

Chapter 2. Tribal Court

Legislative History.

This revised chapter was enacted by the Tribal Council on September 13, 1988

On September 29, 1988, 16 days after its enactment, the Superintendent of the Western Nevada Agency notified the Tribe that he was disapproving this chapter in accordance with the Tribe's Constitution, Art. VI, Section 1(f). On October 11, 1988, the Tribe filed an appeal of the Superintendent's action; basis: The Tribe's Constitution, Art. VI, Section 1(f), only allows the Secretary of the Interior "10 days ... to approve or disapprove the same". As well, the Tribe appealed that it is only the Tribal Court which has the authority to determine the constitutionality or unconstitutionality of any Law & Order Code provision of chapter. Also on October 15, 1988, the Tribal Council enacted a revised section 11 of this chapter, reserving the contents of the section for later legislation.

Sec. 1. Creation of Tribal Court.

The "Fort McDermitt Indian Court" originally established by the Fort McDermitt Tribe in 1936 is hereby renamed the "Fort McDermitt Tribal Court".

Sec. 2. Appointment of Judges.

The judges of the Tribal Court of the Fort McDermitt Tribe shall include a Chief Judge and whatever number of Associate Judges the judicial services contract with the federal government, through the Bureau of Indian Affairs, will allow. Each judge shall be selected by the Tribal Council and employed for one year period, or lessor, to coincide with the fiscal year of the current judicial services contract.

The salaries of the judges shall be fixed by the Tribal Council in accordance with the funding made available by the Bureau of Indian Affairs each fiscal year.

Each judge shall hold office during the fiscal year unless sooner removed for "cause or by reason of the abolition of his or her office. Judges removed due to abolition of their office shall be eligible for reappointment.

Any Indian or non-Indian shall be eligible to serve as judge of the Fort McDermitt Tribal Court as long as that person has never been convicted of any felony or any misdemeanor involving dishonesty.

Sec. 3. Removal from Judicial Office.

Any judge of the Fort McDermitt Tribal Court may be suspended, dismissed or removed by the Tribal Council for "cause" after hearing and an opportunity to defend against the charges or allegations. "Cause" shall be defined as a violation of the ethical aspirations of the American Bar Association's Code of Judicial Conduct as amended from year to year.

Sec. 4. Rules of Court.

All details of judicial procedure, selection of judges, time and date of court sessions, shall be prescribed by and set down by Rules of Court developed by the judges of the Fort McDermitt Tribal Court and approved by the Tribal Council and Bureau of Indian Affairs as set forth in the Constitution of the Fort McDermitt Tribe.

It shall be the duty of the judges of the Tribal Court to make recommendations to the Tribal Council, on a regular basis, for the enactment of such Rules of Court and laws and procedures to improve judicial procedure and ensuring that the Tribal Court serves the people of the Fort McDermitt Indian Reservation.

Sec. 5. Attorneys at Law.

Any person who has graduated from a law school recognized by any state and who has practiced law in any state, on any Indian reservation or other jurisdiction for at least 18 months as a legal services attorney as defined at Title 45, Code of Federal Regulations, section 1604.2(a), shall be entitled to practice law within Fort McDermitt Indian Country and utilize the title of "Attorney at Law" after scoring a score of 82 or higher on the Fort McDermitt Bar Examination, which shall be administered by the Tribal Council as set forth in this chapter.

Sec. 6. Tribal Attorneys and Tribal Court Advocates.

- (a) Tribal Attorneys. Any person who has attended a law school recognized by any state and who has worked as a Legal Assistant or Paralegal under the direct supervision of an attorney or legal services program for at least six months shall be entitled to practice law within Fort McDermitt Indian Country and utilize the title "Tribal Attorney" after scoring a raw score of 75 or higher on the Fort McDermitt Bar Examination, which shall be administered by the Tribal Council as set forth in this chapter.
- (b) Tribal Court Advocates. Any person who scores a raw score of 70 or higher on the Fort McDermitt Bar Examination, which shall be administered by the Tribal Council as set forth in this chapter shall be entitled to practice law in Fort McDermitt Indian Country as long as such person demonstrates an ability to represent persons before the tribal court in an acceptable manner.

Sec. 7. Court Clerk; Duties and Responsibilities.

The Tribal Council shall ensure that the Tribal Court has a Court Clerk by regular employment practices as set forth in the Tribal Operations Manual. The Clerk of Court shall, in addition to other duties as established by the Chief Judge, shall assist the Associate Judges, render assistance to the Court, to the police officials, and to individual members of the tribe in the drafting of complaints and other documents.

The Court Clerk shall ensure that a recording device is made available to the judges of the court for their use during hearings and arraignments, shall administer all oaths, collect all fines and fees ordered by the court, notify the Chief Judge when such fines and fees ordered to be paid have not been paid, and prepare each month for the Tribal Council a Monthly Report detailing the number of cases handled and the amount of fines and fees ordered and collected.

Sec. 8. Decisions of Court; Requirement of Writing and Publishing.

All decisions of the judges of the Tribal Court shall be in writing setting forth the procedural and case facts (findings of fact), conclusions of law and an order or judgment.

One copy of all decisions of the judges of the Tribal Court shall be mailed to the American Indian Lawyer Training Program to be published in the Indian Law Reporter (___ Ind.L.Rep.___) immediately upon it being signed by the judge authoring the decision.

Sec. 9. Records.

The judges and clerk of the Fort McDermitt Tribal Court shall be required to keep, for inspection by duly qualified officials, a record of all proceedings of the court, which record shall reflect the caption of the case, the names of the adults or initials of minor children involved, the substance of the complaint, the names and addresses of all witnesses the date of the hearing or trial, by which judge conducted, the findings of the court or jury, the judgment or order, together with any other facts or circumstances deemed of importance to the case. Decisions in cases involving juveniles shall be kept secret except that the Court Clerk may detail a brief statement of the case, without identifying the juvenile's name, to the Bureau of Indian Affairs as Public Law 638 Contract requirements may require.

Sec. 10. Definitions.

- (a) "Fort McDermitt Indian Country", as used in this Law & Order Code, means all lands owned or occupied by the Fort McDermitt Tribe including, but not limited to, the Lasa Purchase, the Hog John Ranch, the Old reservation, the Hearn and Giacometto Ranches, Hopping Meadows, and the Oregon lands.
- (b) "Tribal Council", as used in this Law & Order Code, means the governing body of the Fort McDermitt Paiute-Shoshone Tribe, the Fort McDermitt Tribal Council.
- (c) "Signature", as used in this Law & Order Code, means the written signature, official seal or the witnessed thumbprint or mark of any individual.

Sec. 11. Relations with Court by Federal Employees.

Reserved by action of the Tribal Council on October 15, 1988.

Sec. 12. Disposition of Fines, Fees and Property.

All money fines and fees ordered and imposed by the court and collected shall be in the nature of an assessment for the payment of designated court expenses except as otherwise stated. Such expenses shall include the payment of the fees provided for in this chapter to witnesses answering a subpoena issued by the court, not by a defendant or party to a civil action. The fines assessed shall be paid over by the Clerk of Court to the Tribe's Finance Department, who shall cause them to be deposited into a bank account maintained by the Tribe, for the Tribal Court and shall be withdrawn in accordance with the Tribal Operations Manual for the payment of specified fees for specified court expenses. The Tribe's Bookkeeper shall keep a record of all such deposits and withdrawals for the inspection of any judge and the Tribal Council. Whenever such fund shall exceed the amount necessary with a reasonable reserve for the payment of the court's expenses whether or not such expenses were previously paid for another source. Whenever property is confiscated pursuant to any tribal law or order of the court, the property shall be turned over, under supervision of the Court Clerk, to the custody of the Tribal Council, to be sold, or if the Tribal Council so directs, to be disposed of in other ways for the benefit of the Tribe and its members. The proceeds of any sale of such property shall be deposited in the same manner as other money fines and fees.

Sec. 13. Fort McDermitt Bar Examination.

The Tribal Council shall delegate to an appropriate tribal official the duty of preparing an annual examination, consisting of 100 questions, true/false and multiple choice, testing the applicants knowledge of the Constitution of the Fort McDermitt Tribe (15 questions); Federal Indian Law (25 questions); Tribal Law (20 questions); Indian Civil Rights Act of 1968 (19 questions); United States Constitution (1 question); Indian Child Welfare Act (9 questions); Ethics (10 questions); and, Public Law 280 (1 question). The applicants shall pay a fee of \$25 for the examination. The applicants shall have the right to contest any five questions without cause and such other questions with cause. All persons wishing to practice law as "Attorney at Law" shall score a raw score of 82 or higher. Those persons wishing to practice law as a "Tribal Attorney" shall score a raw score of 75 or higher. Those persons wishing to practice as a "Tribal Court Advocate" shall score a raw score of 70 or higher. The questions of the previous bar examinations shall be made available to applicants at the regular copying cost.

Sec. 14. Re-Examination.

Upon the filing of a petition with the Tribal Council, any judge of the Fort McDermitt Tribal Court may ask the Tribal Council to re-examine any person practicing before the Tribal Court without cause.

Sec. 15. Disciplinary Action Against Attorneys and Advocates.

Upon the filing of a petition setting forth sufficient facts or allegations with the Tribal Council, the Tribal Council shall place the issue of disciplining an attorney or advocate on the Agenda under New Business. The Secretary of the Tribal Council shall cause notice to be served upon the attorney or advocate, together with all written statements of facts or allegations. At a Tribal Council Meeting, during Executive Session, the attorney or advocate shall be prepared to defend him or herself against such allegations and shall be afforded the opportunity to preset witnesses in their defense. In the case of an attorney, licensed by any state, the Tribal Council may contact the State Bar and inquire about any recent disciplinary actions taken against such attorney and obtain a copy, if possible, of any recent disciplinary action.

When a state licensed attorney has been suspended or disbarred by the state's disciplinary authority, their ability to practice law within Fort McDermitt Indian Country will be restricted in an identical manner as if the Tribal Council so ordered such disciplinary action.

Sec. 16. Severability.

Should any sections of this chapter be disapproved by the Secretary of the Interior, in accordance with the Constitution, or be found unconstitutional or in violation of tribal or federal law by any court of competent jurisdiction, such declaration shall not affect the remaining terms or sentences of any section or the remaining sections of this chapter.