

TRIBAL CRIMINAL COURT CLERK'S MANUAL

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In 1980, the Northwest Intertribal Court System drafted a Court Clerk's Manual for the Northwest Intertribal Court System. That work, which was produced as part of a training program, provided a framework for this manual.

Finally, I wish to thank my wife, Liz and children Sarah, Daniel and Aaron, for not complaining too much for all of the evenings and weekends I spent at the office working on this project.

INTRODUCTION

Tribal courts cannot function without competent clerks. Clerks are essential to a successful court system. Clerks maintain the day-to-day operations of the court, in addition to undertaking specific duties related to various types of civil and criminal cases. In order for clerks to be successful they must understand the basic framework of how court systems operate. Clerks should strive to be masters of the rules and procedures for the particular court system in which they work. This manual focuses on clerk duties related to criminal court cases.

This clerk's manual is offered only as a guide and for suggested practices and should not be relied upon as an authoritative source. Clerks are advised to check with and follow tribal codes and local court rules. Federal Indian law, as well as criminal law and criminal procedure, is areas of the law that are constantly changing. Therefore, you are advised to keep current with statutory and case law that may impact tribal courts.

It is our hope that this manual will be of value to all tribal clerks having duties associated with a criminal docket.

Randy A. Doucet

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CHAPTER 1

INTRODUCTION

- 1.1 Scope and Purpose
- 1.2 The Role of the Tribal Court Clerk in Criminal Proceedings

1.1 Scope and Purpose

This clerk's manual is designed to be a practical one-volume reference manual for tribal court clerks. The purpose of this manual is to provide tribal court clerks with a description of general job duties associated with criminal court proceedings. The manual is organized by chapters that follow the generally accepted chronological steps in the criminal justice process. At the end of the manual are forms associated with the topics covered in previous chapters.

1.2 The Role of the Tribal Court Clerk in Criminal Proceedings

The job duties of a tribal court clerk will probably differ from the job duties of a court clerk working in a state or federal court system. One reason is because tribal court clerks are often called upon to perform numerous duties, as opposed to only a few specific duties. Due to limited staffing, tribal court clerks often work on both civil and criminal matters, in addition to fulfilling duties associated with general office administration.

Job duties will vary depending on the size of the tribal court and number of clerks in a particular tribal court system. However, there are duties that are universal to all clerks. Clerks must manage legal paperwork filed with the court. Clerks will have to deal with people who are in distress or angry. Clerks will encounter people in numerous career fields and with various backgrounds, such as police officers, attorneys, witnesses, and jurors. Clerks will also be called upon to draft letters, answer phone calls, take care of administrative matters and generally solve minor problems associated with the court. Clerks attend all court sessions to insure that proceedings are recorded and properly cataloged for later reference. Clerks must also maintain a filing system that is well

organized and secure. Since court files often contain original documents, those files must be well protected.

Clerks must maintain a professional demeanor under all types of situations. This includes keeping calm in stressful situations. It is also expected that clerks will keep conversations overheard and information filed with the court confidential. Tribal communities must have confidence that matters brought before the tribal court will be handled with care and that the court staff will maintain privacy. If tribal members believe the court system does not run professionally or that information is not kept confidential, they will be reluctant to use the tribal court for fear that their private affairs will be made public.

Clerks are often the only court personnel that the public deals with on a face-to-face basis. Therefore, clerks can influence the public image of the court. If paper work gets lost it will reflect poorly on the court and the court will earn a reputation for being disorganized. If clerks are rude, then the perception is that the court is not a friendly place. All of these little things can add up to paint a poor image of the court, which chips away at the public confidence in the court.

Clerks are responsible for the day to day handling of matters of an administrative nature involving the court. Their role is essential, and the court cannot function without the clerks carrying out these duties. In handling all matters, the clerks should be efficient and diligent in the timely processing of legal paperwork. In the criminal arena where an individual's freedom or a victim's protection relies on the flow of information, the clerk becomes a critical component in the justice system. Accurate record keeping is also vital. Inaccuracy may cause a warrant to be issued for the wrong person. Warrant information must be updated as soon as possible, to remove or add warrants. In some instances, tribal codes may mandate that the clerks transmit certain information to victims of crime, such as criminal release dates, protection orders, etc., this should be done efficiently and effectively.

Although the duties of the tribal clerk are many and varied, the clerk's duties never include giving legal advice. People will ask clerks for legal advice and there will be a temptation to help. However, the best advice is to refer people with legal questions to a spokesperson or an attorney. Legal advice includes giving an opinion as to how

someone should proceed in a case. Always remember that the court is a neutral forum. The court and, therefore, its staff cannot take sides or offer to assist one side over another. The court will lose its integrity with the community as a neutral forum if legal assistance is given to one party. Further, if a clerk were to give legal advice and the outcome is contrary to the advice given, it is very likely that the litigant will tell everyone, including the judge on the record that the clerk told them to proceed in such a manner.

The majority of a court's time presiding over a criminal docket will consist of preliminary criminal hearings. Only a small percentage of cases will be decided by a trial. The primary role of the clerk in criminal proceedings is to make sure that complaints, motions and orders are timely processed. Because criminal matters involve a person's freedom, it is of vital importance that all legal documents involving warrants, judgments, release orders, etc., are accurate and forwarded to the proper agencies in a timely and efficient manner. Persons who are to be released from jail should be released as soon as possible after the judge signs the release. In no event should a release be delayed due to inefficient handling of paperwork.

Finally, two important points that should be mentioned are docket management and case management. Docket management is controlling the flow of cases set on a specific day. Case management is controlling the progression of a single case as it proceeds through the criminal justice system. Poor management of either can be a source of frustration and dissatisfaction by the public. Clerks should constantly monitor the dockets to ensure that the number of matters placed on a docket are manageable and enough time is allotted to handle all matters set that day. A well-managed court docket will save time. A poorly managed docket reflects adversely on the court and wastes the time of the judge, clerks, prosecutors, defense counsel, police officers, victims, defendants and their families.

**** Practice Pointer****

“Start Court on Time”

Help the court start sessions promptly as scheduled. If the calendar begins at 9:00 a.m., clerks should give themselves enough time to be in place and ready to start the court session when the judge makes his/her appearance. Make a few extra copies of the

morning court calendar for advocates. This will give the advocates an idea of what is on the docket and they can plan accordingly, which may help the court save time and run more efficiently.

CHAPTER 2

GENERAL CLERK DUTIES

- 2.1 Introduction
- 2.2 Legal Documents
 - 2.2.1 Files and Filing
 - 2.2.2 Format of Court Documents
 - 2.2.3 Organizing the Case File Folder
 - 2.2.4 Case Numbers
- 2.3 Evidence
- 2.4 Audio Tapes
- 2.5 Procedures for Money Transactions
 - 2.5.1 Depositing Funds
 - 2.5.2 Withdrawing Funds
 - 2.5.3 Filing Bonds
 - 2.5.4 Bond Forfeiture
 - 2.5.5 Exoneration
 - 2.5.6 Monthly Fiscal Statement

2.1 Introduction

Clerks provide the administrative support necessary to keep the court functioning. In many instances clerks work directly for a judge. In larger courts, the clerk's office may be a separate entity from the judge's office, in which case the judge will have his own support staff. In either organizational make-up, there are general duties that all clerks must handle with proficiency to keep the court functioning.

2.2 Legal Documents

Courts run on paperwork. It is the responsibility of clerks to keep legal documents organized, filed and protected. It is also important to establish a system to insure that court orders and judgments are properly routed to the person or agency that must carry out the orders of the court. This is especially important in criminal cases. Once the court issues an order, it is the responsibility of other agencies, such as the police, probation or the jail to carry out the judge's orders.

In some instances, certain court documents must be kept in accordance with the tribal code. For instance, keeping the docket and minutes of court are likely to be

mandated by the tribal code as part of the duties of the clerk of court. Other records and documents will also need to be maintained. Therefore, it is important that the clerk's office have a system to maintain documents, locate them when needed, and/or distribute copies to parties, police, the jail or judges as needed.

2.2.1 Files and Filing

The term "filing" has more than one meaning in the judicial system. It may mean placing documents into a file folder for storage in a filing cabinet, or more importantly it might describe when a party has presented legal documents to the court for the purpose of having those documents received and made part of the official record of a case.

1) Placing legal documents into the filing system

Keeping and safeguarding legal documents filed with the court is an essential clerk duty. That duty also includes having the ability to locate and produce files and specific legal documents upon request.

Each case should have its own file folder and file number or case number. There are many methods that may be used to identify files. Some filing systems may be alphabetical and use the defendant's last name. In other instances, the case files might be filed in numerical case order according to the date the case was filed. There is not one method that is more desirable than the other. However, the most important indicator of a successful filing system is that case files can be easily located when needed.

One way of making sure that files can be located when needed is to limit the access to who can take files out of the filing cabinets. A system that allows anyone, including judges, to take files without a logout system or some method of tracking who has taken a file will ultimately lead to misplaced files. Access should be limited to as few people as necessary to take and replace files in the filing cabinet. Someone who takes a file and plans to do you a favor by replacing the file, may misfile the folder. It is recommended that only those clerks who are familiar with the filing system be allowed to actually remove and then replace file folders. Prosecutors and public defenders who want to check out a file folder should sign a sheet identifying

the file they are checking out, the date checked-out and the time returned, along with the signature of the person who is assuming responsibility for the file.

Local court rules will dictate whether files may be checked out and removed from the courthouse. This practice is allowed in some jurisdictions, but consider limiting removal of court files from the courthouse. If necessary, it is better to allow attorneys/spokespersons to checkout a court file, which they may review in the courthouse. Court files that leave the courthouse have a greater chance of being damaged or lost. Some courts allow files to be checked out for review at the courthouse, with the restriction that documents may not be removed, except by a clerk for copying purposes.

Documents should be filed in the case folder in chronological order with the most recent documents filed on top. All papers should be secured into the file folder with metal fasteners to prevent papers from falling out of the folder.

The best way to prevent legal documents from getting lost is to keep current with filing. File all paperwork into the appropriate folder at the first possible moment. It is also advisable to limit the removal of documents once placed in the file. It is better to allow someone to look at an entire file rather than separating the file, which increases the likelihood of damage to the paper and loss. Also when files are removed, it is helpful to place a marker where the file was removed for ease in replacing the file.

Finally, case files should be kept separately from administrative files. Administrative files include personnel files, budgeting files and files that contain documents pertaining to the administration of the court.

2) Filing legal documents for the record:

When a party presents legal documents to the clerk of court, they are “filing” those documents. The documents should be immediately stamped with a stamp indicating the name of the court and the date and time the papers were filed. This mark is evidence that the legal documents were filed. The date and time a document is filed is important to determine whether the document was “timely” filed as required by the tribal code or a judge’s order. However, it is not for the clerk’s office to make

determinations as to whether legal documents are filed timely, that determination will be made by the judge.

The party filing the document should give the original to the court, which will become part of the record of the case. The filing party will likely have multiple copies for stamping as proof that the document was filed. Usually when a legal brief is filed, there will be an extra copy or “judge’s copy” which is given to the judge for review.

It is a good idea to keep a “docket sheet” in the court’s case file to record when a document is filed. Useful information on the docket sheet might include the name of the document, the date filed and by whom filed. This allows someone to quickly view what is in the file by scanning the docket sheet.

At the time of filing, the clerk may want to make a cursory inspection of the legal documents to make sure the information in the caption of the document is correct. It is not uncommon for attorneys/spokespersons who use computers and the same forms on a regular basis, to forget to change a case number or name from a previous case when they have used the form before. In some instances, with attorneys who practice in more than one court, they may have the name of the wrong court in the caption. Mislabeled documents may cause problems for everyone involved if a document is misfiled.

The general rule is that all documents presented for filing should be accepted, unless otherwise specified by the tribal code or rule of court. It is for the judge and attorneys/spokespersons to later determine whether a document was timely filed. Making a determination as to whether a document should be filed is a legal determination and not for clerks to make. The clerk’s responsibility is to accept the documents and make sure they are properly filed.

2.2.2. Format of Court Documents

The standardization of pleadings will assist with court efficiency and ease of handling and identifying documents filed with the court. Courts may adopt local rules of court, which standardize the format of documents, including paper size.

1) Paper Size

If your court has not already adopted a standard paper size, you may consider it. Many courts are getting away from legal size paper and adopting rules requiring only letter size paper. This avoids instances in which some attorneys/spokespersons may file legal size documents, while others file letter size papers. These variations in paper size can cause files to become difficult to handle and may lead to some paper work becoming frayed. Regardless of which paper size suits your particular court, it is advisable to adopt a local rule requiring one paper size.

2) Margins

In adopting a local rule for margins, consider the space necessary to affix the paper into the file folder. The pleadings should leave a top margin with sufficient space for hole punching. The standard margins are usually one inch on all sides, except for the first page, which may require a larger top margin to leave space for the court-filing stamp.

3) Font and Type Size

Pleadings should be printed on white paper with black ink using standard 12-point type. Consider adopting rules regarding spacing between lines and type style, such as Times New Roman or Courier. The standard spacing in pleadings is usually double space.

4) Identifying Information contained in the Pleadings

Every pleading should contain the following identifying information:

- a) Title of the Court
- b) Names of the parties
- c) Case number
- d) Name identifying the type of pleading - "CRIMINAL COMPLAINT"

- e) Attorney/spokesperson's name, address, phone number and bar number, if applicable. Pleadings must be signed by the attorney/spokesperson, or individual party if they are representing themselves.

2.2.3 Organizing the Case File Folder

Generally criminal cases tend to follow a standard procedural pattern. The forms filed in the typical criminal case will also usually follow a standard pattern. The majority of defendants will enter a plea of guilty prior to trial. This will usually be followed by hearings to determine whether the defendant is complying with the court's judgment. In criminal cases there are only two parties, the tribe and the defendant. Therefore, the paperwork filed in the typical criminal case will only require a standard manila folder. This folder will keep all legal papers, documents, letters, reports and notes filed with the court.

Courts will likely differ on how to organize the criminal file folder. However, here are some recommendations:

- 1) That folders have metal binders on both sides.
- 2) On the left side of the file folder place court orders with a sheet for taking notes on top. This allows the judge or clerks to make notes about each case during a hearing. These notes allow someone to review the progress of the case at a glance. Examples of notes might be when the arraignment was held, whether bail was required and how much, or if the defendant has failed to appear for a hearing and how many times.
- 3) All other documents such as criminal complaints, notices, etc. should be placed on the right side of the file folder.
- 4) It is a good idea to tab important documents so they can be quickly found in the file folder, such as the criminal complaint or motions.

2.2.4 Case Numbers

Each court is likely to have its own method for numbering cases. Consider a case numbering system that not only sets each case apart from all others, but that can also provide other useful information at a glance. An example of a typical case number might be as follows:

Case No. 2003.05 CR 087

Each number and letter has a meaning as shown below:

The first set of numbers is **2003**. This represents the year the case was filed. This can be shortened to **03**, as in Case No. **03.05 CR 087**.

The second set of numbers, **05**, represents the month the case was filed. In the example, **05** represents the fifth month of the year, May.

The letter **CR** indicates this is a criminal case. Some courts use the letter **CV** for civil cases, and use **CRJ** to represent a criminal juvenile case. In the example, **CR** represents a criminal adult case.

The numbers **087** indicates that this was the 87th criminal case filed in 2003.

The example case numbering system allows you to know the year and month the case was filed, identifies the type of case and tracks the number of criminal cases filed in that year, all at a glance at the case number.

2.3 Evidence

During the course of a trial the parties will offer documents, exhibits or other types of physical evidence for admission into evidence. This evidence will be presented to the court for consideration in the case, by a judge or jury and become part of the trial record. This evidence must be identified and safeguarded.

It is the duty of the clerk to safeguard and store evidence admitted during a trial. Legal documents taken into evidence can be identified and stored in the court file. Procedures should be established to handle other types of evidence, such as weapons or illegal drugs. This might be done in cooperation with the police who will likely already have procedures and storage facilities for physical evidence.

After a case has been decided and all appeals have been exhausted, with permission of the judge, the clerk may return evidence to the parties. Be sure to have the party receiving the returned evidence sign a receipt that they have had their property returned and keep the receipt in the case file or some other file used by the court for keeping such receipts. Evidence of an illegal nature, such as drugs, should be turned over to law enforcement for proper disposal.

2.4 Audio Tapes

The majority of tribal courts use tape recorders to record proceedings. Tape recording provides a low cost method of preserving the audio portion of hearings, which may later be transcribed into a written format, if necessary. It is important to establish procedures to keep track of the proceedings being recorded on the tape in order for those proceedings to be easily located, if needed in the future. It is also important to establish a system to safeguard cassette tapes.

The following suggestions may help preserve audio tapes:

- 1) Keep audio tapes in a cool dry, lockable drawer. Use the paper index in the plastic protective case for labeling dates, names and case numbers;
- 2) Keep recorded tapes filed by date;
- 3) Start recording blank tapes on Side 1;
- 4) While in court, keep a log of events with the tape digit counter in the left-hand margin, then the corresponding speaker and event in the right;

Example:

<u>Tape Counter</u>	<u>Speaker</u>	<u>Proceeding</u>
000- 05	Clerk	“Arrestment of Joe Jones”
05 – 25	Judge	“Case No., names, etc.”
25 – 32	Prosecutor	Motion to Dismiss
33 – 47	Judge	Granted
49 – 50	Judge	Adjourned

- 5) Reset the tape counter to 000 before starting each tape. This will allow you to “fast forward” or “reverse” to the exact part of the tape you or the Judge wish to hear over again;
- 6) Be sure to put the tape in a protective case and IDENTIFY both the tape itself and the outside case with names, case numbers and dates of court proceedings; and
- 7) Adopt local rules for discarding or reusing tapes after appeal times have lapsed.

On occasion parties will want copies of tapes. Consider establishing a fee for the price of the cassette and the time it takes to make a copy of the tape.

2.5 Procedures for Money Transactions

One of the most sensitive duties a clerk will have is the handling of money. It is important for the integrity of the clerk and the integrity of the court that all transactions involving money be handled with great care and according to established procedures.

All money received by the court must be receipted, balanced and disbursed according to procedures established by the tribal code, rules of the court or by court order. To insure that disbursements are carried out correctly basic accounting procedures must be followed.

2.5.1 Depositing Funds

Enter a record of all money and bail bonds received in the court account, indicating:

- a. Case number;
- b. Name and address of payer;
- c. Date;
- d. Receipt number; and
- e. Whether payment is for bond, fine, special fee, e.g., money to be paid another party.

Transmit money to the auditor or Tribal Treasurer for deposit in the court trust fund.

2.5.2 Withdrawing Funds

Enter a record of monies disbursed in the court account, indicating:

- a. Case number;
- b. Name and address of payee;
- c. Date; and
- d. Purpose for the withdrawal.

2.5.3 Filing Bonds

A bail bond is a guarantee supported by the potential forfeiture of the value of the bond for the purpose of insuring that a party will appear in court at the times ordered by the court. Bonds can be cash bonds (cash is deposited with the clerk), property bonds (property is pledged), or surety bonds (persons other than the party pledge to pay a specified amount if the party does not appear). The bonds should be deposited in a court bond account consisting solely of bonds. Court bond accounts should not be co-mingled with other court accounts containing filing fees, etc.

a) Cash Bond

1. Collect the money and give a receipt to the depositor;
2. Place a copy of the receipt in the bond receipt book; and
3. Deposit funds in court bond account.

b) Surety Bond

1. Receive and file stamp the bond, inspect to insure that it is filled out properly and give the depositor a receipt;
2. Place a copy of the receipt in the bond receipt book; and
3. File the bond in the case file.

c) Property Bond

The judge must approve a property bond before it can be accepted.

1. After court approval, receive and file stamp the bond and give the depositor a receipt;
2. Place a copy of the receipt in the bond receipt book; and

3. File the bond in the case file.

2.5.4 Bond Forfeiture

If a party fails to appear, the court may order the deposited bond forfeited.

1. On order of the court forfeiting the bond, notify the bonding company or person posting the bond; and
2. Enter the bond forfeiture into the case status sheet.

2.5.5 Exoneration

After a case is disposed of, the judge may order any bond deposited exonerated or refunded. Upon the Court ordering a refund of the bond, draft a check and a voucher for signature by the judge. As a matter of practice, return cash bonds to the person who posted the bond. There have been occasions when a cash bond returned to a defendant has not been returned by the defendant to the person posting the bond.

2.5.6 Monthly Fiscal Statement

At the end of each month, the clerk should prepare a report for the judge, which gives an up-to-date report on all monies expended and/or deposited in all court accounts, including the bond account.

CHAPTER 3

INITIAL ACTIONS & APPEARANCES

- 3.1 Initiating a Criminal Action
 - 3.1.1 Summons and Complaint
 - 3.1.2 Duties Upon Receipt of Complaint
- 3.2 Initial Appearance (Arraignment)
 - 3.2.3 Duties Prior to Initial Appearance (Arraignment)
 - 3.2.4 Duties During Initial Appearance
- 3.3 Appointment of Attorney/Spokesperson (if applicable)
- 3.4 Guilty Plea
- 3.5 Defendant Placed in Custody
- 3.6 Scheduling of Pre-Trial or Trial
- 3.7 Duties Following Initial Appearance

3.1 Initiating a Criminal Action

The criminal process begins with the issuance of a citation, or filing of a criminal complaint. The criminal complaint is the official charging document prepared by the prosecutor's office. After review of the police reports and evidence, the criminal complaint states the charges that the prosecutor expects to prove at trial. The complaint also provides notice to the defendant of the crimes he/she is alleged to have committed. The court may be aware of the defendant and the alleged crime prior to the filing of the complaint through a probable cause hearing or bond hearing, but the complaint must be filed to begin formal court proceedings.

At a minimum the criminal complaint should consist of the following:

- 1) Identify the prosecuting jurisdiction;
- 2) Cite the criminal code section which is alleged to have been violated, and cite the ordinance and the maximum penalties;
- 3) Date and time of the alleged offense;
- 4) Cite the location of the offense (important for jurisdiction);
- 5) Give a brief fact description of the alleged offense;
- 6) Name and date of birth of the defendant;
- 7) Venue or location of the court;
- 8) Conclusion;
- 9) Signature of the prosecuting authority; and

- 10) If the summons and complaint are combined, then include the date and time of the required appearance and address of the court.

3.1.1 Summons and Complaint

Some jurisdictions combine a summons and complaint into one document, although the summons and complaint serve different purposes. The summons commands the defendant to appear before the court at a set date and time. The complaint notifies the defendant of the charges.

The summons and complaint serve two functions:

- 1) **Notice** – The defendant is placed on notice that he/she has been accused of having committed a certain crime and that they must appear in court to answer the charges at a set date and time; and
- 2) **Start of the Criminal Process** – Filing of the complaint initiates the criminal process for that particular crime and defendant. The specific date that a criminal complaint is filed may be important in determining whether a charge has been brought within the statute of limitations for a particular crime.

3.1.2 Duties Upon Receipt of Complaint

Upon receipt of the complaint the court clerk begins the critical function of compiling and safeguarding the record of a tribal court action. It is this record that faces possible review and scrutiny of tribal members, the tribal appellate court, practicing attorneys, federal judges, and members of the general public. Therefore, the procedures followed by the court clerk from the filing of the complaint forward substantially affect the image of tribal courts and tribal governments. The following procedures are general clerk duties, which may vary depending on the requirements of each particular tribal court:

1. File stamp the complaint with the date and time of filing.
2. Assign a criminal case number.

3. Type a label for the file folder showing the case number and defendant's name.
4. Fill out a case status sheet and attach to the file. Enter the complaint as the first action item at the top.
5. Enter the case into the court case tracking system. For some courts this may be an index card filing system, while other courts may have a computer program for criminal case management.
6. Set the case on the calendar for initial appearance (arraignment) before a judge.
7. Prepare a summons to give notice to the defendant of the initial appearance and attach a copy of complaint or citation to be served with the summons.
8. After the summons has been completed, notify tribal police to serve the summons and complaint on defendant and to return a copy of summons with an affidavit of service to the court for filing after service has been completed.
9. Send court calendar to judge, prosecutor's office, and public defender (if applicable) at least one week prior to arraignment.

3.2 Initial Appearance (Arraignment)

The initial appearance or arraignment is the first formal court proceeding at which a defendant will appear. The arraignment is held in criminal cases to inform the defendant of the charges, advise the defendant of his rights, determine if the defendant needs an appointed attorney/spokesperson, and review the defendant's custody status.

At the arraignment, the criminal complaint is read aloud in open court and the defendant is explained his/her rights and is given the opportunity to enter a plea. The defendant may waive the reading of the complaint. Some courts allow for defendants who are represented by an attorney or spokesperson to waive their appearance at the arraignment by having their defense attorney/spokesperson file a written waiver of arraignment, which also contains the defendant's plea. The defendant has four plea options at arraignment:

- 1) Not Guilty;
- 2) Guilty;
- 3) No Contest; or
- 4) Not Guilty by Reason of Insanity.

At a minimum the arraignment should address the following:

- 1) Identification of the person charged as the defendant;
- 2) A preliminary jurisdictional determination (proper defendant and crime committed within the jurisdiction of the court);
- 3) Informing the defendant of the charges that have been filed against him/her;
- 4) Advising the defendant of his/her rights under the Indian Civil Rights Act or the Tribe's own constitution;
- 5) Entering of a plea – guilty, not guilty, or no contest;
 - a) If defendant enters a plea of not guilty, or the court enters a plea for the defendant, - set the next court date, whether it be for a pre-trial hearing or trial.
 - b) If defendant enters a plea of guilty or no contest, the court should impose a sentence or set the matter for a sentencing date.
- 6) If a not guilty plea is entered, the court should determine if the defendant is entitled to pretrial release, if pretrial release is proper, the court should determine what, if any, conditions of release should be imposed and/or money bond set to ensure sufficiently the defendant's appearance at trial.
- 7) If a guilty or no contest plea is entered, determine whether the defendant is entitled to release prior to the date set for sentencing. If such release is proper, what conditions and/or money bond are necessary to ensure defendant's appearance on the date set for sentencing.
- 8) If the defendant refuses to enter a plea, the court should enter a "not guilty" plea on his/her behalf.

The arraignment may also accomplish one of the following:

- 1) Bail may be set at the arraignment, along with conditions for release.
- 2) Depending on the resources of the court, a public defender may be assigned at the arraignment.

3.2.1 Duties Prior to Initial Appearance (Arraignment)

1. Insure that the judge's case file is up-to-date.
2. Notify the bailiff to be present (if applicable).
3. Check case file to verify that all parties have been served with notice of hearing and evidence of service is on file.
4. Insure that the courtroom is neat and in good order.
5. Set up court recorder and test recording device. Have extra tapes and status sheets available.
6. Have appropriate forms, blackboard, easel pad and stand readily available.
7. Have fine receipt book available.
8. Have a sufficient supply of exhibit stamps available.
9. Have exhibit admissions stamp out ready for use.
10. Set the clock for the correct time and the calendar for the correct day.
11. Have a supply of staples and paperclips.
12. Have date stamp on today's date.
13. Dress in manner established by local rules.

3.2.2 Duties During Initial Appearance

If there is no bailiff present to open court, the clerk of court opens court by rapping the gavel and making the following announcement:

“All rise. _____ Tribal Court is now in session, the Honorable _____ presiding.”

Have a copy of the morning court calendar available for the judge to call the calendar. As the judge calls the names on the calendar, mark on a copy of the calendar those present.

Fill out the arraignment sheet to include the following information:

- 1) Date of proceedings;
- 2) List all officers of the court present by name;

- 3) Record the case number and title of case;
- 4) Record attorney/spokesperson giving the name of the individual, firm name and parties (give tribe's attorney, defendant(s) and defendant's attorney/spokesperson);
- 5) Check off rights read to defendant; and
- 6) State the scheduling of any further actions, bail set, or motions made and rulings given.

During the proceedings continually monitor the recording device to insure that the proceedings are being recorded. At the end of the proceedings the judge will adjourn court by stating, "Court is adjourned." Assist the judge in leaving the courtroom by telling the spectators and parties to stand by announcing, "All rise."

3.3 Appointment of Attorney/Spokesperson (if applicable)

If the judge appoints attorney/spokesperson, the judge obtains information about the defendant's status. The judge then signs either an order either appointing attorney/spokesperson or an order denying the request.

Order appointing attorney/spokesperson for defendant:

- 1) Fill out notice of appointment forms;
- 2) Send copies of order appointing attorney/spokesperson, complaint or citation and notice of trial or pre-trial to defender's office;
- 3) Send a copy of order appointing attorney/spokesperson to prosecutor's office;
- 4) File documents in the case file; and
- 5) Enter required information on case status sheet.

Order denying appointment of attorney/spokesperson:

- 1) Send copy of order denying appointment to the defendant and the chief clerk;
- 2) File documents in the case file; and
- 3) Enter required information on case status sheet.

3.4 Guilty Plea

There may be occasions when a defendant wishes to enter a plea of guilty at the arraignment. A clerk's duties may be the following:

- 1) Prepare an order accepting guilty plea for judge's signature;
- 2) Fill out judgment and sentencing order if requested by the court;
- 3) Give or mail copies of the above order to defendant (if mailed, affidavit of mailing required);
- 4) File documents in case file;
- 5) Enter required information on case status sheet;
- 6) Prepare appropriate orders for the judge's signature if there is a jail sentence imposed, fines or alternative sentencing; and
- 7) Forward copies of appropriate orders to probation or the jail, or other departments as may be appropriate.

3.5 Defendant Placed in Custody

Defendant is ordered remanded to custody:

- 1) Fill out a commitment form in the courtroom;
- 2) Route the commitment to the jail after the hearing; and
- 3) Receive cash/bond as established on the commitment form.

Defendant is ordered released on own recognizance:

- 1) If the defendant was in custody, fill out a personal recognizance form; and
- 2) If the defendant was not previously in custody, the judge makes an in-court order on the record continuing the release on defendant's own recognizance.

3.6 Scheduling of Pre-Trial or Trial

The judge sets the pre-trial or trial date either at the initial appearance or shortly thereafter.

- 1) Type and mail a notice of pre-trial (or trial) to the prosecutor, defendant's attorney/spokesperson, defendant (if defendant is appearing without representation), and chief clerk;
- 2) Prepare affidavit(s) of mailing on documents sent to the above;
- 3) File documents in case file;
- 4) Enter required information on case status sheet; and
- 5) Place the case on the calendar for the date and time scheduled.

*****Practice Pointer*****

If another hearing is set while the defendant is in court, serve the defendant with a "promise to appear" for the next hearing while they are in court. The promise to appear should state the next court date, the purpose of the next court appearance and the time to appear. The promise to appear should also warn the defendant that if they fail to appear, a warrant might be issued for their arrest. Have the defendant sign the promise to appear showing that they received a copy.

3.7 Duties Following Initial Appearance

- 1) Get case file from the judge;
- 2) Make notes in the file explaining action taken, for example:
"Arrestment - defendant entered plea of not guilty, bail set at \$500.00, pre-trial hearing set for June 24, 2003, defendant served with promise to appear for next hearing."
- 3) Insure courtroom is clear of all case related materials;
- 4) Secure all tapes and return to locked storage area;
- 5) Enter required information on case status sheet; and
- 6) Calendar next hearing.

*****Practice Pointer*****

When returning bail money, consider returning the bail money only to the person who posted the bail. This prevents the bail money from becoming "lost" before it reaches the person who posted the bail.

CHAPTER 4

PRE-TRIAL HEARINGS

- 4.1 Pre-Trial Hearing
- 4.2 Duties Prior to Pre-Trial Hearing
- 4.3 Types of Pre-Trial Hearings
 - 4.3.1 Probable Cause Challenges
 - 4.3.6 Motion and Suppression Hearings
 - 4.3.7 Motion to Compel Discovery
 - 4.3.8 Plea Bargaining
 - 4.3.9 Continuances
- 4.4 Failure to Appear
- 4.5 Duties During Pre-Trial Hearing
- 4.6 Duties Following Pre-Trial Hearing

4.1 Pre-Trial Hearing

A pre-trial hearing is a hearing between all parties to determine any contested issues prior to the trial.

4.2 Duties Prior to Pre-Trial Hearing

1. Insure the judge's case file is up-to-date;
2. If the parties have filed legal briefs in support of a motion that has been filed, make copies of the brief for the judge days in advance of the pre-trial hearing. It is also advisable to remind the judge that there will be oral argument on the briefs so that the judge can prepare. (Some courts require a "judge's copy" of legal briefs to be filed along with the original brief.)
3. Check case file to verify that all parties have been served with notice of hearing and evidence of service is on file;
4. Insure that the courtroom is neat and in good order;
5. Insure that the bench has a legal pad, pen, water and appropriate code book or ordinance;
6. Set up court recorder and test recording device (have extra tapes and status sheets available);
7. Have appropriate forms, blackboard, easel pad and stand readily available;

8. Set the clock for the correct time and the calendar for the correct day;
9. Have colored pens/pencils available for diagrams;
10. Have a supply of staples and paperclips;
11. Have date stamp with today's date;
12. Have water and glasses on the attorney/spokesperson tables; and
13. Dress in manner established by local rules.

4.3 Types of Pre-Trial Hearings

Although there are numerous types of pre-trial hearings, there are general procedures that are applicable to all pre-trial hearings. For example, a typical pre-trial hearing will be initiated by one party filing a motion. The motion will be accompanied by a request for a hearing and a brief (or memorandum) in support of the motion. The following are typical pre-trial motions that might be filed in a criminal case which would require a pre-trial hearing:

4.3.1 Probable Cause Challenges

After charges have been filed and the defendant has reviewed the police reports and other discovery material, the defendant may challenge probable cause. This type of hearing is common in traffic related cases, when the defendant challenges the probable cause to make the initial traffic stop. The defense may cross-examine the police officer and other witnesses. The court must determine whether there was sufficient probable cause to make the traffic stop or arrest. Depending on the court's ruling, evidence may be excluded if probable cause is not upheld at the probable cause hearing.

4.3.2 Motion and Suppression Hearings

A common pre-trial motion is the motion to suppress or exclude evidence for use at trial. The basis will likely be that during the arrest or investigation of the crime the evidence was obtained in violation of the defendant's rights. The challenge to admissibility of evidence may include exclusion of physical evidence, confessions, or

inculpatory statements or identification testimony. The purpose of the motion to suppress is to avoid unnecessary trials and to prevent juries from hearing references to evidence that has been determined to be inadmissible.

4.3.3 Motion to Compel Discovery

The prosecution is obliged to disclose evidence to the defense that divulges the strengths and weaknesses of the prosecution's case. The discovery process provides both sides the opportunity to gather information about the strengths and weaknesses of the other side's case. This step is important to prepare for trial. It is also important for each side to assess its own case and determine if a plea bargain would be advisable instead of trial.

Discovery is also intended to eliminate the unwarranted prejudice arising from surprise testimony. Generally, the defendant is entitled to know what evidence the prosecution plans to use at trial. A motion requesting the prosecution to turn over discovery material might ask for the following:

- 1) All oral, written or recorded statements made by the defendant;
- 2) Police reports and witness statements;
- 3) Copy of defendant's criminal arrest/conviction records;
- 4) Lab reports (opportunity to have an independent lab examine evidence); and
- 5) Video tapes, pictures, recordings, etc.

4.3.4 Plea Bargaining

Plea negotiations between prosecutors and defendants are routine. Although plea bargaining is not initiated by a motion, plea bargaining does take place prior to trial. Some courts have adopted procedures that provide for a "pre-trial hearing" for the specific purpose of getting the prosecution and defendant together in advance of trial to discuss a plea bargain. This procedural step is often an efficient manner of disposing of cases prior to trial. Common arrangements in "plea bargaining" are: (1) pleading guilty to a lesser included offense; (2) dismissal of some of the charges in the complaint; and (3)

recommendations by the prosecutor to the court as to the sentence the defendant should receive for committing the offense.

4.3.5 Continuances

A continuance is a delay or postponement of a hearing or trial, which is granted by the court prior to a hearing, or trial. The motion can be oral or in writing. A written motion should allege the specific grounds on which it is based. The motion must be signed by the defendant or his/her spokesperson. An oral motion is also permissible to continue a matter on the day of the hearing or trial if the grounds causing the need for the continuance were unexpected and a genuine surprise to the defendant.

The court may also allow a joint motion to continue, in writing or orally, brought by the prosecutor and defendant. In some instances, the parties may have determined that they need more time to prepare, or that more time is needed to supply information to the other party which may allow for a dismissal of the charges or a plea at a later date. It is also common for a joint motion to continue be made to give the defendant time to complete a condition by the prosecutor which may then result in a dismissal or reduced charge.

If the parties are not in agreement to the motion for continuance, the court should hear arguments from both sides and determine whether a continuance should be granted. A common claim by a defendant, seeking a continuance, is that his/her attorney/spokesperson has not had sufficient time to prepare the case. The court should consider whether the preparation time was so minimal as to cast doubts on the basic fairness of the proceedings. There is no specific time in which to prepare a case, the attorney/spokesperson must have time to confer and consult with the client and prepare a defense. The defense should have a reasonable time to prepare his/her defense and must make diligent efforts toward preparation in the time allotted, and the lack of opportunity to prepare must be prejudicial to the defendant.

4.4 Failure to Appear

When a defendant fails to appear the court may be requested to take action to have the person appear. If the defendant has been personally served with a notice giving a date and time to appear, the court may order a bench warrant be issued for the person's arrest and detention until the next hearing date. If the person has not been personally served, then it may be more appropriate to issue an order to show cause why a bench warrant should not be issued for their failure to appear. Bench warrants should only be issued if the defendant has been personally served with a notice providing the date and time they are to appear.

The clerk will need to prepare the bench warrant for the judge's signature or prepare the order to show cause. Some courts mail out a notice to defendants that a bench warrant will be issued for their arrest if the defendant does not contact the court within a specific number of days. The defendant is often required to appear at the clerk's office to sign a promise to appear at the next scheduled court date or the bench warrant will be issued.

4.5 Duties During Pre-Trial Hearing

General clerk duties during a pre-trial hearing include:

1. Record the time, date and purpose of the proceeding in the court notes;
2. List all officers of the court present by name (judge, court reporter, and clerk);
3. Record the case number and title of case; and
4. Record the name of prosecutor, defendant, and defendant's attorney/spokesperson.
5. If the pre-trial hearing involves taking of a guilty plea, have the guilty plea forms available for the defendant to complete.

4.6 Duties Following Pre-Trial Hearing

1. Get case file from the judge;
2. Make notes in the case file explaining action taken by the court;

3. Insure courtroom is clear of all cases related materials;
4. Secure all tapes and return to locked storage area;
5. Make entry in register of actions; and
6. Enter required information on case status sheet; and
7. Issue orders or bench warrants, if any, as ordered by the judge.
8. Serve promise to appear on defendant for next hearing.

*****Practice Pointer*****

As a matter of standard practice, consider verifying a defendant's address and phone number after every hearing. Some defendant's move often and it can be difficult to contact them. Also, remind defendant's that it is their responsibility to keep the court informed of a new address or telephone number.

CHAPTER 5

BENCH TRIALS

- 5.1 Courtroom Proceeding
- 5.2 Duties Prior to Bench Trial
- 5.3 Duties During Bench Trial
- 5.4 Duties Following Bench Trial

5.1 Courtroom Proceeding

A bench trial is a trial to the judge. The judge decides whether the defendant is guilty or not guilty at the close of trial. In a jury trial, the jury makes the decision whether the defendant is guilty or innocent. This chapter concerns clerk duties for a bench trial.

The fact finder in a bench trial is the judge. Each side tells their respective stories through the testimony of witnesses and/or by the presentation of exhibits.

The generally accepted order of trial is as follows:

Opening Statements – by both parties – prosecution goes first

Prosecution puts on their case

Defense puts on their case

Prosecution rebuttal

Defense rebuttal

Prosecution closing statement

Defense closing statement

Prosecution closing statement rebuttal

From time to time, circumstances arise which may require modification in the order of the trial. In that instance the judge has discretion to change the order of proof in a particular trial and which is not subject to review on appeal, except for a gross abuse of that discretion. For example, a witness may be taken out of order if they are only available at a certain day or time during the trial.

5.2 Duties Prior to Bench Trial

1. Insure witness subpoenas are issued per the request of the parties;
2. Insure that the judge's case file is up-to-date (remind the judge a few days in advance that a trial is on the docket so that the judge can begin reviewing the file);
3. Notify the bailiff to be present (if applicable);
4. Check the case file to verify that all parties have been served with notice of hearing and evidence of service is on file;
5. Insure that the courtroom is neat and in good order;
6. Insure that the bench has a legal pad, pen, water and appropriate code book or ordinance;
7. Set up court recorder and test recording device (have extra tapes and status sheets available);
8. Have appropriate forms, blackboard, easel pad and stand readily available;
9. Have fine receipt book available;
10. Have a sufficient supply of exhibit stamps available;
11. Have exhibit admissions stamp out ready for use;
12. Check the clock for the correct time and the calendar for the correct day;
13. Have colored pens/pencils available for diagrams;
14. Have a supply of staples and paperclips;
15. Have date stamp with today's date;
16. Have water and glasses on the counsel tables; and
17. Dress in manner established by local rules.

5.3 Duties During Bench Trial

1. Record name of witnesses and type of examination whether direct, cross, redirect, recross, rebuttal or surrebuttal;
2. Monitor the recording device to insure that the proceeding are being recorded;

3. Record all motions, stipulations, offers of proof and the Court's orders thereon; and
4. Mark all exhibits as presented.
 - (a) Use the alphabet for prosecution's exhibits;
 - (b) Use numerals for defense exhibits;
 - (c) List all exhibits in the minutes of proceeding as identified, offered and admitted as directed by the court;
 - (d) Record all objections to exhibits by whom made and the court's rulings thereon;
 - (e) If a copy of an exhibit is to be substituted as ordered by the court, so state in the minutes;
 - (f) Upon recess of the proceeding and before leaving the courtroom, gather all exhibits for safekeeping by the clerk; and
 - (g) Keep all exhibits, both admitted and rejected, in possession of the clerk until time of appeal has expired.
5. Make a record of all recesses and convening by the hour; and
6. Make a record of opening, closing and final argument of respective counsel.

5.4 Duties Following Bench Trial

1. Account for all exhibits;
2. Get case file from the judge;
3. Make notes in the case file explaining action taken;
4. Insure that the courtroom is cleared of all case related materials;
5. Secure all tapes and return to the locked tape storage area;
6. Type court minutes and put in case file;
7. Enter required information on case status sheet;
8. Catalogue and secure any physical evidence admitted during the trial;
9. Prepare judgments or orders as directed by the judge following the trial;
10. Distribute judgments or orders as directed by the judge;

11. Serve promise to appear on defendant if required to return for a sentencing hearing.
12. Calendar sentencing hearing if applicable.

CHAPTER 6

JURY TRIALS

- 6.1 Jury Selection
 - 6.1.1 General
 - 6.1.5 Establishing the Jury list
 - 6.1.6 Selecting a Panel
 - 6.1.7 Filling the Jury Box
- 6.2 Duties Prior to Jury Trial
- 6.3 Duties Convening a Jury Trial
- 6.4 Voir Dire (Jury Examination)
 - 6.4.1 Exercise of Challenges
- 6.5 Procedures for Seating Jurors for Criminal Jury Trials
 - 6.5.1 Checklist for Seating Jurors
 - 6.5.3 Rules for Jurors
- 6.6 Duties During Testimony in Jury Trial
- 6.7 Duties for Jury Deliberations
- 6.8 Duties Following Jury Trial

6.1 Jury Selection

6.1.1 General

Trial by jury, both in civil and criminal cases, requires an impartial jury drawn from a cross-section of the community. This is often a challenge for tribal courts. Indian communities are often small and it is common that most, if not all, of the members selected for jury duty will know the parties and witnesses, as well as have heard something about the case. This does not mean that the defendant cannot receive a jury trial. It does, however, make the task of jury selection more challenging.

Some tribal codes may provide for procedures to exclude close relatives of a defendant, witnesses or attorney/spokesperson. It is important to remember that the juror must be impartial. The court should seek to exclude those persons who believe they cannot be impartial due to their relationship to someone involved in the case, due to their having formed an opinion based on what they may have heard in the community or some other reason.

The procedures used to select a jury will vary according to the size of the court and the number of jurors needed. However, the basic procedures used in all jurisdictions are generally similar. There are four stages in the jury selection process:

- 1) Establishing the jury list;
- 2) Selecting a jury panel;
- 3) Filling the jury box; and
- 4) Examination of the prospective jurors.

Clerks will need to check the tribal code at their court to make certain the procedures they are following comply with tribal law. Consider reviewing the tribal code procedures for jury trials and making a checklist of duties that must be done, including time limits in which certain duties must be completed by. The following duties are suggestions, keeping in mind that your tribal code may include additional duties or set time limits different from the following:

6.1.2 Establishing the Jury List

The first step in jury selection is the most time-consuming because it involves compiling a list of prospective jurors. The list should be made far in advance of the time a jury will be needed for trial. The method used for selecting names must insure that the list contains a cross section of all members of the community within the jurisdiction of the court. While a minimum age must be established, it is not proper to exclude groups because of income, religion, or gender. In state and federal courts, jury lists are usually based on voter registration or tax rolls, but most tribal courts use tribal membership rolls.

One method of compiling a jury list is to estimate the number of jurors who will be needed during the next year or two and establish a ratio between the number of jurors needed and the number of adults on the tribal rolls. If, for example, the court anticipates twenty jury trials during the next two years and a panel of twenty is needed for each trial, a jury list of 400 names will be required. If the tribe has 4,000 members, but half are children or live off reservation, one out of every five eligible members will be selected for the jury list. The court clerk must then go through the rolls and select every fifth name for the jury list. This selection process must be done in such a manner that there is no opportunity for anyone to manipulate the selection process; the clerk **MUST NOT**

attempt to pick persons whom he/she feels will be good jurors. The clerk MUST pick every fifth name.

Depending on the tribe, non-members living within the boundaries of a reservation and tribal members living off reservation may be included on the jury lists. Check the tribal code for qualifications for jury members.

6.1.3 Selecting a Panel

Once the jury list has been completed, panels may be selected from the list whenever they are needed. The panel is a smaller group of potential jurors from which the final jury of six will be chosen. The panel is selected by drawing names at random from those on the original list. Experience will determine how many potential jurors should be called to get the six who will hear the case. One might start by calling 20-25; the number then can be increased or decreased as required. An easy method is to write the name of each person on the jury list on a separate slip in a box. The clerk can draw out the required number of names for each panel.

Although the actual selection of jury lists and panels is an appropriate job for the court clerk, the trial judge is responsible to see that the jury is properly chosen and that it represents a cross section of the community. The judge will also have to rule on all requests to be excused from jury duty. If a prospective juror asks you if they can be excused, advise them that the judge will make the decision.

6.1.4 Filling the Jury Box

The court clerk must estimate the number of jurors to be called, or summoned, in order to assure enough are left after all excuses to be exempt from jury duty have been approved and preemptory challenges and challenges for cause have been made. In making such an estimate, the clerk will have to consider the type of the case to be tried, who the parties are, how long the trial may last, if either or both sides are represented by attorneys, and how much publicity there has been about the case in the community. Where the tribal code provides for a six-member jury with three preemptory challenges per side, the clerk may want to call approximately 20-25 jurors.

The jurors should meet with the clerk at least 30 minutes before the case is called for trial. In this way the clerk can see how many people have failed to appear. He/she can also check to insure that each is qualified, and if any seek to be excused, that request can be taken to the judge.

The jurors are then taken to the courtroom and seated in the spectator section (an area should be reserved for them so they will not come in contact with any of the parties, witnesses, their relatives or attorneys). The case is called for trial and juror examination and selection begins shortly thereafter.

6.2 Duties Prior to Jury Trial

The following is a general checklist of duties prior to a jury trial.

1. Summon jurors to appear as directed by the court (usually weeks in advance);
2. Insure that the judge's case file is up-to-date (remind the judge at least a week in advance of the upcoming jury trial);
3. In the weeks leading up to the jury trial keep in contact with the prosecutor and defendant's attorney/spokesperson to determine whether the jury trial will settle or go forward. If the matter will settle, notify the judge so that he/she can verify the case has settled. Once a settlement is confirmed immediately begin notifying people summoned for jury duty that they will not need to attend. (Some courts note on jury notices that the people summoned for jury duty should call the court the day before a scheduled jury trial to confirm whether their services will be needed.)
4. Have jury chart on the judge's bench and on each attorney/spokesperson table;
5. Have current jury list available;
6. Have preemptory challenge sheets ready;
7. Have exhibit list ready;
8. Notify the bailiff to be present (if applicable);
9. Check case file to verify that all parties have been served with notice of hearing and evidence of service is on file;

10. Insure that the courtroom is neat and in good order;
11. Insure that the bench has a legal pad, pen, water and appropriate code book or ordinance;
12. Set up court recorder and test recording device (have extra tapes and status sheets available);
13. Have blackboard, easel pad and stand easily available;
14. Have a sufficient supply of exhibit stamps available;
15. Have exhibit admissions stamp out ready for use;
16. Check the clock for the correct time and the calendar for the correct day;
17. Have colored pens/pencils available for diagrams;
18. Have date stamp with today's date;
19. Have water and glasses on the attorney/spokesperson tables.

6.3 Duties Convening a Jury Trial

1. If there is no bailiff present to open court, the clerk of court opens court by rapping the gavel and making the following announcement:
 “All rise. _____ Tribal Court is now in session, the
 Honorable _____ presiding.”
2. Record the time and date of trial in the minutes;
3. List all the officers of the court present by name (judge, court reporter and clerk);
4. Record the case number and title of the case;
5. Record the name of the prosecutor and the defendant and his/her attorney/spokesperson;
6. Call the roll of prospective jurors;
7. Keep daily record of juror's service including hour of arrival and departure for payment;
8. If the court pays mileage, have prospective jurors fill out mileage forms;

9. Give *voir dire* oath to prospective jurors:

“Do you and each of you solemnly swear (or affirm) that you will well and truly answer such questions as may be propounded to you by or under the direction of the court touching your qualifications to sit as trial jurors in this cause, so help you God?”

6.4 Voir Dire (Jury Examination)

Before a juror can be selected to hear a case, each prospective juror must be questioned to determine whether they are competent (mentally and physically capable of serving on the jury) and impartial. The examination of prospective jurors takes place before any of the matters of the trial are discussed in court. Normally the examination is referred to as the “*voir dire*” of the jury. “*Voir dire*” means “to speak the truth”, and in practice refers to the process of examination of a jury panel in order to select a qualified and unbiased trial jury. The general purposes of the *voir dire* examination are:

- (1) To determine whether the jurors meet the qualifications for jury service set out in tribal ordinances (for example, that the juror is an Indian and is not a minor);
- (2) To determine whether any grounds exist for challenges for cause; and
- (3) To provide the parties with sufficient information that they may intelligently exercise their right to make preemptory challenges.

6.4.1 Exercise of Challenges

When the prosecution and defense have completed their *voir dire* questioning of the six prospective jurors, the judge will ask each side to approach the bench to exercise their challenges. The exercise of challenges should be done in a low tone of voice so that it is outside the hearing of the jury. The normal procedure is that the judge asks both sides if they have any challenges for cause, and if so, to state them. As the challenge is made to the specific juror, the judge will rule on it by either allowing or denying the

challenge. If either side is not represented by attorney/spokesperson, the judge will have to exercise the challenge for cause for that side.

In almost all courts the defense and prosecution have what are called preemptory challenges. These may be exercised without the necessity of having to state the grounds or reasons for such challenge. In other words, absolutely no reason at all need be given for the exercise of a preemptory challenge. It may be that the party challenging the juror does not like the way the juror is dressed, his/her reasoning can be arbitrary, but should not be discriminatory. The number of preemptory challenges for each side should be set by the rules of the court. If this has not been done, it is suggested that a total of three preemptory challenges per side are adequate.

If either side is not represented by attorney/spokesperson, the prosecuting or complaining witness and the defendant should be informed of the right to exercise preemptory challenges, the number available, and the method by which they are exercised.

After the first six jurors in the box have been questioned by the judge, the prosecution and defense, and preemptory challenges and challenges for cause have been exercised; those jurors left in the box will constitute a part of the trial jury. New prospective jurors will fill the remaining seats when the judge instructs the clerk to call the required number of names. The same process of jury selection will begin again and continue until six jurors have been chosen. If none of the original six were challenged, they would, of course, compose the jury. All remaining jurors who have not been selected should be told that they are excused until a later date.

6.5 Procedures for Seating Jurors for Criminal Jury Trials

Once the jury has been selected, it must be sworn. The oath given to the jury should be administered in a solemn way to impress upon them the importance of their role in the administration of justice. The oath is administered by the court clerk or judge, and could be as follows:

“Do you solemnly swear that you will truly and fairly try this case between the _____ Tribe and the defendant, so help you God?”

This simple ceremony sets the tone for the entire trial in the minds of the jurors. The judge must then instruct the jury on their responsibilities both in and out of court. He/she has to explain that once they leave the courtroom they cannot talk about the matters of the trial until the trial is completed. If a flagrant violation should arise, the judge may use the contempt power to discipline a delinquent juror. The jurors are officers of the court as long as they are in the process of hearing a case. As officers, they fall under the direct supervision and control of the judge.

To preserve the integrity of the jury during the trial, there should be a jury room available that is reserved for their use alone. Unless such a room is available it will be nearly impossible for the judge to prevent the jury from coming into contact with persons or information which might affect their deliberations.

During the course of the trial some jurors may want to take notes to aid them in following the facts which are presented. In the past, this practice was forbidden because only a few members of the jury could write, and it was thought that written notes would unduly influence the other members of the jury. However, today most courts encourage jurors to take notes so long as they do not try to record everything that happens during the trial. The court may want to furnish notepads and writing instruments to the jurors.

Occasionally it becomes necessary for the jury to view the scene of an event or a piece of evidence that cannot be brought to the court. Such views are left at the discretion of the judge and, if conducted at all, must be handled carefully. When the jury leaves the court the judge should direct the bailiff to see that no one talks to them and that they do not engage in conversation or question anyone else. The area to be viewed by the jury should be carefully prepared in advance to insure that the site has not changed since the event took place.

6.5.1 Checklist for Seating Jurors

1. List first six prospective jurors drawn;
2. Record challenges for cause:
 - (a) State by whom challenges are made;
 - (b) State whether granted or denied by the court;

- (c) If challenge is granted:
 - 1) Record the name of the newly drawn juror; and
 - 2) Withdraw the name of the prospective juror who was challenged for cause.
 - (d) After six prospective jurors have been passed for cause, record the preemptory challenges:
 - 1) State by whom preemptory challenge made;
 - 2) The tribe and defendant may each exercise preemptory challenges:
 - (e) When several defendants are tried together, the defendants may join in the challenges; and
 - (f) Preemptory challenges shall be exercised according to the rules of the court or the tribal code.
3. Draw additional names upon order of the court withdrawing the names challenged.
 4. After all challenges for cause and preemptory challenges have been exercised, list the final six jurors and administer the following oath:

“Do you and each of you solemnly swear (or affirm) that you will well and truly try the matter in issue now pending before the court and a true verdict render according to the evidence, so help you God?”

6.5.2 Rules for Jurors

The following are basic rules for jurors to abide by during the trial and during all recesses. This may be read to the jurors or printed on a sheet to hand out to the jurors:

- 1) Do not discuss with any other juror or anyone else any subject concerning the case being tried before them;
- 2) Do not allow any other juror, or anyone else, to discuss with them any subject concerning the case being tried before them;

- 3) Tell the judge of anyone, another juror or anyone else, who talks to them concerning the case being tried before them;
- 4) A juror cannot under any circumstances, or for any reason, talk to the prosecutor, defendant or defendant's attorney/spokesperson;
- 5) Do not talk to any witness about any matter whatsoever;
- 6) Do not have any information about the trial before them except that information given to them in court while the trial is in session;
- 7) Do not try to learn any facts concerning the case which are not presented during the trial;
- 8) Do not read any newspaper, magazine or other articles about the trial or about the law and facts affecting the case;
- 9) Do not listen to radio or television broadcasts concerning the case, facts, or law involved in the trial, and
- 10) Do not form an opinion on the case except based upon all the evidence presented and in light of the law as told to him by the judge. The verdict must be based upon all the evidence presented during the trial and that evidence only.

6.6 Duties During Testimony in Jury Trial

1. Record name of witnesses and type of examination whether direct, cross, redirect, recross, rebuttal or surrebuttal;
2. Monitor the recording device to insure that the proceedings are being recorded;
3. Record all motions, stipulations, offers of proof and the court's orders thereon;
4. Mark all exhibits as presented:
 - (a) Use alphabet for prosecution's exhibits;
 - (b) Use numerals for defense exhibits;
 - (c) List all exhibits as identified, offered and admitted as directed by the court;
 - (d) Record all objections to exhibits, by whom made and the court's rulings thereon;
 - (e) If a copy of an exhibit is to be substituted as ordered by the court, so state in the minutes;

- (f) Upon recess of the trial and before leaving the courtroom, gather all exhibits for safekeeping by the clerk;
 - (g) Keep all exhibits, both admitted and rejected, in your possession until ordered released by the court.
5. Record each admonition of the jurors by the court; and
 6. Make a record of all recesses and convening by the hours, showing roll call taken or waived.

6.7 Duties for Jury Deliberations

Deliberation is the discussion by the jury, once the case has ended. They will discuss matters of fact, determine the truth of these facts and, in light of the law applicable to the case and issues involved, reach a verdict as to the innocence or guilt of the parties involved.

After receiving the instructions on the law from the judge, the judge directs the bailiff or clerk to take the jury to the jury room for deliberation. Once in the jury room, the jurors are to select a foreman who is to preside over the proceedings while in the jury room. Once the foreman is selected the deliberations among the jurors may begin.

1. Prepare of jury room:
 - (a) Insure the room has adequate pencils, paper, blackboard and display board;
 - (b) Remove any distracting materials from the room; and
 - (c) Insure that jurors' bathrooms have sufficient supplies.
2. When directed by the court, record the verdict of the jury in the minutes, read it to the jury and inquire if it is the jury's true verdict, "Ladies and Gentlemen (or Members) of the jury, is this your true verdict, so say ye all?"
3. Poll the jurors if so directed by the court, "Mary Smith, is this your verdict?"
4. Stamp and file the instructions to the jury and all unsigned verdict forms provided by the court.

6.8 Duties Following Jury Trial

1. Account for all exhibits;
2. Get case file from the judge and place verdict form in it;
3. Make notes in the case file explaining action taken;
4. Insure that courtroom and jury room are cleared of all case related materials;
5. Secure all tapes and return to the locked tape storage area;
6. Type court minutes and put in case file;
7. Catalogue and secure any physical evidence admitted during the trial;
8. Enter required information on case status sheet;
9. Prepare judgments or orders as directed by the judge following the trial, for example, order for pre-sentence interview;
10. Distribute judgments or orders as directed by the judge;
11. Serve promise to appear on defendant if required to return for a sentencing hearing;
12. Calendar sentencing hearing if applicable; and
13. Complete paperwork to insure that all witnesses and jurors are paid.

CHAPTER 7

SENTENCING

- 7.1 General
- 7.2 Sentencing Upon Entry of Plea
- 7.3 Sentencing Hearings
- 7.4 Sentencing Alternatives
- 7.5 Duties Prior to Sentencing Hearing
- 7.6 Duties During Sentencing Hearing
- 7.7 Duties Following the Sentencing Hearing

7.1 General

Sentencing occurs after a plea of “guilty” or after a verdict of “guilty” by either the court or the jury. In most jurisdictions the judge is solely responsible for sentencing the defendant. In a few jurisdictions the court is authorized by statute to impose an indeterminate sentence for the maximum period defined by law. This sentence can then be terminated at any time after the service of the minimum time, if there is any, by a parole board or other agency.

The role of the clerk will depend on whether the court sentences a defendant immediately after a guilty plea or guilty verdict, or whether the court holds a sentencing hearing at a future date.

7.2 Sentencing Upon Entry of Plea

Once a judge has accepted a guilty plea from a defendant he/she must then sentence the defendant. If judges choose to sentence a defendant immediately after accepting a guilty plea, then the clerk’s duties may consist of the following:

1. If the court has pre-printed standardized sentencing forms, either begin filling out the form as the judge announces the sentence or have a form ready for the judge to fill out. (Who fills out the actual sentencing form is going to depend on the court, however, it is important that the handwriting

on the form be legible.) Some courts, depending on available technology, may be able to have the clerk type the sentence into a template on the computer, so that a judgment form can be immediately printed for signing by the judge.

2. Insure the defendant receives a copy of the judgment form.
3. Forward copy of judgment to appropriate agencies, such as probation.
4. If a jail sentence is ordered, make arrangements for a date and time for the defendant to report to jail.
5. Notify the jail that defendant is to report to jail;.
6. Make arrangements with the defendant to pay fines and court costs.
7. If the court requires another hearing for restitution, or a compliance hearing, try to set the hearing then and have notice of the hearing served on the defendant while he/she is in court.

7.3 Sentencing Hearings

On some occasions, or as a matter of regular practice, courts may have sentencing hearings set on separate dockets. This is usually to give the defendant the opportunity to meet with a probation officer. The probation officer conducts a pre-sentence investigation (“PSI”) and then prepares a pre-sentence report (“PSR”) for the court. The purpose of the PSI and PSR is to provide the court with information about the defendant to allow the court the opportunity to make an informed decision about the appropriate sentence.

A PSR will likely contain intimate and confidential information about the defendant. Therefore, clerks should take precautions to keep said information confidential. Viewing should only be allowed by officials of the court, probation officials, and the defendant, unless instructed otherwise by a judge.

Whenever a defendant is being sentenced for more than one charge, the sentence may run concurrently or consecutively. Concurrent sentencing is having the defendant serve two or more sentences at the same time. For example, if a defendant is guilty of two counts of battery and is sentenced to serve 30 days in jail on each count to run

concurrent, then the defendant must serve a total of 30 days. Consecutive sentencing provides that a defendant must complete one sentence then serve another. For example, if a defendant is guilty of two counts of battery and is to serve 30 days on each count to run consecutively, then the defendant must serve a total of 60 days.

7.4 Sentencing Alternatives

Courts may use a variety of sentencing alternatives which clerks should be familiar with, such as:

1. **Probation.** The defendant is released after agreeing to follow conditions set by the court, which are then supervised by a probation officer.
2. **Suspended Sentence.** The court imposes a sentence, then the defendant is allowed to remain free of serving any jail time or imposed fine, provided the defendant complies with conditions imposed by the court. For example: A defendant may be sentenced to serve 30 days with 30 days suspended, credit for time served, provided the defendant does not commit any criminal law violations for a six-month period.
3. **Deferred Sentence.** The sentence is deferred for a period of time set by the court. The sentence may later be dismissed depending on whether the defendant complies with conditions imposed by the court.
4. **Restitution.** The defendant is required to pay for the damages incurred by the victim. (Note: Unless the defendant agrees to the amount of restitution owed to the victim, the court should set a restitution hearing to determine the amount of restitution owed.)
5. **Community Service.** The defendant is required to perform a certain amount of volunteer work for the community, approved by the court, in lieu of serving jail time or paying fines.
6. **Work Release.** The defendant is allowed to attend work, but spend nights and weekends in jail until their sentence is complete.

7. **Electronic Monitoring.** The defendant is restricted to his/her home and work. An electronic monitoring device worn around the ankle monitors the defendant.
8. **Treatment or Counseling.** Defendants who have an alcohol or drug problem may be required to obtain a drug and alcohol evaluation and ordered to follow any treatment recommendations. For violent offenders, they may be required to attend anger management or some other form of counseling depending on the defendant's particular circumstances.

7.5 Duties Prior to Sentencing Hearing

These duties are suggested if the sentencing hearing takes place on a date following entry of a guilty plea or verdict.

1. In advance of sentencing hearing, give file to the judge for review of pre-sentence reports;
2. Insure notices are sent to victims who might want to testify at the sentencing hearing;
3. Distribute court calendar to the prosecutor and defendant's attorney/spokesperson;
4. Notify the bailiff to be present (if applicable);
5. Check the case file to verify that all parties have been served with notice of hearing and evidence of service is on file;
6. Insure that the courtroom is neat and in good order;
7. Insure that the bench has a legal pad, pen, water and appropriate code book or ordinance;
8. Set up court recorder and test recording device (have extra tapes and status sheets available);
9. Have appropriate forms, blackboard, easel pad and stand readily available;
10. Have fine receipt book available;
11. Have a sufficient supply of exhibit stamps available;
12. Have exhibit admissions stamp out ready for use;
13. Check the clock for the correct time and the calendar for the correct day;

14. Have colored pens/pencils available for diagrams;
15. Have a supply of staples and paperclips;
16. Have date stamp with today's date;
17. Have water and glasses on the counsel tables; and
18. Dress in manner established by local rules.

7.6 Duties During Sentencing Hearing

1. Record name of prosecutor, defendant, attorney/spokesperson and witnesses;
2. Monitor the recording device to insure that the proceeding is being recorded;
3. Mark all exhibits as presented;
 - (a) Use the alphabet for prosecution exhibits;
 - (b) Use numerals for defense exhibits;
 - (c) List all exhibits in the minutes of proceeding as identified, offered and admitted as directed by the court;
 - (d) Record all objections to exhibits by whom made and the court's rulings thereon;
 - (e) If a copy of an exhibit is to be substituted as ordered by the court, so state in the minutes; and
 - (f) Keep all exhibits, both admitted and rejected, in possession of the clerk until time of appeal has expired.
4. Prepare judgment or order forms as the judge announces the sentence; and
5. Distribute copies of the judgment or order form to the prosecutor, defendant and his/her attorney/spokesperson.

7.7 Duties Following the Sentencing Hearing

1. Enter required information on case status sheet;
2. If a jail sentence is ordered, make arrangements for a date and time for the defendant to report to jail;
3. Notify jail that defendant is to report to jail;
4. Make arrangements with the defendant to pay fines and court costs;
5. Distribute judgments and orders to the probation officer; and
6. Serve promise to appear on defendant if he/she is required to return for a review or compliance hearing.

CHAPTER 8

POST-CONVICTION RELIEF, PROBATION AND HABEAS CORPUS

- 8.1 Introduction
- 8.2 Post-Conviction Relief
- 8.3 Post-Trial Motions
- 8.4 Probation
- 8.5 Parole
- 8.6 Compliance and Revocation Hearings
- 8.7 Habeas Corpus

8.1 Introduction

After the court has rendered a sentence, it is essential that the court have a system in place to monitor the defendant's compliance with the court's judgment. Monitoring compliance with criminal judgments is usually done by a probation officer. However, in smaller court systems, the court may hold periodic "compliance hearings" or "review hearings" to monitor compliance with criminal judgments.

As part of probation or a suspended sentence, the court may request defendant to submit information to the court to show he/she is following through with requirements of the criminal judgment. The clerks may be required to record the information in the file to insure compliance with judgments.

This chapter provides general information about various types of pleadings that may be filed, or hearings that may take place, after sentencing. Clerks should be familiar with these motions, petitions and hearings.

8.2 Post-Conviction Relief

A petition for post-conviction relief is a petition filed by a person in custody after being sentenced and seeking to have the conviction and sentence set aside or vacated. "Custody" means detention, confinement or being placed on probation.

A petition for post-conviction relief must be in writing and should contain the following:

- 1) Name of the person in custody and the place of custody;
- 2) Name and description of the custodian for example, “Chief of Tribal Police”;
- 3) A statement of the grounds for relief specifically and sufficiently setting forth a factual basis for the relief requested;
- 4) A list of any prior petitions for writs of habeas corpus or post-conviction relief filed on behalf of the petitioner and a list of all errors known or discoverable by the exercise of due diligence; and
- 5) Petitioner’s signature on an attached affidavit attesting to the truthfulness of the allegations with a copy of the judgment of conviction and sentence attached.

The court may conduct an evidentiary hearing depending on the validity of the claimed errors. The burden of proof rests with the petitioner to establish whether he/she is entitled to relief. The usual grounds offered for post-conviction relief include, but are not limited to, the following:

- 1) The conviction was obtained in violation of a tribal constitution or Indian Civil Rights Act;
- 2) The court exceeded its jurisdiction;
- 3) The conviction or sentence subjected the defendant to double jeopardy;
- 4) The time limitations for institution of prosecution had expired; and
- 5) The conviction or sentence constituted ex post facto application of law in violation of a tribal constitution or the Indian Civil Rights Act.

Post-conviction relief petitions may be dismissed if the issue raised in the petition has already been litigated in an appeal or in a prior petition for post-conviction relief. The court may also consider dismissing a petition if the issue raised could have been raised in earlier proceedings but the petitioner failed to do so without good cause.

8.3 Post-Trial Motions

There are a number of possible post-trial motions that may be brought by a defendant. Below are common post-trial motions.

1) Motion to Set Aside the Verdict

The defendant may file this motion if he believes that the verdict of the jury was contrary to the law or the evidence presented at trial. Generally only in extreme cases will the court set aside the verdict of a jury. In those cases, the court must find there was insufficient evidence to support the verdict and there reasonable doubt as to the defendant's guilt as a matter of law.

2) Motions for a New Trial

The defendant may file a motion for a new trial based upon errors or mistakes by the court or on the basis of newly discovered evidence. These motions are generally granted only if the errors or mistakes substantially affect the case or prejudiced the defendant or if newly discovered evidence would result in acquittal.

3) Motions for Correction or Reduction of Sentence

This motion is a plea for leniency based on grounds such as age of the defendant, defendant's health, hardship to the defendant's family, a change in law since the imposition of the sentence, or a mistake of fact or law. This motion can also be based on grounds that the sentence was imposed illegally (the sentence exceeded the maximum allowed by the Indian Civil Rights Act or the tribal code), the sentence constituted double jeopardy, or the tribal court did not have jurisdiction to impose the sentence.

4) Motions for Withdrawal of Guilty Plea

This motion requires a high burden on the defendant in order to have a court permit the withdrawal of a guilty plea.

5) Motions for a Stay of Execution of Sentence

While an appeal is pending, the defendant may request a stay of execution of any sentence imposed by the court. The court may also order the defendant released on his own recognizance, continued in detention or released under conditions established by the court.

8.4 Probation

Probation is a sentencing alternative in which the defendant is released to the supervision of a probation officer. Prior to such a release, the defendant must agree to follow conditions set by the court, such as obtaining a drug and alcohol evaluation and/or not committing any further criminal law violations. The defendant is generally required to report periodically to the probation officer and maintain good behavior for a specified period of time. The court may also impose additional conditions, such as requiring the defendant to maintain a job, avoid drugs or alcohol, ask permission from the probation officer before traveling outside the area. If the defendant does not follow the conditions of his probation, then the probation may be revoked and the original sentence or another sentence imposed. Usually, probation is not revoked until after a hearing is held on the revocation of the probation. Probation procedures, including the procedures for revocation of probation, vary among court systems.

8.5 Parole

Parole is the conditional release of a prisoner from jail. The prisoner is released from jail prior to the completion of his entire sentence under certain terms or conditions that are established by the court or a parole board. The prisoner is usually required to maintain good behavior for a specified period of time. There may also be additional terms and conditions which the prisoner must follow. If the prisoner does not follow conditions of his parole, then the parole may be revoked and the convict is usually returned to serve the unexpired time. Generally, however, the parole is not revoked until after a hearing is held on the revocation of the parole.

8.6 Compliance and Revocation Hearings

For those jurisdictions that do not have a probation officer, the judge may consider making compliance hearings a regular part of the court docket. For example, if someone is sentenced to DUI, with conditions of a suspended sentence, the compliance hearing will give the court the opportunity to periodically bring the defendant before the court to see if the defendant is complying with the conditions of his probation and suspended sentence. A variation may be to have the defendant submit reports, evaluations or community service hours to the prosecutor to monitor compliance. The court might also request the clerk to accept reports, evaluations, etc. from the defendant.

8.7 Habeas Corpus

Habeas corpus is a remedy available to defendants who seek release from “unlawful” detention. A petition seeking a writ of habeas corpus may be sought at anytime by a defendant and is not necessarily considered post-conviction relief. A defendant’s petition for habeas corpus may seek release from a tribal court, police officer, or other tribal office. It is most often used in criminal cases when a defendant is in jail and believes that his rights have been violated in some manner. Such violations of rights include being denied a right to bail, denied a speedy trial or jury trial, denied a right to counsel, arrested illegally, convicted by use of an illegal confession, given cruel and unusual punishment, etc.

The federal courts have jurisdiction to hear petitions for writs of habeas corpus from persons held in tribal custody. A petition for a writ of habeas corpus can be made to the federal district court or tribal court if the tribal code so provides. The petition must be in writing and signed by the person for whose relief it is intended or by someone acting on his/her behalf. The petition must state the facts concerning the person’s commitment or detention and the cause or reason why the detention is illegal. The petition must be verified, that is, it must be made under oath.

The judge deciding the petition for the writ must either grant it or issue an order directing the person(s) alleged to be detaining the petitioner to show cause why the writ

should not be issued. Generally the only exception to this procedure is where it is obvious from the application that the petitioner is not entitled to release.

Issuing the writ does not entitle the petitioner to immediate release. Instead, it merely orders that the petitioner be produced before the court so that the legality of his detention can be determined. The clerk will have to make arrangements to have the petitioner/defendant brought from the jail to the hearing.

An order to show cause can be used to determine whether the writ should be issued or a preliminary hearing held. The writ of habeas corpus or the order to show cause is served on the person(s) alleged to have custody of the petitioner. The person(s) to whom the writ or order is directed must make a return certifying the true cause for detention. The petitioner or a person on his behalf can deny the facts set out in the return. Then the court generally holds a hearing on the matter.

CHAPTER 9

JUVENILE MATTERS

- 9.1 Introduction
- 9.2 Considerations in Juvenile Matters
- 9.3 Juvenile Court Procedure
- 9.4 Duties Prior to a Juvenile Hearing
- 9.5 Duties During the Juvenile Hearing
- 9.6 Duties Following the Juvenile Hearing

9.1 Introduction

Juvenile cases are treated differently from adult cases. Juvenile codes often give juvenile court judges broad discretion in handling juvenile cases. However, there are certain procedures that must be followed. Juveniles are entitled to closed hearings. Therefore, the court needs to make provisions to handle each matter separately. Also, only persons necessary to the proceedings should be present during juvenile hearings.

Practice Pointer

Be on guard against placing yourself in situations in which you are alone, one-on-one, with a juvenile. Have another adult, such as another clerk or parent, present when dealing with juveniles. This will safeguard court staff from accusations of inappropriate conduct with a juvenile.

9.2 Considerations in Juvenile Matters

- 1) Providing notice to parents or guardians of hearings and notices.
- 2) File protection – Consider separating juvenile files in a secure filing cabinet and stamping “Juvenile – Confidential” or some other identifying marker to distinguish juvenile files. Juvenile hearing and files are generally not matters of public record.

9.3 Juvenile Court Procedure

A “delinquency” action in tribal court begins with the prosecutor filing a delinquency petition. Generally the petition should contain the following:

1. Name of child and date of birth;
2. Name of parent(s)/guardian(s);
3. Address of child and parent(s)/guardian(s);
4. Statement that the child is or appears to be within the jurisdiction of the Court;
5. Factual statement alleging with specificity that the child has violated a title of the tribal code or may be subject to a delinquency action under the juvenile code; and
6. Signature of person filing the petition certifying the allegations are true.

The Petition should be filed with the court along with a request for a hearing. The petition and summons should be personally served upon the child and parent(s) or guardian(s) of the child.

The first hearing set by the court should be an adjudicatory hearing. This is a fact-finding hearing. The adjudicatory hearing is held to determine whether the alleged facts meet the requirements of a delinquency. If the court finds that the charges are true or that certain action may be taken, then the court moves to the next step, which is to hold a dispositional hearing. The judge determines what caused the child to misbehave and then decides how the court can best help the child. This might be compared to the pre-sentence investigation and sentencing phases of adult court.

Formal adjudicatory procedure must meet almost all of the same standards as adult criminal procedure. Informal dispositional procedure may depart from these higher standards so long as it guarantees each child fair treatment and at the same time honors the best interests of the child and the whole community.

Generally, juvenile proceedings are closed to the public, unless the child or their parent(s)/guardian(s) request otherwise, or the judge determines a person has a proper interest in the case to be present. Clerks should be alert to monitor the courtroom in juvenile proceedings to assist the court in preventing persons who have no interest in the

case from being in the courtroom. This is especially important when the court does not have a separate juvenile docket and both juvenile and adult cases are heard on the same calendar.

9.4 Duties Prior to a Juvenile Hearing

1. Insure that the judge's case file is up-to-date;
2. Notify the bailiff to be present (if applicable);
3. Check the case file to verify that all parties have been served with notice of hearing and evidence of service is on file;
4. Check to make sure the parents/guardians have been notified of the hearing;
5. Insure that the courtroom is neat and in good order;
6. Insure that the bench has a legal pad, pen, water and appropriate code book or ordinance;
7. Set up court recorder and test recording device (have extra tapes and status sheets available);
8. Have appropriate forms, blackboard, easel pad and stand readily available;
9. Have fine receipt book available;
10. Have a sufficient supply of exhibit stamps available;
11. Have exhibit admissions stamp out ready for use;
12. Check the clock for the correct time and the calendar for the correct day;
13. Have colored pens/pencils available for diagrams;
14. Have a supply of staples and paperclips;
15. Have date stamp with today's date;
16. Have water and glasses on the counsel tables;
17. Dress in manner established by local rules; and
18. Insure that only persons having an interest in the case are in the hearing, such as parents, the prosecutor, the juvenile's attorney/spokesperson and court personnel.

9.5 Duties During the Juvenile Hearing

1. Record name of parties present, parents/guardians, prosecutor and the juvenile's attorney/spokesperson;
2. Monitor the recording device to insure that the proceeding are being recorded;
3. Record all motions, stipulations, offers of proof and the court's orders thereon; and
4. Mark all exhibits as presented.
 - (a) Use the alphabet for prosecution's exhibits;
 - (b) Use numerals for defense exhibits;
 - (c) List all exhibits in the minutes of proceeding as identified, offered and admitted as directed by the court;
 - (d) Record all objections to exhibits by whom made and the court's rulings thereon;
 - (e) If a copy of an exhibit is to be substituted as ordered by the court, so state in the minutes; and
 - (f) Keep all exhibits, both admitted and rejected, in possession of the clerk until time of appeal has expired.

9.6 Duties Following the Juvenile Hearing

1. Account for all exhibits;
2. Get case file from the judge;
3. Make notes in the case file explaining action taken;
4. Insure that the courtroom is cleared of all case related materials;
5. Secure all tapes and return to the locked tape storage area;
6. Type court minutes and put in case file;
7. Enter required information on case status sheet;
8. Catalogue and secure any physical evidence admitted during the hearing;
9. Prepare judgments or orders as directed by the judge;

10. Distribute judgments or orders as directed by the judge; and
11. Serve promise to appear on the juvenile and his/her parents/guardians if required to return for another hearing.

CHAPTER 10

CIVIL INFRACTIONS

- 10.1 Introduction
- 10.2 Civil Infraction Procedures
- 10.3 Duties Prior to a Civil Infraction Hearing
- 10.4 Duties During the Civil Infraction Hearing
- 10.5 Duties Following the Civil Infraction Hearing

10.1 Introduction

This chapter will discuss non-criminal law violations, which are sometimes referred to as “civil infractions” or simply “infractions.” Typical infractions include speeding tickets and hunting and fishing violations. Persons committing infractions are entitled to due process and an opportunity to dispute the infraction before a neutral and detached judge. Some codes may provide for suspension of certain privileges, such as suspension of hunting or fishing privileges for serious violations, or for repeated violations.

10.2 Civil Infraction Procedures

It is important to review the tribal code procedures for handling traffic violations, as well as hunting and fishing violations. There will usually be a timeline by which certain actions must be taken. In many instances, people cited with infractions will pay the ticket and there will be no need for further action. However, in some instances the person may want to dispute the ticket, which will require a short fact finding hearing to determine whether the infraction was committed or not committed.

Civil infractions are fairly simple matters. It might be advisable to set one court day per month for civil infractions, depending on the timelines provided in the tribal code, and the number of citations issued and contested on a regular basis. Work with the police department in notifying them of the court dates for civil infractions so that they can place that court date on the ticket. Depending on the timelines in the tribal code, tickets written in one month will likely not be heard until the end of the next month.

Clerk duties will be the same as for a regular bench trial, however contested traffic ticket cases might be considered as mini-trials, because there will a limited number of witnesses and evidence presented. The clerk will likely need to make provisions to accept fine payments on that date or, if allowed, make arrangements for fine payments on an installment plan.

Please note that some tribal codes provide for suspension of certain privileges. Therefore, the clerk may be required to forward a copy of the judgment to the department responsible for monitoring compliance. For example, if hunting privileges are suspended for 30 days, forward a copy of the judgment to the tribal fish and game department.

10.3 Duties Prior to a Civil Infraction Hearing

1. Provide the judge with copies of the civil infractions, traffic tickets, for the day's docket;
2. Notify the bailiff to be present (if applicable);
3. Insure that the courtroom is neat and in good order;
4. It is advisable to have a preprinted form explaining the procedures for civil infractions to hand out (the majority of people will have no legal representation);
5. Insure that the bench has a legal pad, pen, water and appropriate code book or ordinance;
6. Set up court recorder and test recording device (have extra tapes and status sheets available);
7. Have appropriate forms, blackboard, easel pad and stand readily available;
8. Have fine receipt book available;
9. Have a sufficient supply of exhibit stamps available;
10. Have exhibit admissions stamp out ready for use;
11. Check the clock for the correct time and the calendar for the correct day;
12. Have colored pens/pencils available for diagrams;
13. Have a supply of staples and paperclips;
14. Have date stamp with today's date; and
15. Dress in manner established by local rules.

10.4 Duties During the Civil Infraction Hearing

1. Monitor the recording device to insure that the proceeding are being recorded;
2. Record all motions, stipulations, offers of proof and the court's orders thereon; and
3. Mark all exhibits as presented.
 - (a) Use the alphabet for prosecution's exhibits;
 - (b) Use numerals for defense exhibits;
 - (c) List all exhibits in the minutes of proceeding as identified, offered and admitted as directed by the court;
 - (d) Record all objections to exhibits by whom made and the court's rulings thereon;
 - (e) If a copy of an exhibit is to be substituted as ordered by the court, so state in the minutes; and
 - (f) Keep all exhibits, both admitted and rejected, in possession of the clerk until time of appeal has expired.
4. Fill out civil infraction judgment form as judge announces decision.

10.5 Duties Following the Civil Infraction Hearing

1. Account for all exhibits;
2. Get tickets from the judge;
3. Insure that the courtroom is cleared of all case related materials;
4. Secure all tapes and return to the locked tape storage area;
5. Catalogue and secure any physical evidence admitted during the hearing;
6. Prepare judgments or orders as directed by the judge;
7. Distribute judgments or orders as directed by the judge; and
8. Accept fines and make payment arrangements for fines imposed.

CHAPTER 11

HIGH PROFILE CASES

- 11.1 Introduction
- 11.2 Preparing for the High Profile Case
- 11.3 Sealing Court Records

11.1 Introduction

Occasionally the court will have before it “high profile cases.” These are cases that draw the attention of the community. As a result, not only does the case come under scrutiny by the tribal community, but the entire court system and those who work there. Be on notice that every word spoken and action taken by the court staff will be closely scrutinized from beginning to end.

The court should be prepared for handling high profile cases. With the proper planning and a well-trained staff, the court should view the occasional high profile case as an opportunity to show the community how well the court system operates.

11.2 Preparing for the High Profile Case

The most important aspect of handling a high profile case is to keep confidential any information about the case. Even information that has already been made public should not be repeated. The community will quickly lose confidence in the court system if there is a perception that the clerks leak information. The court is probably not the best work place for a person who likes to gossip.

Judges are prohibited from *ex-parte* communications with parties to a case. This means that judges cannot speak to a party to a case before the court without the other party being present. There are exceptions to this rule. However the general rule is as stated above. Therefore, it is important for court staff to protect the judge from *ex-parte* contacts. Phone calls should be screened to insure that parties to the case are not calling to speak with the judge. Kindly ask who is calling and the purpose, if it is a party to the

case, advise them that the judge is prohibited from talking to them and that if they have questions, they should speak with their attorney/spokesperson.

It is important that court procedures are strictly followed during a high profile case. In a high profile case, unfair bias on the part of the court would likely be construed by someone if any procedures which are not followed may, in any way, be perceived to be in the slightest favor of one litigant over another. It is not uncommon for a losing party to seek to place blame on the court or court staff for some minor procedural flaw.

Prepare for a high profile case before there is a high profile case. The court should prepare a brief biography of the judge(s), which can be handed out. Also consider preparing an information sheet about the tribal court system that provides answers to some basic questions about how the court operates, the jurisdiction of the court, how judges get appointed or elected to the bench and other information that will be asked by the press or public. Finally, tidy up the courthouse and courtroom.

*****Practice Pointer*****

Judges are prohibited from public comment about a pending or impending proceeding in any court. This rule also applies to court staff. Clerks should not refer media persons to the judge for any purpose, including for the purpose of giving background information. Be aware that in any conversation with the media nothing is "off the record." Expect that anything said to the media will be published.

11.3 Sealing Court Records

Sealing records means the act of keeping some or all of the papers, documents or exhibits from a case separate and unavailable for public inspection without a court order. Docketed materials may be sealed when justice so requires and upon a showing of good cause. In some instances, tribal code provisions may require that juvenile court records be sealed. Consider establishing written procedures that identify sealed records and that protect against accidental disclosure of such records.

CHAPTER 12

DOMESTIC VIOLENCE CASES

- 12.1 Introduction
- 12.2 Procedures for Filing Protection Orders
- 12.3 Assisting Victims of Domestic Violence
- 12.4 Court Security

12.1 Introduction

The purpose of this chapter is to assist clerks in handling domestic violence cases and victims. There are three topics that will be covered in this chapter:

- 1) Procedures for filing protection orders;
- 2) Assisting victims of domestic violence; and
- 3) Court security.

12.2 Procedures for Filing Protection Orders

Procedures for issuing civil protection orders for domestic violence vary among jurisdictions. Generally, an action for a tribal court protection order is started by the victim filing a petition with the court. The petition should be supported by a signed statement or affidavit by the petitioner. If the petitioner requests an immediate *ex-parte* hearing before the court, the petitioner will be sworn in to give the specific facts and circumstances of the alleged domestic violence and the necessity for immediate issuance of a protection order. If the judge determines that an emergency does exist, a temporary order of protection may be issued that same day.

A hearing with the respondent on a temporary *ex-parte* order usually takes place within 7-10 days. The temporary *ex-parte* order usually expires on the day set for the hearing. In some tribal jurisdictions a hearing on an *ex-parte* order will be scheduled within three days if the petitioner requests temporary custody of children, or has requested possession of a shared residence or vehicle.

The tribal police usually accomplish service on a respondent living on the reservation. For respondents living off the reservation, the petitioner will likely use either the sheriff's department or a private process server.

After the respondent has been given notice and the opportunity to be heard, the court may issue an order of protection for an extended period of time. In some jurisdictions the order may be valid for one year or more. The court may review, rescind, or modify the order.

Common relief provisions include:

- Restraining the perpetrator from committing further acts of domestic violence;
- Excluding the respondent from the residence of the petitioner;
- Making temporary custody and visitation provisions or restraining the respondent from interfering with child custody or removal from the jurisdiction of the court;
- Ordering the respondent to stay away from the victim's residence, school or place of employment;
- Ordering respondent to receive substance abuse evaluations, attend treatment, seek mental health assessment, attend counseling, anger management, or other programs to include parenting classes, if needed; and
- Requiring the respondent to sign a release of information enabling the court to monitor the respondent's compliance with treatment or counseling as ordered.

Since enactment of the Violence Against Women Act ("VAWA"), there have been efforts made by tribal and state officials for cooperative agreements between the jurisdictions in enforcing protection orders. If this is the case with your court, there may be additional steps after a protection order is issued or modified, such as entering the judgment in a regional protection order registry.

12.3 Assisting Victims of Domestic Violence

You should check with the tribal code procedures in rendering assistance to victims in filling out petitions for protection. Some tribal codes have general provisions that allow clerks to assist with filling out forms. Remember that the court is a neutral forum, and assistance in filling out domestic violence forms should not lapse into giving legal advice.

Some tribes may provide for victim services. If this is the case, consider training members of the victim services agency in assisting domestic violence victims fill out the appropriate forms. Also consider training victim services personnel about the procedures the court must follow when issuing protection orders.

Clerks often suffer the frustration of having to deal with victims who apply for a protection order on one day and ask for a dismissal the next. If victims want to dismiss a petition, have the victim withdraw or dismiss the petition in writing or on the record. Try not to become callous when dealing with the same victims over and over again. Some victims find it difficult to leave an environment they are accustomed to, even though it is an abusive relationship. Process the petitions and let the judge make the determination as to the merits.

Training is readily available to understand the cycle of violence to which victims of domestic violence are subjected. Consider seeking training on understanding domestic violence and dealing with victims of domestic violence.

12.4 Court Security

Be sure to be aware of security issues for the court. Have emergency numbers memorized or easily available. During domestic violence hearings in which both parties are expected to be in attendance, consider having a bailiff or police officer available in the courtroom.

CHAPTER 13

FORMS

- 13.1 Arrest Warrant
- 13.2 Search Warrant
- 13.3 Extradition Warrant
- 13.4 Criminal Complaint
- 13.5 Advisement of Rights – Checklist for Arraignment
- 13.6 Conditional Release, Domestic Violence – Order
- 13.7 Statement of Defendant on Plea of Guilty
- 13.8 Sample Opening Statement by Court to Jury
- 13.9 Jury Verdict
- 13.10 Order of Acquittal
- 13.11 Criminal Judgment
- 13.12 Prisoner Release Order
- 13.13 Order for Pre-Sentence Investigation and Report
- 13.14 Petition for Order to Show Cause – Revocation of Suspended Sentence
- 13.15 Motion and Order Closing Criminal Case – Satisfactory Completion of Probation
- 13.16 Petition for Writ of Habeas Corpus
- 13.17 Order – Writ of Habeas Corpus
- 13.18 Writ of Habeas Corpus
- 13.19 Judgment – Natural Resources Violation
- 13.20 Order to Enforce Protection Order
- 13.21 Certification of Protection Order Compliance with VAWA
- 13.22 Order for Protection – Domestic Violence

13.1 Arrest Warrant

[Caption]

ARREST WARRANT

Case No. _____

TO ALL POLICE OFFICERS OF THE _____ TRIBE and any law enforcement officer authorized to execute this arrest warrant:

A criminal complaint has been filed in this court against (name of defendant & date of birth) charging that on or about (date), within the jurisdiction of the (Tribe), a criminal offense(s) was committed, to-wit: (list criminal offense) in violation of Section _____ of the Criminal Code of the (Tribe).

I have found probable cause to believe that such offense(s) were committed and that the defendant named herein committed them.

THEREFORE YOU ARE COMMANDED to arrest the accused and bring him/her before this court to answer the charges. Defendant may be released on posting bail sufficient to secure his/her appearance in the amount of \$ _____ dollars.

DATE:

Judge

CERTIFICATION OF EXECUTION

I certify that I received this Warrant of Arrest on (Date), and executed it by arresting the above-named accused at (Location), on (Date of Arrest) at _____ a.m./p.m. and presenting him/her before Judge _____ of the _____ Tribal Court on (Date) at _____ a.m./p.m.

Date:

(Name of Agency)

(Signature of Arresting Officer)

13.2 Search Warrant

[Caption]

SEARCH WARRANT

TO: The Chief of Police and any Law Enforcement Officer authorized to execute this search warrant:

WHEREAS, upon the sworn complaint made before me and it appearing that there is probable cause to believe that on or about the _____ day of _____, 20____, within the jurisdiction of the _____ Indian Tribe, a criminal offense, to wit: _____ was committed upon the person or property of _____ and further that there is probable cause to believe evidence material to the investigation of said crime is presently concealed in, about and upon certain premises within the jurisdiction of the _____ Indian Tribe, and described below;

NOW THEREFORE, in the name of the _____ Indian Tribe, you are hereby commanded, with the necessary and proper assistance, to enter and search the following premises located at _____, and to search diligently for the following evidence: _____ and if the same or any part thereof, be found on such search, you are to seize such evidence and retain it in a safe and secure manner until such time as it may be disposed of according to law.

A copy of this search warrant shall be served upon the person or persons found at said address, and if no person is found at said address, a copy of this search warrant shall be posted upon any conspicuous place at or on the premises.

DATE: _____ at _____ a.m./p.m.

Judge

RETURN

RECEIVED THIS SEARCH WARRANT on _____, 20____, and executed same on _____, 20____, at _____ a.m./p.m. and seized the following property: _____.

Date: _____

Signature of police officer

13.3 Extradition Warrant

[Caption]

**WARRANT TO ARREST
FOR EXTRADITION**

TO: Chief of Police

WHEREAS, a copy of valid arrest warrant issued by the _____ Court has been delivered to _____, and confirmed as such for the arrest of _____ having the date of birth of _____ for violation of laws of that jurisdiction, specifically _____ and it appearing to be in the interest of justice that the warrant be honored and enforced by this Court;

NOW THEREFORE, YOU ARE COMMANDED to apprehend said defendant and bring him/her before the _____ Tribal Court for hearing on the extradition request, in accordance with Chapter _____ of the _____ Tribal Codes.

Date: _____ at a.m./p.m.

Judge

CERTIFICATE OF SERVICE

I, _____, do hereby certify that I served the foregoing instrument and delivered _____ to the _____ Tribal Court as directed on _____, 20____.

Date: _____

Signature of police officer

13.4 Criminal Complaint

[Caption]

CRIMINAL COMPLAINT

Case No. _____

I, [name of prosecutor], Tribal Prosecutor for the [tribe name] Tribe, in the name and by the authority of the [tribe name] Tribe, do accuse the [name of defendant and date of birth] with the crime of **Aggravated Assault**, [code section] of the [name of tribal code] Tribal Code, committed as followed:

That the defendant, in the [tribe name] Tribe jurisdiction, on or about: [date of offense], did use a deadly weapon to commit an assault, to wit: [brief description of facts], contrary to the [name of tribal code] Tribal Code and against the peace and dignity of the [tribe name] Tribe.

Maximum Penalty: 6 months confinement and/or \$500.00 fine, plus court costs.

Dated this _____ day of _____, 2000.

I certify, under penalty of perjury, that I have reasonable grounds to believe, and do believe, that the above named Defendant committed the offense as stated in this criminal complaint, contrary to law.

Tribal Prosecutor

13.5 Advisement of Rights – Checklist for Arraignment

ADVISEMENT OF RIGHTS - ARRAIGNMENT

[Tribe name] v. _____, Case # _____

Charge(s): _____

1. Defendant's legal name: same as above, or _____.
2. Pro-se Represented by : _____.
3. Jurisdiction. Within boundaries of [Tribe name] Reservation.
 tribal member, non-member Indian – tribal affiliation: _____.
4. "The purpose of this hearing is to (1) inform you of the charges filed against you, (2) advise you of your rights in this court, (3) allow you to enter a plea to the charge(s)."
If you plead "guilty" you are admitting that you did what the criminal complaint alleges.
If you plead "not guilty" you are denying the charges filed against you.
You may plead "no contest" at the discretion of the court, which means you do not contend the charges filed against you. A no contest plea is equivalent to a plea of guilt.
5. Defendant read rights: YOU HAVE THE RIGHT TO ...
 - a) be informed of the charges against you.
 - b) remain silent; anything you say may be used against you in Court.
 - c) testify in your own behalf.
 - d) to be represented by an attorney or spokesperson at your own expense.
 - e) a speedy and public trial.
 - f) call witnesses, whom the Court will subpoena for you.
 - g) cross-examine those witness who testify against you.
 - i) appeal the result of your trial,
 - j) file a Writ of Habeas Corpus if you believe you are being unlawfully detained.
6. Defendant served with criminal complaint and discovery.
7. Informed of the crimes charged and maximum penalties.
8. Defendant waived reading of complaint. Complaint read to Defendant.
9. Plea entered: not guilty guilty -refer to guilty plea form no contest
10. Conditional Release. PR Bail: \$ _____
11. Set for pre-trial. Set for motions. Continued - hearing will be requested

DONE IN OPEN COURT this _____ day of _____, _____.

JUDGE

13.6 Conditional Release, Domestic Violence - Order

[Caption]

Order – Conditional Release
Domestic Violence
Case No. _____

TO: LAW ENFORCEMENT AGENCIES, and
_____ Jail / Juvenile Detention Center

This matter having come before the Court by motion of the Defendant for release from custody pending ARRAIGNMENT / PRE-TRIAL / TRIAL on charge(s) of :

_____ and the Court having heard arguments and recommendations from the Defendant and the Tribal Prosecutor, now makes the following:

ORDER

IT IS ORDERED that the Defendant shall be released upon his/her:

_____ Personal Recognizance _____ Cash Bail set at \$ _____
_____ OTHER: _____

CONDITIONS

- _____ Shall not commit or threaten to commit acts of domestic violence against the alleged victim or other family or household members.
- _____ Shall not contact, harass, annoy, telephone, or otherwise communicate with the alleged victim, either directly or indirectly.
- _____ Shall vacate and/or stay away from the residence of the victim.
- _____ Shall not possess or consume any alcohol or illegal drugs.
- _____ Shall not possess or use any firearms or other weapons _____ and shall cause any firearms or weapons to be turned over to the police for safekeeping.
- _____ No contact with _____
- _____ OTHER: _____

VIOLATION OF THIS ORDER IS A CRIMINAL OFFENSE AND WILL SUBJECT A VIOLATOR TO ARREST. YOU CAN BE ARRESTED EVEN IF ANY PERSON PROTECTED BY THE ORDER INVITES OR ALLOWS YOU TO VIOLATE IT. YOU HAVE THE SOLE RESPONSIBILITY TO FULLY COMPLY WITH ALL OF THE ORDER'S PROVISIONS. ONLY THE COURT MAY CHANGE THE ORDER.

DATE: _____ JUDGE _____

Acknowledged and Agreed: Defendant _____ Tribal Prosecutor _____

13.7 Statement of Defendant on Plea of Guilty

[Caption]

Statement of Defendant on
Plea of Guilty

Case No. _____

1. My true name is _____ and I am an enrolled member of the
_____ Indian Tribe.

2. I am _____ years old and went through the _____ grade.

3. My address is _____.

4. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT:

a) I have the right to legal representation at my own expense. My legal counsel is _____.

b) I have been charged with and I am pleading guilty to the following charges:

(List the charges to which you are pleading guilty)

OFFENSE	Statutory Maximum Penalties
a) _____	MAX Jail Time _____ Fine \$ _____

b) _____	MAX Jail Time _____ Fine \$ _____
----------	-----------------------------------

c) _____	MAX Jail Time _____ Fine \$ _____
----------	-----------------------------------

TOTAL EXPOSURE RESULTING FROM PLEA:	Jail Time _____	Fine \$ _____
	Add Mandatory Court Costs	\$ _____
		Total \$ _____

5. I HAVE BEEN INFORMED AND FULLY UNDERSTAND THAT I HAVE THE FOLLOWING IMPORTANT RIGHTS, AND I GIVE THEM UP BY PLEADING GUILTY.

a) The right to a speedy and public trial.

b) The right to remain silent before and during trial, and the right to refuse to testify against myself.

c) The right at trial to hear and question witnesses who testify against me.

d) The right at trial to have witnesses testify for me. These witnesses can be made to appear at no expense to me.

e) The right to a jury trial by a jury of my peers living on the _____ Indian Reservation, if a conviction of the crime with which I am charged may result in jail time and I am an adult.

f) I am presumed innocent until the charge is proven beyond a reasonable doubt or I enter a guilty plea.

g) The right to appeal a determination of guilt after a trial through the Tribal Appellate Court.

6. IN CONSIDERING THE CONSEQUENCES OF MY GUILTY PLEA, I UNDERSTAND THAT:
(Please circle the appropriate answer)

a) YES; NO; I am admitting that I committed the offense(s) to which I am pleading guilty.

b) YES; NO; I will have to tell the judge what I did that makes me guilty of the charges.

c) YES; NO; I will have a criminal record.

d) YES; NO; If on probation/parole, a guilty plea may result in a probation/parole violation.

e) YES; NO; I may have to pay restitution to victim(s) of the crime(s) to which I plead guilty.

f) YES; NO; If I hold public office or a government job, I may lose my office or job.

g) YES; NO; If I am on probation with a suspended sentence on another case, a guilty plea to the present charge will be sufficient grounds for the judge to revoke my suspended sentence.

h) YES; NO; This guilty plea may result in suspension of my driving privileges.

7. REGARDING THIS GUILTY PLEA ANSWER THE FOLLOWING:

- a) YES; NO; Are you making this plea freely and voluntarily?
- b) YES; NO; Has anyone threatened harm to you or anyone to force you to make this plea?
- c) YES; NO; Has anyone made you any promises of any kind to cause you to enter this plea?
- d) YES; NO; Have you received a copy of the criminal complaint and police reports?

8. List any charges the prosecutor has agreed to recommend for dismissal:

Case Number	Charge
_____	_____
_____	_____
_____	_____

9. The tribal prosecutor agrees to make the following recommendation to the Judge:

Days in jail _____, Days suspended _____; Fine _____, Fine Suspended _____;
 Probation _____ months; Courts Costs _____; Driving Suspended for _____ days;
 Community Service hours _____; Report to Compliance Officer _____ per _____;
 Obtain and Comply with a Drug and Alcohol Evaluation; Commit no criminal law violations
 while on probation; abstain from alcohol and non-prescribed drugs.

OTHER: _____

YES; NO; I understand the Judge does not have to follow anyone's recommendation as to sentence.
 The judge is completely free to give me any sentence up to the maximum authorized by law no matter what
 the tribal prosecutor or anyone else recommends.

10. The following statement in my own words is a true and correct account of what I did that makes me guilty of this crime. This is my statement:

11. I have read or have had read to me this guilty plea statement and fully understand the consequences of this guilty plea.

_____	_____
Prosecuting Attorney	Defendant
_____	_____
Spokesperson for Defendant	Parent/Guardian/Custodian for Juvenile

FINDINGS AND CONCLUSIONS OF LAW

- 1) YES; NO; The foregoing statement was read by or to the defendant and signed by the defendant in the presence of his or her spokesperson and the undersigned judge in open court.
- 2) YES; NO; The defendant's plea of guilty was made knowingly, intelligently and voluntarily.
- 3) YES; NO; Defendant informed of the nature of the charges and the consequences of the plea.
- 4) YES; NO; The Court has personal and subject matter jurisdiction to hear this case.
- 5) YES; NO; There is a factual basis for the plea.
- 6) YES; NO; The defendant is guilty of the charge(s).

DONE IN OPEN COURT THIS _____ day of _____, _____.

 Judge

13.8 SAMPLE OPENING STATEMENT BY COURT TO JURY

LADIES AND GENTLEMEN:

What I will say now is intended to serve as an introduction to the trial of this case. I will also give your further instructions on the law and the evidence, which has been presented in this case at the close of the case, before you retire to consider your verdict.

This is a criminal case brought by the _____ Indian Nation, which I may sometimes refer to as the prosecution, and sometimes as the Tribe, against _____. The case is based on a complaint, which reads as follows: [Judge reads the complaint].

You must understand that the complaint is simply a charge, and it is not, in any way, evidence that the defendant committed this crime or any other crime.

The defendant has entered a plea of not guilty to the complaint. The prosecution, therefore, has the burden of proving all of the essential elements of the complaint beyond a reasonable doubt. The purpose of this trial is to determine whether the prosecution can meet this burden.

The charge is based on Section _____ of the _____ Tribal Code, which provides, in part, as follows: (The Court should also give the jury a general instruction as to the essential elements of the offense charged.)

The trial will proceed in the following order:

First: The prosecution and the defendant have the opportunity to make a short opening statement which has the purpose of introducing you, the members of the jury, to the evidence which the party expects to produce. The prosecution will make its opening statement at the beginning of the case, and the defendant may make his/her opening statement following the prosecution, or he/she may defer the making of an opening statement until after the prosecution has completed its case. Neither party is obliged to make an opening statement. What is said in the opening statement is not evidence and shall not be considered by you in reaching your verdict.

Second: The prosecution will introduce evidence in support of the charges contained in the complaint.

Third: After the prosecution has presented its evidence, the defendant may also present evidence, but is not obliged to do so. The burden is always on the prosecution to prove every element of the offense beyond reasonable doubt. Law never imposes on the defendant, in a criminal case, the burden or responsibility of calling any witnesses or introducing any evidence in his/her behalf.

Fourth: At the conclusion of the evidence, each party may present oral argument in support of his/her case. As in the opening statement, what is said in closing argument is not evidence and shall not be considered by you in reaching your verdict. The arguments are designed to present what the parties contend the evidence has shown and what inferences they contend may be drawn from the evidence. The prosecution may both open and close the argument.

Fifth: I will instruct you on the applicable law and you will then retire to consider your verdict. Your verdict must be by two-thirds majority (as to every party and on every count).

Your purpose, as jurors, is to find and determine the facts; you alone are the sole judge of the facts. If, at any time, I make a comment regarding the facts you may

disregard my comments completely. It is especially important for you to perform your duty of determining the facts fairly and honestly for, generally, there is no way to correct an erroneous determination of the facts made by a jury.

On the other hand, and with equal emphasis, I instruct you that the law, as given by the court, constitutes the only law for your guidance. It is your duty to accept and follow it even though you may disagree with it.

You are to determine the facts only from the testimony you hear and the other evidence introduced in court. It is up to you to draw whatever inferences you feel may be proper from the evidence presented in this trial.

The parties or their attorneys may sometimes object to some of the testimony or other evidence; this is entirely proper, and you should not be prejudiced by a party or an attorney who makes objections. If I sustain such objections and direct that you disregard certain testimony or other evidence, you must not consider that testimony or evidence in any way in reaching your verdict. You must also not consider anything you may have read or heard about this case outside of the courtroom, either before or during this trial.

In considering the value of the testimony of any witness, you may take into consideration the appearance, attitude and behavior of the witness, the interest of the witness in the outcome of the case, if any, the relationship of the witness to any party in the suit, the inclination of the witness to speak truthfully or not, the probability or improbability of the witness's statement, and all other facts and circumstances in evidence in this case. Thus, you may give the testimony of any witness just such weight and value as you believe the testimony of the witness is entitled to receive.

No statement, ruling, remark, comment, expression, or other mannerism which I may make during this trial is intended to indicate my opinion as to how you should decide the case, or to influence you in any way in making your determination of the facts. At times I may ask questions of witnesses for the purpose of bringing out matters which I feel should be brought out, but again this is not to indicate that those facts should be given special weight or value. If I find it necessary to rebuke the parties or their lawyers, you should not show prejudice to the party because I have found it necessary to be critical of them.

Once you have returned your verdict, if it is a verdict of guilty, it is my responsibility to determine what sentence should be imposed on the defendant. You should not concern yourself in any way with the sentence that the defendant might receive if you should find him guilty. Your function is solely to decide whether the defendant is guilty or not guilty of the charges against him. If and only if, you find him guilty of one or more of the charges, will it become the duty of this court to pronounce sentence.

Until this case is concluded and submitted to you for your determination, you must not discuss it with anyone, including your fellow jurors. After it has been submitted to you for decision, you must discuss it only in the jury room and only with your fellow jurors. It is very important that you keep an open mind and not decide any issue in the case until the entire case has been presented and you have received the instructions of the court.

13.9 Jury Verdict

[Caption]

JURY VERDICT
Case No. _____

We, the jury, being first duly impaneled and sworn to try the above-entitled matter, do hereby find the Defendant, guilty / not guilty, of the charge of _____.

Date: _____

Jury Foreperson: _____

13.10 Order of Acquittal

[Caption]

Order of Acquittal

THIS MATTER having come before this Court for trial on _____, 200__, and the jury having found the Defendant JOHN DOE not guilty of the charges against him,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendant JOHN DOE is acquitted of the charges against him in this matter.

DATED _____, 200__

Judge

13.11 Criminal Judgment

[Caption]

CRIMINAL JUDGMENT

THIS MATTER HAVING come before the undersigned Judge in open court and the above-named defendant having been found guilty of the following offense(s):

_____.

IT IS HEREBY ORDERED THAT DEFENDANT SHALL:

_____ Serve _____ day(s) in jail, with _____ suspended, credit _____ days served
_____ Pay \$ _____ fine, with \$ _____ suspended, pay \$ _____ court costs

CONDITIONS OF SUSPENDED SENTENCE

- _____ Pay all fines and court costs within _____ days of judgment date.
- _____ Complete an Alcohol & Drug Evaluation within _____ days and file a copy with the Court. Comply with recommended treatment and aftercare plans.
- _____ Abstain from alcohol and non-prescribed drugs. Defendant shall be required to submit to a random urine analysis by the probation officer.
- _____ Obtain anger management / domestic violence evaluation within _____ days, and comply with recommendations.
- _____ NO DRIVING within the _____ Reservation boundaries for _____ days from the date of this order. ** Note: Occupational Driving Waiver May Apply
- _____ Complete _____ hours of community service.
- _____ Report to the Probation Officer _____ time(s) per _____.
- _____ Probation period shall end on _____. Any criminal law violations by Defendant during the probation period will be considered a probation violation.
- _____ OTHER: _____

FAILURE TO COMPLY WITH CONDITIONS, SATISFY JUDGMENT OR ANY PROBATION VIOLATIONS MAY RESULT IN REVOCATION OF ANY SUSPENDED SENTENCE.

DONE IN OPEN COURT this _____ day of _____, _____.

JUDGE

13.12 Prisoner Release Order

[Caption]

PRISONER RELEASE ORDER

TO: _____ **Jail / Detention Facility**

YOU ARE HEREBY ORDERED to release from your custody:

_____ **DOB:** _____

on the following charges:

_____ conditional release applies
_____ to appear in the _____ Tribal Court on the
_____ day of _____, _____, at the
hour of _____ am/pm.

THUS DONE AND SIGNED IN OPEN COURT this _____ day of
_____, _____.

Judge

13.13 Order for Pre-Sentence Investigation and Report

[Caption]

Order for Pre-Sentence Investigation and Report

The above named defendant having pled guilty, no contest, or having been found guilty of the charges of _____, the court now orders the following:

IT IS HEREBY ORDERED that:

- 1) The defendant shall submit himself/herself to a pre-sentence interview with the Probation Officer on _____, _____ at _____ am/pm.
- 2) The Probation Officer shall conduct a pre-sentence interview with the defendant, and conduct a pre-sentence investigation, which shall consist of a criminal background check in all jurisdictions, current and past treatment programs, and any other relevant information that will assist the Court in determining an appropriate sentence.
- 3) The Probation Officer shall submit to the Court and to the defendant, or his/her spokesperson, a Pre-Sentence Report that shall contain sentencing recommendations based upon the pre-sentence interview and investigation. The Pre-Sentence Report shall be provided to the defendant or his/her spokesperson at least five (5) working days prior to the sentencing hearing.
- 4) The sentencing hearing shall be set for _____ at _____ am/pm.

IF THE DEFENDANT FAILS TO APPEAR AT THE PRE-SENTENCE INTERVIEW OR SENTENCING HEARING, A WARRANT FOR HIS/HER ARREST WILL BE ISSUED.

SO ORDERED THIS _____ day of _____, _____.

JUDGE

13.14 Petition for Order to Show Cause –Revocation of Suspended Sentence

[Caption]

PETITION FOR ORDER
TO SHOW CAUSE -
REVOCATION OF
SUSPENDED SENTENCE

COMES NOW THE _____ Tribe, through its probation officer, and requests that the above named defendant be made to appear to show cause why the suspended sentence in the above stated case should not be revoked, thereby having the above named defendant serve out any suspended jail time.

I, _____, Probation Officer, under penalty of perjury of the laws of the _____ Tribe now state that I have reviewed the above named defendant’s criminal file under this case number and have found the following:

- 1) The probation period under this case number ends on _____,
- 2) The Defendant has failed to satisfactorily comply with the Judgment Order dated _____, to-wit:

_____.

- 1) The charge(s) for which the defendant was found guilty was/were :

_____.
- 2) Attached are documents in support of this petition, to wit:

_____.

Therefore, the _____ Tribe requests that defendant be ordered to show cause why his suspended sentence should not be revoked for non-compliance with the judgment order under this case number.

DATED THIS _____ day of _____, _____.

Probation Officer

BASED ON the above petition and supporting documentation, the Court now enters the following:

ORDER

THE CLERK OF COURT shall issue an Order to Show Cause commanding the above named defendant to appear on a regularly scheduled court date, to then and there show cause why his suspended sentence should not be revoked.

IT IS FURTHER ORDERED that the Clerk of Court shall attach a copy of the Petition for Order to Show Cause along with copies of all supporting documents.

DATED this _____ day of _____, _____.

Judge

13.15 Motion and Order Closing Criminal Case – Satisfactory Completion of Probation

[Caption]

MOTION AND ORDER

**CLOSING CRIMINAL CASE-
SATISFACTORY COMPLETION
OF PROBATION**

COMES NOW THE _____ Tribe, through its probation officer and now makes the following motion to close the above-entitled criminal case. The defendant in this case has satisfactorily completed all the requirements of the Judgment Order issued by this Court under the above-entitled case number.

DATED THIS _____ day of _____, _____.

Probation Officer

ORDER

The Court hereby orders as follows:

- 1) The above entitled case be and is hereby closed.
- 2) The above named defendant is relieved of all-further obligations and sentences.
- 3) The Clerk of Court shall archive this file one (1) year from the date of this order.

SO ORDERED this _____ day of _____, _____.

Judge

13.16 Petition for Writ of Habeas Corpus

[Caption]

PETITION FOR WRIT OF
HABEAS CORPUS

NOW INTO COURT, through undersigned counsel, comes petitioner, _____, a resident of the full age of majority of _____, _____, who respectfully represents as follows:

1.

Defendant is a citizen of the United States and a resident of the _____.

2.

Defendant is now actually, unjustly and unlawfully imprisoned and restrained of his liberty and detained under color of the authority of the _____ in the physical custody of _____, _____ of _____ Tribe, pursuant to detention with the _____.

3.

On or about _____, _____, defendant was arrested and incarcerated in the _____, where he is still incarcerated.

4.

On _____, defendant pled guilty to the charges of _____ in violation of _____. Defendant was sentenced to _____.

At the time of this plea defendant had served _____ days and should have been released within a reasonable time.

5.

As of this date, the defendant, _____, has served _____ days, which is _____ days in excess of his required statutory time to be served under his sentence.

WHEREFORE, PETITIONER PRAYS that:

This Honorable Court issue a Writ of Habeas Corpus addressed to _____, directing them to have the defendant, _____, brought forthwith before the Court and at that time defendant be discharged from further custody.

For the purpose of informing the Court defendant states that _____ is the Tribal Prosecutor of _____ Tribe, _____, in charge of this prosecution and her address is _____.

13.17 Order – Writ of Habeas Corpus

[Caption]

ORDER

Considering the allegations of the foregoing petition,
IT IS ORDERED that a writ of habeas corpus issue herein, commanding _____, to produce the defendant, _____, before this Court on the _____ day of _____, 20____, at _____ o'clock _____m. and to state then and there their authority for continued custody.

Dated this the _____ day of _____, 20____.

JUDGE

13.18 Writ of Habeas Corpus

[Caption]

WRIT OF HABEAS CORPUS

To: _____

And

YOU ARE HEREBY COMMANDED to produce the defendant, _____, before the Honorable _____, Judge of the _____ Tribe, on the _____ day of _____, 20____, at _____ o'clock _____m.

BY ORDER of the Honorable _____, the _____ Tribal Court.

CLERK OF COURT

13.19 Judgment – Natural Resources Violation

[Caption]

Case No. _____

**JUDGMENT - NATURAL
RESOURCES VIOLATION**

FINDINGS

The above-named defendant was found to have committed the following offense(s):

_____.

The above-named defendant received proper notice and a hearing was scheduled to determine this matter. Defendant was found to have committed the above described offenses by way of :

- _____ Admitting the infraction occurred and explaining the circumstances.
- _____ Contested Hearing based on the police reports and defendant’s testimony.
- _____ Trial.
- _____ Default. The defendant failed to appear, and did not contact the court for a continuance.

IT IS HEREBY ORDERED THAT DEFENDANT SHALL:

_____ Pay a fine in the amount of \$ _____ with \$ _____ suspended.

_____ The defendant’s hunting and fishing privileges are **suspended for _____ days**, in consecutive days beginning with the first legal opening in the management period for the harvest of the species that was associated with the original violation, which in this case is : _____.

_____ **All** hunting and fishing privileges are **suspended for _____ days**.

_____ Defendant shall immediately surrender Commercial Fishing Identification Cards or Hunting permits and tags to the Court, until such time as the penalty is completely satisfied. Failure to surrender I.D. cards, permits or tags is a criminal offense.

CLERK OF COURT: You shall give notice of this judgment to the Tribal Accounting Department, Department of Natural Resources and Natural Resources Enforcement. You shall also give notice to these departments when I.D. Cards, permits or tags are returned to the defendant and judgment is satisfied.

DONE IN OPEN COURT this _____ day of _____, 200 _____.

JUDGE

13.20 Order to Enforce Protection Order

[Caption]

**ORDER TO ENFORCE
PROTECTION ORDER**

TO THE CHIEF OF POLICE AND OFFICERS:

The Petitioner in the above-entitled action has requested that the _____ Tribal Court issue an Order to Enforce a Protection Order issued by _____ State Court. This Court having reviewed the files and records herein and being fully advised in the premises, and presuming the said order to be valid and enforceable pursuant to the Violence Against Women Act, 18 U.S.C. 2265, now therefore:

It is Hereby Ordered, Adjudged and Decreed that the attached Protection Order shall be and is hereby accorded full faith and credit in this Court and shall be enforced by this Court and the Law Enforcement Agencies within the jurisdiction of this Court.

It is further ordered that the Petitioner shall immediately inform this Court in writing should the foreign protection order be terminated, modified or extended.

CLERK’S ACTION. The clerk of the court shall forward a copy of this order to Tribal Law Enforcement, who shall enter this order into any computer-based criminal intelligence system available to the Tribal Police for the purpose of listing outstanding warrants and registration of protection orders. A copy of this order shall be given to the Petitioner. **(A law enforcement information sheet must be completed by the Petitioner and provided with this order before this order will be entered into the computer system.)**

Dated this _____ day of _____, _____.

Judge

13.21 Certification of Protection Order Compliance with VAWA

[Caption]

CERTIFICATION OF
PROTECTION ORDER
COMPLIANCE WITH
VAWA

It is hereby certified that the attached is a true and correct copy of the protection order entered in the above captioned action on _____ (date) and that the judge whose signature appears thereon duly executed the original of the attached order. The order expires on _____ (date).

The order is: [] a civil protection/restraining order OR
[] a civil temporary ex-parte protection/restraining order.

It is further certified that:

- (a) The issuing Court determined that it had jurisdiction over the parties and the subject matter under the laws of the _____ Tribe.
- (b) The defendant was given reasonable notice and opportunity to be heard sufficient to protect the defendant's right to due process before this order was issued or if the order was issued ex-parte, the time required by the law of this jurisdiction, and in any event within a reasonable time after the order was issued, sufficient to protect the defendant's due process rights.
- (c) The order was otherwise issued in accordance with the requirements of the Full Faith and Credit Provisions of the Violence Against Women Act: Title IV, Subtitle B, Chapter 2 of the Violent Crime Control and Law Enforcement Act of 1994. 18 U.S.C. 2263.

The attached order shall be presumed to be valid and enforceable in this and other jurisdictions.

SIGNED this the _____ day of _____, _____.

Judge

CERTIFIED this the _____ day of _____, _____.

Clerk, _____ Tribal Court

13.22 Order for Protection – Domestic Violence

[Caption]

Order Expiration Date: _____

_____,
Petitioner,

v.

_____,
Respondent

Case No.

**ORDER FOR PROTECTION-
DOMESTIC VIOLENCE**

- TEMPORARY (expires 10 days)
- PERMANENT (expires 1 year)
- MODIFICATION

FINDINGS

- Jurisdiction. This court has determined that jurisdiction is proper over the parties and subject matter under the Laws of the _____ Tribe.
- Ex-parte Order. The petitioner appeared and requested an ex-parte order.
- The respondent appeared at the hearing for a temporary permanent order.
- Respondent received notice through personal service and failed to appear for a hearing on a permanent protection order.
- The court has made a factual determination that issuance of this protection order is warranted to prevent further acts of domestic violence and to provide protection to the petitioner.

OTHER PERSONS ENTITLED TO ALL PROTECTIONS OF THIS ORDER:

	NAME	AGE	RELATION TO RESPONDENT
(a)	_____	_____	_____
(b)	_____	_____	_____
(c)	_____	_____	_____
(d)	_____	_____	_____

ORDER

RESPONDENT SHALL:

- 1. Not commit or threaten to commit further acts of domestic violence, and shall not cause petitioner physical harm or bodily injury.
- 2. Not contact, harass, annoy, telephone or otherwise communicate with the petitioner, and others to be protected under this order, either directly or indirectly.
- 3. Immediately leave the petitioner’s residence.
- 4. Stay away from the petitioner’s residence, school, place of employment:

_____.

() 5. WEAPONS: Not possess or use any firearm or other weapon specifically _____, and shall turn these weapons into law enforcement for safekeeping.

TEMPORARY CHILD CUSTODY AND VISITATION:

- () 6. Petitioner shall have temporary custody of minor children.
- () 7. Respondent's visitation with the minor children is suspended.
- () 8. Respondent shall not remove the children from _____ for the duration of this order.
- () 9. Respondent shall immediately cause the transfer or surrender of custody of the below named minor child(ren) to Petitioner (or designee).
- () 10. [] **Petitioner** [] **Respondent** shall be the custodian of the parties' minor child(ren), solely for the purpose of complying with all other Tribal, State and Federal statutes requiring such a designation.
- () 11. This order applies to the following children:

Name	Age	Birthday	Sex
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

LAW ENFORCEMENT SHALL:

- () 12. Law enforcement officers shall assist Petitioner in obtaining transfer or surrender of custody of the above named children.
- () 13. Assist the petitioner in obtaining possession of petitioner's residence and/or personal property.
- () 14. Confiscate weapons from respondent if he/she is prohibited from possessing or using them, and hold and store those weapons until ordered otherwise by this court.
- () 15. Tribal Police shall personally serve respondent a copy of this order at the address of _____ and shall promptly complete and return to this Court proof of service.

CLERK OF COURT SHALL:

- () 16. Forward a copy of this order to Tribal Police, who shall enter this order into the appropriate law enforcement information system.
- () 17. Send a copy of this order to:

IT IS FURTHER ORDERED that:

If this is a **Temporary Order**, this order shall be valid only until the hearing scheduled on

_____, ___, at _____ am/pm, at the Tribal Court.

SO ORDERED this ___ day of _____, ____.

JUDGE

EX PARTE RELIEF REQUIRING HEARING WITHIN 3 DAYS

If this order removes respondent from a shared residence, grants petitioner possession or use of a shared automobile, or other essential shared property, or gives petitioner temporary custody of children, respondent is entitled to a hearing within three (3) days of the issuance of this order.

NOTICE TO THE PETITIONER

Modification or Termination of this Order: If this order is modified or terminated by issuance of another court order, you are responsible for notifying any other state or tribal jurisdiction where you registered this order.

If this order protects you at your place of work or school, you may want to consider providing a copy of this order to your supervisor or school officials so they may take appropriate action if this order is violated at work or school.

NOTICE TO THE RESPONDENT

VIOLATION OF THE PROVISIONS OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE AND WILL SUBJECT YOU TO ARREST AND MAY RESULT IN IMPRISONMENT AND THE REQUIREMENT TO PAY A FINE. A POLICE OFFICER MAY ARREST YOU AND TAKE YOU INTO CUSTODY IF THERE IS PROBABLE CAUSE TO BELIEVE THAT YOU VIOLATED THIS ORDER. VIOLATORS MAY ALSO BE FOUND IN CONTEMPT OF COURT AND SUBJECT TO PENALTIES FOR CONTEMPT.

YOU CAN BE ARRESTED EVEN IF INVITED TO VIOLATE THE PROHIBITIONS OF THIS ORDER BY THE PERSON(S) OBTAINING IT—THEY CANNOT WAIVE OR SUSPEND THE PROHIBITIONS OF THIS ORDER—ONLY THE COURT CAN MODIFY IT UPON WRITTEN APPLICATION.

THIS ORDER IS ENFORCEABLE IN ALL 50 STATES, THE DISTRICT OF COLUMBIA, ALL TRIBAL LANDS, AND ALL U.S. TERRITORIES, AND SHALL BE ENFORCED AS IF IT WERE AN ORDER OF THAT JURISDICTION.

VIOLATIONS OF THIS ORDER ARE SUBJECT TO STATE AND FEDERAL CRIMINAL PENALTIES. IF YOU TRAVEL ACROSS STATE OR TRIBAL BOUNDARIES WITH THE INTENT TO VIOLATE THE ORDER (INCLUDING WITH INTENT TO INJURE THE PLAINTIFF) AND THEN COMMIT A VIOLATION OF THE ORDER (INCLUDING COMMITTING A CRIME OF VIOLENCE CAUSING BODILY INJURY), YOU MAY BE CONVICTED OF A FEDERAL OFFENSE UNDER VAWA (sec. 2261[a][1]). YOU MAY ALSO BE CONVICTED OF A FEDERAL OFFENSE IF YOU CAUSE THE PETITIONER TO CROSS A STATE OR TRIBAL BOUNDARY FOR THIS PURPOSE (sec. 2262[a][2]).

IF A PERMANENT ORDER IS ENTERED AGAINST YOU AFTER THE HEARING, EVEN IF YOU DID NOT ATTEND, YOU MAY BE PROHIBITED FROM POSSESSING, TRANSPORTING OR ACCEPTING A FIREARM UNDER THE 1994 AMENDMENTS TO THE GUN CONTROL ACT. 18 U.S.C. 922(g)(8). A VIOLATION OF THIS PROHIBITION IS A FEDERAL CRIME.