

CHAPTER I GENERAL RULES OF COURT

Section 1

Creation and Establishment of the Court
Pursuant to the provisions of the Indian Reorganization Act of 1934, as amended, and Article VI, Section 1(k) of the Constitution and Bylaws of the Shoshone Bannock Tribes, there is hereby established a Tribal Court to be known as the Shoshone Bannock Tribal Court. All proceedings within the purview of this Law and Order Code and any additional ordinances hereafter adopted by the Shoshone Bannock Tribes shall be under the jurisdiction of the Tribal Court.

Section 1.1

Court Hours

The Shoshone Bannock Tribal Court and the office of its Clerk shall regularly be open for court business from 8:00 a.m. to 4:30 p.m., Monday through Friday, except on such days as are declared legal holidays by the Shoshone Bannock Tribal Council. Other holidays shall not affect the operation of the Court.

Section 1.2

Courtrooms

No courtroom shall be used for any purpose other than the transaction of regular court business unless a permit in writing is first obtained for such other use from the Chief Judge of the Court. While Court is in session, eating, drinking, reading of newspapers or magazines, or the use of tobacco in any form by anyone at any time is forbidden in any courtroom. Unnecessary conversation, loud whispering or any other disconcerting or distracting activity by anyone in the courtroom or so near thereto as to create a diversion is forbidden.

Section 1.3

Court Officers as Sureties

Subject to the discretion of the Chief Judge, no Judge, Clerk, Policeman, Attorney, Advocate or other officer or employee of the Court will be accepted as surety, either directly or indirectly, on any bond or undertaking in any action or proceeding in this Court.

Section 1.4

Baliffs

Baliffs are officers of the Court, appointed to assist in the efficient administration of justice. At times their duties may be custodial, clerical or official. While their purpose and function is to serve, such service is to be at the direction of only the Chief Judge.

Section 1.5

Conflicting Assignments

Counsel are obliged to manage their calendars so as to prevent conflicting assignments before different judges. Judges honor prior settings when called to their attention. In case of conflict, the case first set enjoys priority, and counsel must immediately upon discovery of a subsequent conflict see the judge and opposing counsel for a new date. When a matter unexpectedly holds over and cannot be recessed to accommodate another court appearance, involved counsel must immediately, in as far as possible, inform the involved judge and counsel so their inconvenience may be minimized.

Section 1.6

Court Costs

Costs sufficient to carry a case to completion shall be deposited upon the filing thereof, and the Court Clerk shall not file any instrument, motion or pleading in any case in which there are not sufficient costs on deposit to pay for the same, except in those cases provided by law where no cost deposits are required.

Section 1.7

Court Files

No original case file, instrument, record, docket, pleading, journal or any part thereof shall be removed from the office and custody of the Court Clerk. Copies shall be made available upon request and payment of the reproduction costs established by the Court Administrator.

Section 1.8

Areas of Initial Judicial Responsibility

All cases are the initial responsibility of the Chief Judge who may assign any case to an Associate Judge. In the event of his or her absence, the Chief Judge shall designate an Acting Chief Judge who shall have all the authority of the Chief Judge.

Section 1.9

Judge's Conference

One morning each month shall be selected by the judges for a conference which they shall attend. No cases or matters shall be set for hearing on any dockets this morning.

Section 1.10

Exceptions and Modifications to Rules

A Judge may make such modifications and exceptions to these rules, in any case before him, as the exigencies of the situation may require. Reason for deviation from any rule shall be given in writing or dictated into the record.

Section 1.11

Violation of Court Rules

These rules are for the guidance of all court personnel, attorneys, advocates and spokesmen and are binding thereon. The violation of a court rule is Contempt of Court. Violations in or near the Court are generally direct contempt while those out and away from the court are indirect contempt. A jury may be requested for indirect contempt trials.

Section 1.12

Court Procedure

Sessions of the Shoshone Bannock Tribal Court for the trial of cases shall be under the direction of the Chief Judge who shall appoint a Judge over each case wherein a "not guilty" plea has been entered. In the case of a "guilty" plea being entered, the presiding judge may dispose of the same. In civil cases, the Chief Judge shall assign each case to a Judge. The time and place of Court sessions, and all other details of judicial procedure not prescribed by the regulations in this Code shall be established by the Chief Judge.

Section 2

Jurisdiction

The Shoshone Bannock Tribal Court shall have civil and criminal jurisdiction as provided in this Law and Order Code.

The Shoshone Bannock Tribal Court shall have original jurisdiction over:

(a) All crimes enumerated in this Code which are committed within the territorial jurisdiction of the Shoshone Bannock Tribal Court.

(b) All civil actions arising under this Code or at common law in which the defendant is found within the Fort Hall reservation and is served with process within, or who is found outside the Fort Hall reservation and is validly served with process.

(c) Criminal jurisdiction over all Indians, and civil jurisdiction over all persons who enter the exterior boundaries of the Fort Hall reservation for whatever purpose, said act of entry being construed as consent to such jurisdiction.

(d) The jurisdiction of the Shoshone Bannock Tribal Court shall be concurrent and not exclusive with respect to an offense over which a Federal or State Court may have lawful jurisdiction.

(e) The territorial jurisdiction of the Shoshone Bannock Tribal Court shall embrace all land and waters within the exterior boundaries of the Fort Hall Indian Reservation, notwithstanding the issuance of any patent, and including rights-of-way running through the reservation, and including all waters thereon.

For purposes of this Code, the term "Indian" shall be construed to mean any person of Indian descent who is either a member of a Federally recognized Tribe, or who is recognized by the Fort Hall Indian community as an Indian.

Section 2.1

Civil Jurisdiction

The Shoshone Bannock Tribal Court shall have jurisdiction over all civil matters and actions as described in this Law and Order Code, as well as civil jurisdiction over all ordinances that may hereafter be passed by the Fort Hall Business Council and amendments to this Code that may hereafter be adopted; and, any person may file a civil cause of action in the Shoshone Bannock Tribal Court wherein the cause of action arose within the exterior boundaries of the Fort Hall Reservation, and that Court shall have jurisdiction thereof. The civil jurisdiction of the Court is not limited by the amount or value in controversy, including interest.

Section 2.2

Criminal Jurisdiction

The Shoshone Bannock Tribal Court shall have criminal jurisdiction over all offenses enumerated in this Law and Order Code when said offenses are committed by an Indian while within the exterior boundaries of the Fort Hall Reservation.

With respect to any of the criminal offenses enumerated within this Law and Order Code over which Federal Courts may have jurisdiction, the jurisdiction of the Shoshone Bannock Tribal Court shall be concurrent and not exclusive. The Shoshone Bannock Tribal Court shall order delivery of any offender upon demand to the proper Federal authority for prosecution where said authority has jurisdiction over the offense and the offender.

Section 3

Judges of the Court

The Judges of the Shoshone Bannock Tribal Court shall have the power and authority to issue all such orders and to act in all such instances as may be authorized by this Law and Order Code or by ordinances that may hereafter be enacted by the Fort Hall Business Council and amendments to this Code that may hereafter be adopted.

Section 3.1

Qualification of Judges

The Shoshone Bannock Tribal Court shall consist of at least one Chief Judge, one Associate Judge and two Trial Judges.

The qualifications and eligibility requirements for the Chief Judge and Associate Judges shall include: Any adult person, 25 years of age or older, who is of Indian lineage, an enrolled member of the Shoshone Bannock Tribes, and is a resident of the Fort Hall Reservation for at least one year prior to appointment by the Business Council, with a high school education or its equivalent.

The qualifications and eligibility requirements for the Trial Judges shall consist of the following: He or she must have graduated from an accredited law school, must be a member in good standing with any State Bar Association in the United States, must be certified to practice law in any Federal District Court in the United States and must possess a knowledge of Federal Indian Law; or, be a member in good standing with the American Indian Bar Association, or the National American Indian Court Judges Association.

No person may hold the office of a Chief Judge, Associate Judge or a Trial Judge unless said person first obtains a license to practice before the Court.

No person may hold the office of any judge who has ever been convicted of a felony or, within one year past, of a misdemeanor. All judges must undergo special courses in judicial procedure and shall participate in further training as may be designated by the Chief Judge.

Section 3.2

Appointment of Judges

All judges of the Shoshone Bannock Tribal Court shall be appointed by the Fort Hall Business Council.

Section 3.3

Oath of Office

Before entering office, all judges shall take the following oath:

"I, _____, do solemnly swear that I will support and defend the Constitution of the United States against all enemies; that I will carry out faithfully and impartially

the duties of my office to the best of my ability; that I will cooperate and promote, and protect the best interests of the Shoshone Bannock Tribes in accordance with the Constitution and Bylaws contained within the corporate charter of the Shoshone Bannock Tribes of the Fort Hall Reservation, Fort Hall, Idaho. I will support and defend the Law and Order Code of the Shoshone Bannock Tribes and the resolutions and ordinances duly passed by the Business Council of the Shoshone Bannock Tribes. I will support and defend the treaties of the Shoshone Bannock Nation."

Section 3.4

Term of Office

The Chief Judge shall serve a term of office consisting of a five (5) year term.

The Associate Judges shall serve a term of one (1) year.

The Trial Judges shall serve a term not to exceed one (1) year as determined by the Fort Hall Business Council.

Section 3.5

Successive Terms in Office-Judges

All Judges may be reappointed to successive terms in office, each term not to exceed the established period in Section 3.4 of this Chapter.

All incumbent judges shall remain in continuance of office until a successor is appointed by the Business Council, unless the Business Council, by resolution, determines otherwise.

Section 3.6

Duties of Judges

The judges shall administer justice and discharge all duties imposed upon them by law and shall hear and decide cases and enter judgments or orders disposing of each case. In the absence of a Clerk of the Court, the judge shall perform the Clerk's duties in addition to his own. The Chief Judge is the only judge authorized to receive cash bail.

The Chief Judge shall be responsible for the administration of the Court, the assignment of cases, and the management of the Court's calendar and business.

In the absence of the Chief Judge, he or she will appoint an Associate Judge to act as Chief Judge.

The Trial Judge shall take cases assigned to him by the Chief Judge and shall give instructions on the law and operation of a court to the other judges.

It shall be the duty of the Judges of the Shoshone Bannock Tribal Court to make recommendations to the Fort Hall Business Council for the enactment or amendment of such rules of court or the Law and Order Code as they believe to be in the best interests of improved judicial procedure.

Section 3.6.1

Powers of the Court

The powers of the Shoshone Bannock Tribal Court shall include, but not be limited to:

1. Preserve and enforce order in its immediate presence;
2. Enforce order in the proceedings before it or before a person or persons empowered to conduct a judicial investigation under its authority;
3. Provide for the orderly conduct of proceedings before it or its officers;
4. Compel obedience to its judgments, orders and process, and to the orders of a judge out of court in an action or proceeding pending therein;
5. Control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a judicial proceeding before it, in every matter appertaining thereto;
6. Compel the attendance of persons to testify in an action or proceeding pending therein, in the cases and manner provided in this Code;
7. Administer oaths in an action or proceeding pending therein, and in all other cases where it may be necessary in the exercise of its powers and duties;
8. Amend and control its process and orders so as to make them conformable to law and justice;
9. To interpret laws;
10. To render decisions.

Section 3.6.2

Rules and Obligations of Judges

1. Judiciary General Obligations-
 - a. A tribal judge accepts the obligation to administer justice fairly and promptly through an administration that is simple, uniform and efficient.
 - b. A judge is responsible for the enforcement of rules and methods that will dispose of litigation and that are as uniform as possible.
 - c. Where the administrative or supervisory power is assigned to one judge or to an officer of the court, each judge should cooperate to the extent of his or her ability, and should not be satisfied with an average or fair share effort.

d. A judge has responsibilities beyond deciding cases. He or she should provide statistical records of the business of the court at regular intervals. As a tribal official in "public" life he or she has an obligation to speak before interested organizations on the condition of the business of the court and on other subjects related to the judiciary.

e. A tribal judge should use his or her unusual opportunity to develop improvements and to recommend ordinances that will advance the administration and cause of justice.

f. He or she should participate in judicial associations and confer with other judges, particularly with those having similar jurisdiction, to improve trial law and its methods, guided by the principle of uniform and even-handed justice for all.

g. A judge should not be a member of, or actively participate in special interest organizations whose purposes conflict with his responsibilities. This includes associations devoted to the interests of specific parties, whether plaintiffs or defendants.

h. Judicial office imposes greater moral responsibilities than that required of attorneys or advocates. A judge may be a member of appropriate legal and other professional organizations; he or she may not, however, accept assignments in such groups which involve a conflict of interest or improper influence. He or she should encourage the suggestions and the cooperation of the attorneys or advocates or court personnel in administrative affairs, but he may not relinquish any portion of his responsibility to others. The responsibility which goes with the judge, wherever he or she may be, does not mean that he must be aloof to human relations. His individual character, his warmth and human qualities should not be affected.

i. A tribal judge should recognize and avoid the economic, social and community pressures that are exerted upon members of the judiciary. He or she need not withdraw from social or community activities; he should, however, refuse excessive demands upon his or her time and he or she should avoid circumstances in which his office may be used for other than judicial purposes.

2. General Duty at Trial-

a. A tribal judge must administer justice without respect to persons and faithfully and impartially perform all duties to the best of his or her ability and understanding.

b. He or she should maintain the dignity of trial proceedings and preside with independence and

impartiality. He or she should set aside all preoccupations. Unnecessary interruptions annoy the participants, detract from the trial, and prevent the court from giving undivided attention to the case. Matters not associated with the trial should be kept to a minimum and handled through the bailiff or clerks.

c. He or she should seek a full understanding of the factual issues and the applicable tribal law. He should consider the arguments of counsel out of the presence of the jury and keep such discussion within reasonable limits.

d. A judge is not merely an umpire between counsel and the parties. He or she is a representative of tribal justice, sworn to uphold the Constitution, Bylaws and ordinances, and to see that justice is done.

3. Assignments and Continuances-

a. The court is responsible for the adoption and operation of an effective method of assignment designed to bring cases trial with a minimum of delay. Where there is a substantial backlog of cases for trial, the method of assignment should provide for the substitution of other available cases in the event an assigned case does not proceed. The system should encourage the normal disposal of cases in the order in which they were originally filed, and without preferences, except when required by necessity.

b. Continuances should be controlled by the court and granted only upon a showing of substantial cause or to prevent an injustice. Uncontrolled continuances waste time, contribute to the problem of congestion and impair the confidence of the parties and the public in the judicial system.

c. At the time appointed for trial, the case should be heard and disposed of on schedule, unless a just and reasonable cause exists for a delay and such cause could not have been anticipated. A postponement should be for a limited time or upon a specific condition after which the trial should proceed.

4. Pretrial and Settlements-

a. The responsibility to determine if litigation can be avoided or terminated is imposed upon counsel; the court should, however, provide the parties and their counsel a reasonable opportunity for reaching a solution if the parties are so disposed.

b. Pretrial effort should be directed toward methods of discovery of the truth by counsel and the attainment of justice. It is not a substitute for trials or a solution to congested dockets.

c. Efforts to encourage amicable dispositions should be undertaken without pressure on the parties or on counsel. If developments at the trial suggest a renewal of such efforts, negotiations should not unreasonably interrupt the trial and must be conducted without the knowledge of the jury.

5. Obligation, Interest and Disqualification-

a. The tribal judge should not hear or determine any case in which a personal interest, relative or close acquaintance is involved.

b. If a basis for personal disqualification appears, he or she should immediately withdraw from the case and take whatever steps may be required for another judge to dispose of the case.

c. The judge will refrain from impropriety, partiality or interest in the outcome of a case; he will avoid conduct or associations that may tend to give the impression that he is influenced by any person or party, or by public clamor, popularity or criticism.

d. A judge should be conscious of any personal prejudices and should avoid their influence in his or her judgment in any case.

6. Personal Conduct-

a. Unnecessary delay can be eliminated.

Counsel will learn that they must be present at the assigned time if the judge sets an example by taking the bench promptly and deciding objections without delay. Trial time should be efficiently used to achieve the maximum results within the time available.

b. A judge should be kind, understanding, patient and dignified. He must be firm and just with counsel, correcting improper conduct when it occurs. A warning out of the presence of the jury is usually sufficient. To cure the harmful effect of continued improper conduct of counsel, it may be necessary to reprimand counsel in the presence of the jury. If such measures are not sufficient the trial judge should take summary disciplinary action.

c. A judge should refrain from displays of temper, personal pique, or manifestations of personal traits and idiosyncrasies. He or she should avoid being spectacular or sensational in his conduct and in judicial acts.

7. Relations With the Jury-

- a. The jury should be treated with courtesy and consideration. Jurors are in unfamiliar surroundings. They perform a public service that is new and strange. The court should arrange for their comfort, inform them of the daily schedule, the duration of their service and of their rights and duties during and after the trial.
- b. At appropriate times he or she should introduce the participants, outline the nature of the case and the responsibility of the jury, explain the purpose and importance of the voir dire examination in the selection of a jury that is fair and impartial, furnish some preliminary instructions and outline the procedure to be followed. He or she may advise jurors when they are discharged that they may discuss the case with counsel, but that they are not required to do so.
- c. The judge should avoid comment, conduct, or appearances that may unfairly influence the jury, or affect their judgment on the outcome of the case. Facial expressions and unconscious reactions influence jurors, who observe the judge for the slightest suggestion that may reveal his opinion.
- d. He should investigate the report of any effort to influence, or to tamper with the jury, or of improper conduct by a member of the jury and take such action as the situation requires.

8. Relations With Counsel-

- a. The tribal judge should be courteous and considerate of counsel, refraining from any act or appearance of favoritism. This should not deter him or her from requiring counsel to be punctual, respectful, expeditious, and free from acrimonious exchanges. Use of former titles, first names and other informalities should be avoided in the courtroom. Local customs and rules should be explained in chambers, particularly for young or inexperienced attorneys, advocates or spokesmen.
- b. He or she will require conduct and proprieties generally recommended and expected of counsel in any other court. He or she should not permit any arguments between counsel or any unnecessary interruption of an examination by opposing counsel.
- c. Conversation with counsel in the courtroom is at times necessary, but the judge should avoid controversies, which obscure the merits of the case or lead to an unjust disposition. In addressing counsel, parties, or witnesses in the presence of the jury, he should avoid a manner or tone that is personal or controversial.

d. He or she should avoid interrupting counsel during legal arguments, except to correct a misstatement of the law or the evidence, or to clarify his mind as to their positions. He should avoid any ostentatious display of learning or of premature judgment.

9. Communications and Briefs-

a. A judge may permit interviews, arguments and communications concerning a pending case when all of counsel are present, or have been reasonably requested or notified to be present at a specific time.

b. All private or confidential communications concerning the merits of a pending case from anyone, are improper and if received, must be disclosed to all of counsel or parties.

c. If counsel, a party, or anyone else presents a written communication, memorandum, brief, or pretrial brief concerning a pending case without certifying that a copy has been delivered or mailed to all of counsel, the judge shall order copies to be delivered or shall otherwise reveal the contents to all others of counsel in the case.

10. Ex Parte and Temporary Orders-

a. Except in proceedings that are ex parte by tribal law, or where an order is required to prevent irreparable harm, and the necessity for immediate action is clearly demonstrated, a tribal judge should not grant a preliminary, temporary or other order unless all parties and interests to be affected by such order are represented or were notified to be present at a specific time.

b. When a temporary ex parte order is issued, the matter should be assigned for prompt hearing on continuance of the order and the opposing party afforded an opportunity to be heard.

11. Relations With Witnesses-

a. While the judge should be courteous and considerate of each witness, he should not manifest preference, familiarity, or unfriendliness. He should protect a witness from abuse, from fright, or from conditions due to a personal handicap and when necessary, should warn a witness who is evasive or obviously not telling the truth.

b. The court should explain the purpose of the separation of witnesses when witnesses are requested to leave the courtroom.

c. Each witness should be sworn separately and the oath administered in the courtroom in a dignified manner.

d. A witness should remain in the witness chair while testifying; if excused for a demonstration, he should return promptly when the demonstration is concluded. Some witnesses must be instructed to speak audibly so that they may be heard by all in the courtroom.

e. The judge may ask proper and pertinent questions designed to expedite the trial, to clear up confusion, or to develop the true character of the event or transaction so as to clarify material facts in an understandable way; however, in so doing, he should avoid an extended examination that may interfere with the presentation of the case by counsel.

f. The trial judge should interrupt the proceedings whenever two persons speak at the same time, a witness indicates distances, or answers with gestures, and at any other time when the record is incomplete. On such occasions, the court should instruct the witness or counsel and direct the appropriate person to repeat his statement or complete the record.

g. A judge should interrupt the proceedings to enforce an instruction, decision or rule of decorum, to correct a misunderstanding or inaccurate statement of the evidence by counsel, to avoid an abusive, unfair or prejudicial question or to avoid a mistrial or a miscarriage of justice. Additional discretion may be exercised when the trial is to the court.

12. Relationship With the Public and Spectators-

a. All persons are entitled to a trial that is public, conducted with dignity, designed to ascertain the truth and to render justice.

b. A public trial is one which the public is admitted to without preference to the extent that the facilities permit, without crowding or standing.

c. The fact that trials are public, does not entitle anyone to photograph, broadcast, televise, record, or to otherwise participate, interrupt or detract from the proceedings, or to distract the participants during the trial.

d. If actions or statements concerning a pending case are published by anyone prior to, or during a trial, and if such publication prejudices the rights of an individual, or interferes with a fair trial by jury, a new trial or continuance should be granted. If the circumstances necessitate a statement or instruction by the judge to correct an injustice, to insure a fair trial or to reprimand counsel, such statement and the circumstances requiring it should be entered in the record of the proceedings at the appropriate time.

e. The judge should not seek or encourage publicity on pending cases. He should make no comment on a proceeding until it is finally determined in the courts. While comment upon individual cases must be restrained, every judge should cooperate with tribal organizations and the press regarding the business, operation, and improvement of the courts. In this respect, a judge may, and often must, seek public support or provide essential information for an accurate presentation to the tribe of newsworthy subjects involving the courts.

f. The judge is responsible for the proper behavior of spectators. He should not tolerate any participation, interruption, or other conduct that may interfere in any manner or to any degree with a fair trial or the essential dignity of the proceeding. He should exercise his authority over anyone whose behavior is not consistent with this purpose.

13. Common Courtroom Practices-

a. The judge should conduct a dignified and orderly trial designed to expedite the business at hand.

b. Jurors, counsel, and parties should be in their places before the judge enters the courtroom.

c. Court should be opened with a brief ceremony that reflects dignity and respect for the law. The trial should proceed under similar conditions.

d. An announcement should be made at each recess and the jury furnished an admonition for its conduct while excused.

14. Evidence-

a. The judge should require exhibits to be identified, marked, and preserved for use on appeal.

b. When films or slides are offered, he or she should view them, if necessary, before they are shown to the jury. If a witness testifies at the time of the showing, opposing counsel should be permitted to conduct his cross-examination while the projection equipment is still set up in the courtroom.

c. Demonstrative evidence should be confined to material issues and presented with a minimum of confusion. When a witness participates in a demonstration, he should return to the stand as soon as possible.

d. When sketches or notes are placed upon a blackboard, photographs should be permitted out of the presence of the jury to preserve the record. A better practice is to provide a lecturer's easel with large sheets of paper and to remove and identify individual sheets for the record. Such evidence should be removed when each counsel completes his examination or argument so as not to interfere with the examination or argument of opposing counsel.

e. Unless requested by the court, or counsel has first obtained permission, counsel should not be permitted to argue or state in the presence of the jury the reasons for his objection. When and how such statements are to be made is within the discretion of the judge.

15. Exercise of Discretion-

a. In many areas of constant concern to the tribal judge, he or she is expressly or impliedly accorded "discretion." In general, the term signifies that the judge has latitude to decide either way as justice and the circumstances of the case may require.

b. Because of the unusual weight of his discretionary rulings, the judge will be aware of the purposes behind the grant of discretion and will exercise his power in a restrained and sensitive manner in consideration of such purposes. He will not hide behind discretion in order to avoid or to conceal a ruling on a doubtful point of law. Whenever feasible, the judge will identify the grounds for his discretionary ruling so that it may be effectively reviewed on appeal.

16. Responsibility for the Law-

a. The tribal judge should never relinquish to counsel his or her responsibility for the law of the case.

b. When the facts are not controverted, or there is not a factual issue, the judge should withdraw the case from the jury and enter a judgment according to tribal law. When this is done, he should explain his conclusions and the reasons for his action to the jurors, counsel, and the parties and preserve a record of his or her explanation for use on appeal.

c. When there is not dispute on a separate issue, the judge should withdraw such issue and submit to the jury only the issues that are in dispute.

d. Where the law is not settled, or where the factual issue does not clearly require direction, a verdict should not be directed. Submission of such cases to the jury permits the judge to reconsider the question upon a motion for judgment notwithstanding the verdict and avoids the possibility of a second trial.

17. Jury Instructions-

a. No function of the judge is more important than the delivery of the instructions of law that the jury must apply to the evidence. The instructions should be delivered in a slow, interesting, conversational voice, and in language that is clear, simple and understandable.

b. The judge should avoid any inflection, act or demeanor that suggests his personal opinion or conveys a meaning that is not expressed in the language employed.

c. The instructions of the judge to the jury should: outline the issues and explain the tribal law on each issue precisely, accurately, and completely; furnish adequate general information on the law and advisory assistance; develop according to a consistent and logical arrangement; define terms and expressions; be fair and impartial; use ordinary language; be as brief as possible; avoid repetition; and provide appropriate instructions before, during and after the evidence.

d. An effort should be made to avoid personalized language and expressions that are difficult to comprehend or which convey incomplete, but not reversible language.

18. Deliberations-

a. It is reasonable to expect the jury to request additional instructions of law and to inquire as to specific evidence. Such requests from the jury should be made in writing. To the extent the law or the exercise of discretion permits, the tribal judge should respond to such requests. Questions concerning the evidence should be answered by agreement of counsel, if possible; otherwise, the judge should have appropriate portions of the record read to the jury or he should impartially refer to the testimony.

- b. Additional instructions or information should not be given in the absence of counsel, unless by consent or when counsel is not available after reasonable notice. In event counsel is absent, this fact and the nature of the notice or counsel's consent should be entered in the record.
- c. The judge should arrange for a suitable and comfortable place for the jury to deliberate and provide adequate security and other necessities until they are discharged.
- d. Personal communications for, or on behalf of jurors, should be handled by, or under the direction of the court. Counsel should be told of all communications.

19. Opinions and Sentences-

- a. A judge should indicate his findings and the reasons for his decisions in brief, straightforward language, demonstrating that he has not overlooked the arguments of counsel, nor the rights of the parties. The facts, law, and conclusions should be clearly and concisely stated without resort to humorous, sensational or other inappropriate or unnecessary language.
- b. Decisions should be rendered promptly and should not be unreasonably delayed. The opinion of a judge should not unnecessarily elaborate upon principles of law that have been established by the appeals courts.
- c. Oral decisions should be expressed in a language that can be understood by the parties. Oral decisions should be avoided if there is reason to believe that such delivery will be misunderstood or possibly harmful to any person because of physical or mental conditions.
- d. The rule of precedent should be followed unless it would result in an injustice and the reasons for the failure to do so are clear and compelling. To a new situation not controlled by precedent, the judge should apply legal principles which in his opinion and fair judgment are just and pertinent.
- e. In criminal cases, the judge should not be extreme or peculiar, but should administer justice fairly and impartially in each situation. He should not require persons to submit to a humiliating or spectacular discipline of his own devising, without authority of law, even though he thinks it may have a beneficial influence. A judge should join with his or her associates to impose probationary orders and sentences that are fair and uniform and to avoid unnecessary variations. Popularity or publicity should not be considered in connection with the nature or severity of the punishment.

f. When Indian Civil Rights Act issues or questions are involved, the judge should require a record of the evidence and an entry containing the findings of fact and of law by the court. He will make and preserve the record relating to all constitutional rights of the accused.

20. Physical Facilities-

- a. The judge should require that facilities be neat, clean and practically arranged to provide a proper environment within which to maintain respect for the law and to serve the administration of justice.
- b. The facilities of the court should not reflect the personal tastes of the occupant of the bench, but rather the purpose of the judiciary and the essentials for an efficient operation of the court, counsel, jury and other officers and agencies of the court.

21. Appeal and Attitude Toward Appeals Courts-

- a. Every party is entitled to a complete review of the trial proceedings.
- b. The tribal judge will provide each party the opportunity to complete the record on rulings as they arise. He will protect the rights of the party against whom rulings or decisions are made to obtain an accurate record for use on appeal.
- c. A failure to provide a record of each ruling, a fair and complete bill of exceptions, or a transcript of the proceedings at the party's expense is an irreparable injury to the party and a denial of justice.
- d. A tribal judge should maintain an attitude of respect for judges of all other courts and particularly for those whose duty it is to review his decisions and his conduct of trial proceedings.
- e. He should not publicly express an interest or firm conviction on any question which he has decided and which is pending on appeal. After final review, he may comment upon a decision of another court involving a trial in which he participated. His remarks in this situation must be made with respect and for the purpose of improving tribal law or advancing the cause of tribal justice.

Section 3.7

Compensation of Judges

The Chief Judge and Associate Judges shall be compensated on a salary basis from tribal funds at a rate set by the Business Council.

The Trial Judges shall be compensated on a per diem basis from tribal funds at rates to be set by the Business Council.

Section 3.8

Suspension and Removal of Judges

Any judge of the Shoshone Bannock Tribal Court may be suspended or removed for reasonable cause by the Business Council at any time provided he or she is given a written statement of such cause at least five (5) days before a scheduled hearing before the Business Council who will pass on such suspension and removal. Any such judge so charged shall be given an adequate opportunity to answer any and all charges at said hearing, which shall be a public hearing.

The removal and suspension of any judge shall be made by a majority vote of the Business Council.

Causes for dismissal or removal shall include failure to perform duties of office while in office, non-feasance, malfeasance, misfeasance, excessive use of intoxicants, immoral behavior, use of official position for personal gain, desertion of office, personal misconduct which would discredit the honor of the office, or a conviction of a felony or misdemeanor involving moral turpitude.

Section 3.9

Disqualification of Judges

No judge shall be qualified as such in any case wherein he or she has any direct interest or wherein any party involved in said action includes a relative by marriage or blood in the first or second degree; or where the judge has discussed or communicated concerning the case, at any length, with any person prior to the time appointed to hear said case.

A defendant or other party to any legal proceeding may accomplish the change or assignment of his or her case from one judge to another upon filing an Affidavit of Prejudice giving satisfactory reason for such change. Such affidavit shall be in type-written form and, if not notarized, then witnessed by a member of the Shoshone Bannock Tribal Court Staff or a designated Court Clerk, and must be filed with the Court at least five (5) days (excluding weekends and holidays) before any action whatever is taken by the initial judge.

The initial judge shall pass on the adequacy of the Affidavit of Prejudice and enter the appropriate order either reassigning it to another judge or retaining the case. The Affidavit of Prejudice must be both timely and reasonably in order to be granted. In the event the initial judge decides to grant the motion of disqualification and there are no other available judges, the Chief Judge may appoint such other qualified person to sit in the judgment of the case, as may be required.

Section 4

Juries

Any party in a criminal case may demand a jury trial by oral demand in open court, or by filing a written demand at least two (2) days prior to the date of trial. Civil cases, other than probate or domestic relations matters, shall be tried by a jury upon the written request filed by any party at least ten (10) days before the trial date and upon said party paying the required fee for a jury trial.

Section 4.1

Eligibility for Jury Duty

Any member of the Shoshone Bannock Tribes of the Fort Hall Indian Reservation, between the ages of 19 and 70, who has not been convicted of a felony and who resides on the Fort Hall Indian Reservation, shall be eligible to be a juror. He or she must not be a Judge, officer or employee of the Court.

Section 4.2

Jury List

A list of 200 persons who shall be eligible jurors shall be prepared by the Business Council each year or by the Chief Judge if the Business Council so elects. The list of jurors shall contain names of persons from all districts within the reservation and as nearly as possible, be pro-rated in number according to population within the respective districts.

Section 4.3

Trial Juries - How Constituted

In any case, civil or criminal, a jury shall consist of six (6) persons selected from the list of eligible jurors by the Judge. Said names shall be drawn by lot from the Jury List. Any party to the case may challenge without cause and have removed not more than three (3) members of the jury panel so chosen, but there shall be no limit to challenges for cause. Jurors may be removed for cause if they have an interest in the case or are related as spouse, parent, brother or sister to any of the parties or their representative, or for any other reason cannot reach an objective decision on the merits of the case. If the list of eligible jurors is exhausted, the Tribal Court Clerk or any member of the tribal police may, at the request of the presiding judge, summon other members of the Tribe to act as jurors.

Section 4.4

Power to Subpoena Jurors

The Judges of the Court shall have the power to issue subpoenas to compel the attendance of members of the Jury List and of trial jurors. Subpoenas shall be signed by the Judge issuing them.

Section 4.5

Power to Excuse Persons from Jury Duty

The Judge assigned to the case shall have the power to excuse persons from jury duty on account of sickness, disability, or for other good causes.

Section 4.6

Verdict - Civil or Criminal

In a civil action, the jury shall bring a verdict for the plaintiff or the defendant. If the jury is unable to reach a unanimous verdict, verdict may be rendered by a concurring vote of at least four (4) of the six jurors.

In a criminal proceeding, the jury shall bring a verdict of guilty or not guilty. A unanimous verdict shall be necessary for the verdict of guilty and a concurring vote of four (4) of the six jurors for a verdict of acquittal. The Judge shall render a judgment in accordance with the verdict and existing law and where a jury in a criminal case has been unable to agree upon a verdict, may order a new trial.

Section 4.7

Compensation to Jurors

Each juror who is called and reports for jury duty or who serves upon a jury shall be entitled to a fee of ten dollars (\$10.00) a day for each day his presence is required in Court, plus fifteen cents (\$.15) a mile round trip from his home to Court for each day he is required to be in attendance. Each juror who appears for jury duty but is not selected shall be entitled to a fee of five (\$5.00) a day for each day his presence is required plus fifteen cents (\$.15) a mile round trip from his home to the Court.

Section 4.8

Instruction to the Jury

The presiding Judge shall instruct the jury in the laws governing the case, and the presiding Judge shall not allow the parties or their spokesmen to explain the laws governing the case to the jury.

Section 5

Spokesmen and Counselors Appearing in Court

REPEALED NOVEMBER 2, 1981. SEE ORDINANCE LWOR-81-S2

Section 5.1

Tribal Court Advocates

A. Prosecutor-

In all criminal proceedings in the Shoshone Bannock Tribal Court there will be a prosecutor who will be the representative of the Tribe. The Prosecutor position will be funded by an annual appropriation from the Tribal Budget or related funds. The Prosecutor will be an advocate for the Reservation Community, and will be a trained paralegal or a person who has knowledge of Tribal, Federal and State laws, as are applicable to the reservation and its inhabitants. The Prosecutor's office will take and file all valid criminal complaints, and process such complaints in Tribal Court. In the filing of said complaints the Prosecutor will obtain the following information to determine the validity of the complaint:

1. Territorial Jurisdiction (applicable)- Did the offense occur within the exterior boundaries of the Fort Hall Reservation?
2. Personal Jurisdiction- Are the parties involved subject to the authority of the Shoshone Bannock Tribal Court?
3. Subject Matter Jurisdiction- Is the offense contrary to or in violation of an applicable Tribal, Federal or State law, as applicable to the Fort Hall Indian Reservation?
4. Would said offense/violation filed as a criminal action be more appropriately filed as a civil action?
5. Did the complainant actually observe/witness the alleged offense, or does complainant have sufficient cause or reason to believe an offense was committed?

After the Prosecutor obtains the information and it is determined that the complaint is valid, he will then secure a Tribal warrant to apprehend, with the signature of a Tribal Judge, or he will issue to the defendant a Summons commanding him/her to appear.

The Prosecutor shall have the discretion to determine the actual validity of an alleged complaint, and may exercise that discretion when necessary to ensure due process of law for all parties involved. He shall have the discretion, when it is in the best interests of all parties, to permit the negotiation for reduction of criminal charges by the use of "Plea Bargaining." The Court need not accept any prior stipulations or plea bargain results. The Prosecutor is not obliged to enter into or accept any plea bargains or prior arranged agreement by a Defendant in a criminal proceeding. In the event that a pre-trial agreement or plea bargain is agreed upon by the Prosecutor, the Defense Counselor, defendant and all parties will present the pre-trial stipulations to the presiding Judge in Court for disposition, at the Judge's discretion.

Duties/Obligations of the Prosecutor during criminal proceedings and or child welfare hearings shall include:

- a. It is the primary responsibility of the Prosecutor's Office to present the case on behalf of the Tribe (Reservation Community), the individual complainant, or the Police Department.
- b. The Prosecutor may be called upon occasionally to present criminal charges (cases) on behalf of the Federal or State law Enforcement Agencies.
- c. The Prosecutor may also pursue cases on behalf of the Idaho State Department of Health and Welfare, and may render assistance to the Bureau of Indian Affairs, Department of Social Services, when requested thereby, in such cases that may require court intervention to protect minor children from abuse, neglect, abandonment, etc.
- d. The Prosecutor's Office must represent and advocate the interests and welfare of the minor children in custody matters to ensure that any minor children are afforded protection.
- e. The Prosecutor's Office will consult regularly with local agencies involved in Human Resource development or rehabilitation to keep abreast of alternatives for sentencing of individuals that are brought before the Court.
- f. The Prosecutor's Office will consult with the Reservation Law Enforcement Agencies and personnel to offer suggestions and assistance for improving and upgrading of services offered to the Reservation and its inhabitants.
- g. The Prosecutor's Office will further make periodic contacts with surrounding off-reservation Law Enforcement and Judicial Departments to provide mutual transfer of suggestions and ideas to improve intra-departmental cooperation.
- h. The Prosecutor's Office will present or recommend amendments or additions to the Tribal Law and Order Code to ensure that it is reflective of the Reservation community and the Tribe's interests.

B. Public Defenders

- a. In all criminal proceedings in the Shoshone Bannock Tribal Court there will be an Advocate Defender, who at the request of the defendant or order of the Court will represent said defendant in criminal proceedings.
- b. The Defender's Office will represent other parties at the request of the Chief Judge or Court Administrator.
- c. The Defender's Office will at all times maintain the strictest confidentiality in regard to their client's records and files. This also

includes all private information conveyed between client and Advocate Defender.

d. The Defender's office will handle every action in a manner which promotes justice and fairness.

e. The Defender's office shall have authority to initiate Civil actions.

f. The Advocate Defender will also strive to put forth the best defense possible for his client. In representing his/her client, he/she must ensure in all possible circumstances that said client is receiving the due process to which each individual is entitled.

g. The Advocate Defender may, at the request of his/her client, participate in plea-bargaining with the other parties involved. Where such negotiations would not be in the best interests of his/her client, the Advocate Defender will so inform his/her client.

h. The Defender's office will not accept any case that presents a potential conflict which would prevent that office from fairly or adequately representing any of its clients. This office also has the duty to withdraw from any case, at any time, where a conflict as described above may arise.

i. The Advocate Defender will avoid becoming personally involved in any cases handled by that office and at all times will avoid personal prejudices and biases in his/her decisions.

j. The Advocate Defender will not be obligated to co-sign or post bond in behalf of his/her clients unless he/she does so in an individual capacity.

k. The Defender's office will at all times maintain proper conduct in and out of Court and will at all times adhere to the rules and procedures of the Court.

Section 5.2

Professional Attorneys Appearing in Criminal Cases

REPEALED NOVEMBER 2, 1981. SEE ORDINANCE LWOR-81-S2

Section 5.2.1 Rules of Admissions and Standards of Conduct
for Attorneys

REPEALED NOVEMBER 2, 1981. SEE ORDINANCE
LWOR-81-S2

PAGES 25-27 RESERVED FOR FUTURE USE.

Section 6

Clerk of the Court

Section 6.1

Offices of the Clerk

There shall be a clerk of the Shoshone Bannock Tribal Court and such additional assistant clerks as the Chief Judge and/or the Court Administrator deem necessary.

Section 6.2

Qualifications

To be eligible to serve as Clerk or Assistant Clerk of the Court, a person must be of high moral character and integrity, be proficient in typing, must never have been convicted of a felony, must be physically able to carry out the duties of the office, and must comply with the hiring policies of the Business Council.

Section 6.3

Appointment, Compensation and Bond

The Shoshone Bannock Tribal Council shall appoint a Clerk of the Shoshone Bannock Tribal Court to be paid from tribal funds in an amount to be determined by the Council. The Clerk, before entering upon his duties, shall, at tribal expense, post bond in an amount determined by the Council.

Section 6.4

Oath of Office

Before entering upon the duties of office, the Clerk and Assistant Clerks shall take the following oath or affirmation:

"I, _____, having been appointed Clerk of the Shoshone Bannock Tribal Court, do solemnly swear and affirm that I will truly, faithfully, and impartially discharge all duties of my office to the best of my abilities and understanding, and will exercise the integrity which this office requires, so help me God."

Section 6.5

Term of Office

The term of office for the Clerk of the Court shall be determined by the management policies of the Shoshone Bannock Tribes.

Section 6.6

Duties

The Clerk shall render assistance to the Shoshone Bannock Tribal Court, to the Police Force of the Reservation, and may render advice and assistance to individual members of the Tribe in court related matters. It is also the duty of the Clerk to attend and keep a written record of all proceedings of the Court, to administer oaths to witnesses, to collect all fines and deposit them to the tribal account at a local bank, and to prepare all vouchers for submission to the Superintendent, to pay all fees authorized by the regulations in this Code, and to make an accounting thereof to the Tribal Council.

Section 7

Records of Court

The Shoshone Bannock Tribal Court shall keep, for inspection by duly authorized officials, a record of all proceedings of the Court, which shall reflect the title of the case, the name of the parties, the substance of the complaint, the names and addresses of all witnesses, the date of the hearing or trial, by whom conducted, the findings of the court or jury,

and the judgment; together with any other facts or circumstances deemed of importance to the case. The record of all proceedings shall be kept at the Court Office Building. Court records covering juvenile, adoption or other matters maintained confidential by the Court shall not be open for inspection except by duly authorized officials.

Section 8

Definition of Signature

The term "signature" as used in this Law and Order Code and in ordinances and amendments enacted by the Fort Hall Business Council shall be defined as the written name, official seal, or the witnessed thumbprint or mark of any individual.

Section 9

Request for outside Information

The Shoshone Bannock Tribal Court may request advice or information from any Federal, State or Tribal agency if such advice or information is deemed by the Court necessary for the just disposition of any case before it.

Section 10

Court of Record

The Shoshone Bannock Tribal Court shall be a court of record recording by mechanical or stenographic device all official proceedings before it. Such recordings shall be preserved and kept in the Court Office Building and shall be under the supervision of the Chief Court Clerk.

Section 11

Severability

If any portion of this Code is declared by the United States Department of the Interior under proper authority granted thereto by the United States Congress, or by a Court of competent jurisdiction to be invalid, the remainder hereof shall not be affected and shall remain in full force and effect.

Section 12

Attorneys in Tribal Court

Any person who is a citizen of the United States, of the age of twenty-one (21) years, of good moral character, and who possesses the necessary qualifications of learning and ability may, under such rules as the Shoshone-Bannock Tribal Court may prescribe, be admitted to practice before any division of said Court.

Any assistance or representation by any person other than a Tribal Advocate will be at the expense of the party employing such counsel.

and the judgment; together with any other facts or circumstances deemed of importance to the case. The record of all proceedings shall be kept at the Court Office Building. Court records covering juvenile, adoption or other matters maintained confidential by the Court shall not be open for inspection except by duly authorized officials.

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