upon the issuance of such an order under this act, the Tribal Jailor or Chief of Police, shall arrange for the convicted person to continue his regular employment without interruption insofar as reasonably possible. However, that said prisoner shall be confined in the Tribal Jail during the hours when he is not employed and, in the extent by the Court, pay the support of his dependents, if any, and balance shall be retained under his discharge.

C. The committing Court may, in its discretion, upon request, reduce the sentence of the prisoner up to one-fourth (1/4) of the full

term, if in the opinion of the Court, the prisoner's conduct, diligence and general attitude merit such diminution.

D. In cases where the convicted person violates the conditions of said sentence, he shall be returned to Court, the Court may then require that the balance of his sentence be spent in full confinement and, further, the Court may cancel any diminution of sentence granted under this act.

NOTE: Any conflict between this Chapter and Chapter 9 of this Code of Rules of Procedures shall be resolved in favor of the provisions of Chapter 9.