

TITLE NINE - ADMINISTRATIVE PROVISIONS OF TRIBAL COURT

Chapter 1 - Courts, Judges and Court Personnel

Chapter 2 - Attorneys and Lay Counsel

TITLE NINE

CHAPTER ONE

COURTS, JUDGES AND COURT PERSONNEL

The Tribal Court system established by this Code shall consist of a Tribal appellate Court, Tribal Court, Tribal Juvenile Court and Tribal magistrate Court.

9-1-1 APPELLATE COURT—The Tribal appellate Court shall consist of three (3) Justices and shall handle appeals from the Tribal Court and the Tribal Juvenile Court, and the procedures for such appeal shall be determined by the Appellate Court Justices.

9-1-2 TRIBAL COURT—The Tribal Court shall be the Court of general criminal and civil jurisdiction on the Rosebud Reservation and shall hear all matters of a judicial nature not specifically placed with the exclusive jurisdiction of some other judicial forum by this Code. (The Tribal Court shall also hear appeals from the decisions of any Magistrate Court and all other Tribal Administrative bodies and agencies.

9-1-3 TRIBAL JUVENILE COURT—The Tribal Juvenile Court shall handle all matters set forth in the Tribal Juvenile Code and shall be subordinate to and subject to the supervision and jurisdiction of the Tribal Code.

9-1-4 TRIBAL MAGISTRATE COURT—At the discretion of the Tribal Judiciary Committee there may be established in each recognized community on the Rosebud Reservation, a magistrate Court to be presided over a lay Magistrate said Court to have jurisdiction over all criminal matters involving offense of the C class. Magistrate Court shall have civil jurisdiction over no matters.

9-1-5 COURT PERSONNEL—

1. There shall be appointed three (3) appellate Court Justices consisting of two (2) or more attorneys licensed to practice before the Federal Courts and may include one (1) lay person, who shall have the same qualifications as those hereinafter specified for Associate Judges of the Tribal Court. All Appellate Justices are to be selected by the Tribal Judiciary Committee and approved by the Tribal Council.

2. There shall be appointed for the Tribal Court one (1) Chief Judge and two (2) or more associate Judges as the Judiciary Committee and the tribal Council see fit.

(a) To be eligible to hold the office of Chief Judge or Associate Judge, a Person

1. Must be at least 30 years of age and not more than 70 years of age.
2. Must be of high moral character and integrity.
3. Must have a high school education or equivalent thereof and be capable of preparing the papers and reports incident to the office of Judge.

4. Must be physically capable of carrying out the duties of the office.
5. A member of the Rosebud Sioux Tribe shall be given preference.
6. At least one (1) Associate Judge shall be bilingual in English and Lakota.

(b) Notwithstanding any other provisions in this code to the contrary, no person is eligible to hold the position of Chief Judge of the Rosebud Sioux Tribe unless such person is an attorney at law and admitted to practice in the United States District Courts for the District of South Dakota.

(c) All Tribal Court Judges shall be selected by the Judiciary Committee and recommended to the Tribal Council for approval. Appointments of Tribal Judges shall be for a probationary period of one (1) year during which time such appointment can be terminated by written notice from the Judiciary Committee or the Tribal Council. Following the one (1) year probationary period, Tribal Judges shall be appointed for a term of two (2) years.

9-1-6 JUVENILE COURT--There shall be appointed for the Juvenile Court One (1) Juvenile Judge whose qualifications shall be the same as those of Associate Judges of the Tribal Court. The appointment of the Juvenile Judge shall be for a probationary period of one (1) year during which time such appointment can be terminated by written notice from the Judiciary Committee or the Tribal Council. Following the one (1) year probationary period Juvenile Judges shall be appointed for a term of two (2) years.

9-1-7 MAGISTRATES--Magistrates to serve in the community shall be selected by the Judicial Committee and approved by the Tribal Council. The Judiciary Committee shall in its discretion, determine which persons are suitable to serve as Magistrates. Magistrates shall be appointed for a term of one (1) year and may be terminated by written notice from the Judiciary Committee or the Tribal Council.

9-1-8 CLERK OF COURTS--There shall be a Clerk of the Tribal Court, which Clerk shall also act as the Clerk of the Appellate Court. The Clerk of Courts shall be selected by the Judiciary Committee and approved by the Tribal Council. There may also be appointed additional Deputy Clerks of Court and a Clerk of the Juvenile Court if such are deemed necessary.

(a) The appointment, qualifications, term of office and compensation of such Clerk shall be determined by the Judiciary Committee and the Tribal Council.

9-1-9 ADDITIONAL COURT PERSONNEL--If such are deemed necessary by the Judicial Committee and the Tribal Council there may also be appointed a Court Reporter, a Process Server, a Probation Officer, a Bailiff, a Typist to assist the other Court personnel. The appointment, qualifications, terms of office and compensation of such additional Court personnel shall be determined by the Judicial Committee and the Tribal Council.

9-1-10 SALARIES--The compensation to be received by all Court personnel shall be determined by the Judiciary Committee and the Tribal Council and shall be negotiated and agreed upon at the

time of the appointment of the individual officers of the Court. Court personnel shall not have their compensation decreased during their term of office. Court personnel may be appointed to successive terms of office and salary may be renegotiated with each successive appointment.

9-1-11 REMOVAL OF JUDGES--Any Judge may be removed from office prior to the expiration of his term by a majority vote of the Tribal Council and upon recommendation of the Judiciary Committee. The grounds for such removal shall be neglect of duty, gross misconduct, incompetence, or other just cause, and only after the holding of a public hearing before the Tribal Council, by giving such Judge not less than five (5) days notice of such hearing. At the hearing the Judge shall be given the opportunity to answer all charges and present evidence in his own behalf. After such hearing removal of a Judge may only be accomplished by a two-thirds (2/3) vote of the Tribal Council members present at the hearing and constituting a quorum. The Judiciary Committee shall have the power to suspend a Judge, after investigation and hearing, for a period not to exceed thirty (30) days pending a hearing before the Tribal Council for dismissal of such Judge.

9-1-12 POWERS AND DUTIES OF JUDGES

(1) Judges shall administer justice and discharge all duties imposed upon them by law and shall hear and decide matters of a Judicial nature and enter judgements and orders disposing of such matters. In the absence of the Court Clerk, a Judge may perform the Clerk's duties in addition to his own and may receive cash bail or bonds whenever a Clerk or other authorized person is not available.

(2) The Chief Judge shall be responsible for the administration fo all Courts, including the Tribal Juvenile Court, which shall be administered by the Juvenile Court Judge under the supervision of the Chief Judge. The Chief Judge shall supervise all probation and parole officers. In addition, the Chief Judge shall be responsible for the assignment of cases and the management of the court's calendar and business. The Chief Judge shall designate and Associate Judge to act as Chief Judge in his absence.

(3) All Judges of the Courts of the Rosebud Sioux Tribe shall conform their conduct to the Code of Judicial Conduct as adopted by the American Bar Association.

(4) Every Judicial Officer has Power to:

(a) Preserve and enforce Order to his immediate presence, and in proceedings before him, when he is engaged in the performance of his official duty;

(b) Compel obedience to his lawful orders;

(c) Compel the attendance of persons to testify in a proceeding before him a provided by law;

(d) Administer oaths to persons in proceedings before him and in any other case where such shall be necessary in the exercise of his powers and duties;

(e) Punish for contempt to assure the effectual exercise of these powers.

(5) A Judge shall disqualify himself from hearing any matter in which he has a direct interest or in which any party to the matter is a relative by blood, in the fourth degree (first cousin, or where he feels that he will not be able to render a just decision.

(6) Any party to a legal proceeding may request a change of assignment of Judges to hear the proceedings by filing a written affidavit of Prejudice giving sufficient reasonable grounds why the Judge assigned should not hear the case. Such affidavit shall be presented to the Judge assigned to hear the case, who shall rule on the sufficiency of the Affidavit, and if sufficient, either disqualify himself or turn the Affidavit over to the Chief Judge or some other Judge for a decision as to whether a different Judge should be assigned.

9-1-13 OATH OF OFFICE OF JUDGE

(1) Every Judge, prior to taking office or acting in such office, shall take the following oath or affirmation:

I, _____, do solemnly swear (affirm) that I will support and defend the laws and the Constitution of the United States; that I will support, defend, and uphold the Constitution, By-laws and Treaties of the Rosebud Sioux Tribe; that I will support, uphold and enforce the Law and Order Code of the Rosebud Sioux Tribe, and that I will faithfully and impartially discharge the duties of my office to the best of my ability.

(2) Said oath may be administered by a member of the Tribal Council or a Judge of the Court.

9-1-14 DUTIES OF THE CLERK--It shall be the duty of the Clerks of the Tribal Courts to supervise and keep all records, files, dockets or other records required to be kept by this Code, by rule of the Court, tribal Resolution or as otherwise established, and further to keep a written record of all proceedings of the Court, to administer oaths, to collect and account for all fines, bail or bond money, fees or other charges which cause money to come into the Court, to deposit and account for all such moneys in the manner prescribed by the Tribal Council, and to disburse such money as authorized by law. The Clerks shall further assist the Court in any way required to facilitate the performance of its duties, to aid the police or private citizens in their dealings with the Court, and may render and assistance to individual members of the tribe or their counsel in the drafting of documents incidental to proceedings in the Court.

9-1-15 OATH OF CLERKS

(1) Every Clerk shall take the following oath upon assuming office:

I, _____, having been appointed Clerk of the Rosebud Sioux Tribal (Juvenile) Court, do solemnly swear (affirm) that I will truly, faithfully, honestly, and impartially discharge all the duties of my office to the best of my ability and understanding.

(2) Such oath shall be administered by a Judge of the Tribal Court.

TITLE NINE

CHAPTER TWO

ATTORNEYS AND LAY COUNSEL

9-2-1 Any professional attorney or lay counsel who desires to practice before the Courts of the Rosebud Sioux Tribe shall first be admitted to practice before such Courts.

9-2-2 Any professional attorney who is an active member, in good standing, of the South Dakota State Bar, or any attorney certified to practice before the highest Court of any other State or the Supreme Court of the United States is eligible to be admitted to practice before the Rosebud Sioux Tribal Court. An admission fee of \$100.00 shall be paid by professional attorneys to practice before the Tribal Courts.

9-2-3 All counsel shall also take and pass a Tribal Bar Examination testing their knowledge of tribal law and Professional ethics. No counsel shall practice in Tribal Court without having first passed such examination, and paying the appropriate admission fee. The Chief Tribal Judge shall be responsible to set up the testing mechanism for all counsel. All attorneys, both lay and professional, shall abide by a Code of Professional Responsibilities which from time to time shall be adopted by the American Bar Association.

9-2-4 Both professional attorneys and lay counsel shall make application for admission to practice before the Courts of the Rosebud Sioux Tribe to the Chief Tribal Judge who shall review the applications and if satisfied that the applicant meets the qualifications necessary to practice before the Court, the Chief Judge shall upon the paying of the proper fees and subscribing and swearing to the following oath issue the proper license to the applicant.

"I, _____, do solemnly swear that I will support and defend the Constitution and laws of the Rosebud Sioux Tribe against all enemies, foreign and domestic, that I have studied and am familiar with the laws of the Rosebud Sioux Tribe, and that I will conduct myself with honor towards those whom I represent and with respect for the Courts of the Rosebud Sioux Tribe".

9-2-5 Any person denied admission to practice before the Tribal Court shall the right to appeal and to have a due process hearing before the Tribal Council.

9-2-6 Every person appearing as a party in any judicial procedure before a Tribal court shall have the right to be represented either by lay counsel or professional attorneys and have such counsel and attorneys assist in the preparation and presentation of his case. The Rosebud Sioux Tribe shall have no obligation to provide or pay for such lay counsel or professional attorneys and only those persons who have first obtained admission to practice before the Tribal Courts shall appear therein.

9-2-7 Any person admitted to practice before the Tribal Court will accept and represent indigent clients without compensation or without full compensation when directed to do so by a Judge of the Tribal Court.

9-2-8 Any Judge of the Tribal Court who finds an attorney admitted to practice before the Tribal Courts to be in contempt of Courts may, in addition to any other sanction imposed, order the attorney to appear within five (5) days and show cause why he should not be suspended from practicing before the Courts of the Rosebud Sioux Tribe.

9-2-9 The Chief Judge of the Tribal Court may, upon receiving a written, verified Complaint which indicates that an attorney admitted to practice before the Tribal Court has acted in an unethical or otherwise improper manner while functioning as an attorney, order such attorney to appear and defend himself at a hearing to hear all evidence relevant to the matter and may order the suspension of such attorney, if it appears necessary or appropriate.

9-2-10 All suspensions from practicing before the Courts of the Rosebud Sioux Tribe shall be for an indefinite period unless the Judge ordering such suspension specifically orders otherwise. Any attorneys suspended from practice before the Tribal Court may appeal to the Tribal Counsel and the action of the Tribal Council on said matter shall be final.