

POTAWATOMI LAW AND ORDER CODE

TITLE 2 COURTS

CHAPTER 2-1 GENERAL PROVISIONS

Section 2-1-1. Authorization.

The Tribe hereby establishes and activates a court system pursuant to the Tribal Constitution, comprising the District Court and the Court of Appeals.

Section 2-1-2. Consent to Jurisdiction.

The act of entry within the exterior boundaries of the Reservation and or the performance of any act specified in Section 1-1-1 of Title 1 of this Code shall be considered consent to the jurisdiction of the Tribe and the Tribal Courts.

(Amended by PBP TC No 2002-081, June 14, 2002)

Section 2-1-3. Tribal Court Jurisdiction.

(A) The Nation has a vital self-government interest in the exercise of the jurisdiction of its Tribal Courts over all matters to the full extent not prohibited by federal law. Under Article I, Sec. 1, of the Nation's Constitution, the authority and jurisdiction of the Nation's courts shall extend to the fullest extent possible, including, without limitation, (a) to any and all persons, including non-members and members of the Nation and including any corporation, other entity or any person located or doing business on the Nation's Reservation and (b) to all surface, subsurface or other territory or real or personal property of any nature within the Nation's Reservation. The establishment of a judicial system and the parameters of its jurisdiction are fundamental attributes of sovereignty and are necessary instruments of self-government and territorial management, which derive from the Nation's general authority, as sovereign, to control activity within its jurisdiction. The development of tribal courts plays an important role in furthering the goal of tribal self-government. They also provide orderly and fair procedures for resolving conflicts that reflect tribal traditions and prevailing community standards of the reservation area. Exclusive Tribal Court jurisdiction where such jurisdiction is not prohibited by federal law is necessary in order to preserve the Tribal Court as an integral part of tribal self-government. The exercise of state or federal court jurisdiction over such matters would infringe upon the Nation's right of self-government and undermine the authority and purpose of its tribal courts.

Congress has acknowledged and declared the strong federal interest in the protection and promotion of tribal courts as an essential function of tribal self-government. Pursuant to 25 U.S.C. §3601:

"The Congress finds and declares that—

- (1) there is a government-to-government relationship between the United States and each Indian tribe;
- (2) the United States has a trust responsibility to each tribal government that includes the protection of the sovereignty of each tribal government;
- (3) Congress, through statutes, treaties, and the exercise of administrative authorities, has recognized the self-determination, self-reliance, and inherent sovereignty of Indian tribes;
- (4) Indian tribes possess the inherent authority to establish their own form of government, including tribal justice systems;
- (5) tribal justice systems are an essential part of tribal governments and serve as important forums for ensuring public health and safety and the political integrity of tribal governments;
- (6) Congress and the Federal courts have repeatedly recognized tribal justice systems as the appropriate forums for the adjudication of disputes affecting personal and property rights;
- (7) traditional tribal justice practices are essential to the maintenance of the culture and identity of Indian tribes and to the goals of this chapter..."

Indian tribes have a strong interest as a sovereign in regulating economic activity within their own territory, and they may enact laws governing such activity. A tribe may regulate the activities of nonmembers who enter consensual relationships through commercial dealings, contracts, leases, or other arrangements and may also exercise civil authority over the conduct of non-members on any lands within its reservation when that conduct threatens or has some direct effect on the political integrity, the economic security, or the health or welfare of the tribe. Such consensual relationships with non-members include all transactions where the Nation or its members are involved, either directly or indirectly, in the activity to which the transaction relates. Tribal regulation of and jurisdiction over non-members may also be appropriate under other circumstances.

Congress has recognized and declared under 25 U.S.C. §2701(5) that "Indian tribes have the exclusive right to regulate gaming activity on Indian lands" as long as the activity does not violate federal law or state criminal law. This exclusive right to regulate gaming facilities includes the right to determine when and how to compensate for claims for injuries occurring with respect to such gaming facilities. The Nation has a significant governmental and economic self-determination interest in all matters pertaining to its gaming facilities on its reservation.

(B) The Tribal Courts shall have general civil jurisdiction over all civil actions arising under the Tribal Constitution, the Tribal Law and Order Code, and the Tribal Common Law, over all civil claims which arise within the tribal jurisdiction, and over all transitory claims in which the defendants may be served within the tribal jurisdiction. The Tribal Courts shall have exclusive jurisdiction over all civil matters except where tribal jurisdiction is prohibited by federal law. Personal jurisdiction shall exist over all defendants served within the territorial jurisdiction of these Courts, or served anywhere in cases arising within the territorial jurisdiction of the Tribe, and over all persons consenting to such jurisdiction. The determination of whether the Tribal Court has jurisdiction over Indians or non-Indians will be conducted in the first instance in the Tribal Court itself.

(C) Tort Claims arising from Gaming Facilities. All tort claims arising from injuries directly or indirectly involving or related to the Nations' gaming facilities shall be adjudicated in Tribal Court. This applies to any and all tort claims that may be brought against the Nation, the manager of the Nation's facilities, their employees or agents and any related or other persons. "Gaming facilities" includes all those facilities known as the Nation's casino, together with all buildings and all related roads, parking lots, access ramps, structures, developments and improvements used directly or indirectly in connection with the casino.

This subsection is expressly intended by the Nation to constitute the exclusive means of adjudication of such tort claims by patrons, invitees, guests, employees and other persons, and the Nation expressly withholds its consent to suit in any forum other than Tribal Court for these or any other matters. Under the Nation's Gaming Compact with the State of Kansas, the Nation has adopted and will apply in its Tribal Court the Kansas Tort Claims Act for patron claims to the extent the Act is consistent with federal and tribal law. Pursuant to Compact Sec. 3(E), in such suits the Nation's insurer may not invoke tribal sovereign immunity up to the specified policy limits. All tort claims shall be brought in Tribal Court regardless of whether the Nation is or is not named as a party. For claims arising from or related to the Nation's gaming facilities or activities, the Nation shall exercise exclusive jurisdiction for both Indian and non-Indians. Compact Sec. 14(A) states that with respect to all transactions or activities that relate to Class III gaming on the reservation, the Nation shall exercise civil jurisdiction over both Indians and non-Indians. The Compact does not authorize state or federal courts to assume civil jurisdiction over the adjudication of gaming related or other matters.

(Amended by PBP TC No 2002-081, June 14, 2002)

Section 2-1-4. Criminal Jurisdiction.

The Courts shall have original jurisdiction over all criminal offenses enumerated and defined in any ordinance adopted by the Prairie Band of Potawatomi Indian Tribe insofar as not prohibited by federal law.

Section 2-1-5. Probate Jurisdiction.

To the extent permitted by federal law the Courts shall have probate jurisdiction over all of the real and personal property located within the jurisdiction of these Courts at the time of death, and the personal property, wherever located, of any person who is domiciled within the boundaries of the jurisdiction of these Courts at the time of death.

Section 2-1-6. Juvenile Jurisdiction

The Juvenile Division of the District Court shall have exclusive original jurisdiction in all proceedings and matters affecting dependent or neglected children, children in need of supervision, or children under the age of eighteen (18) accused of crime, when such children are found within the jurisdiction of these Courts, or when jurisdiction is transferred to these Courts pursuant to law. The Court of Appeals shall hear appeals in juvenile cases as in other civil actions.

Section 2-1-7. Law to be Applied

The Courts shall first apply the Tribal Constitution and this Code, as amended hereafter. In matters not covered by such law, the Courts shall apply traditional tribal customs and usages, which shall be called the Tribal Common Law. When in doubt as to the Tribal Common Law, the Courts may request the advice of counselors and tribal elders familiar with it. In any dispute not covered by the tribal Constitution, this Code, or Tribal Common Law, the Courts may apply any law of the United States or any State. Except as required by federal law, no such federal or state law shall govern the Courts unless specifically incorporated into tribal law by amendment to the Tribal Law and Order Code or made applicable by a decision of the Tribal Courts adopting such federal or state law as Tribal Common Law.

**CHAPTER 2-2
DISTRICT COURT AND COURT OF APPEALS**

Section 2-2-1. Composition of the Courts.

The District Court shall consist of one Judge, and such other Judges or Magistrates as may be appointed according to law.

Section 2-2-2. Minimum Qualifications.

Eligibility for selection and confirmation as a Judge or Justice a person shall:

- (A) be either
 - (1) an enrolled member of any Tribe, or
 - (2) the parent, child, or spouse of an enrolled member of the Tribe, or
 - (3) domiciled within the territorial jurisdiction of the Tribe, or
 - (4) an attorney, or
 - (5) a lay advocate or lay judge with at least five (5) years of previous experience as a Judicial Officer for a recognized Court, or
 - (6) an Indian graduate of an American Bar Association approved Law School, or a Paralegal program approved by the Administrative District Judge and Court of Appeals; and

- (B) have demonstrated moral integrity and fairness in his business, public and private life, and

- (C) have never been convicted of a felony or any offense, except traffic offenses, for a period of
 - (1) two (2) years for District Court
 - (2) five (5) years for Court of Appeals

- next preceding his appointment. The two-year period shall begin to run from the date the person was unconditionally released from supervision of any sort as a result of a conviction.

- (D) have regularly abstained from the excessive use of alcohol or illegal drugs.

- (E) be at least thirty (30) years of age.

- (F) not hold or be a member of an appointed or elected position of this Tribe

- (G) if less than fifty (50) years of age, have a degree at an accredited college or university, or at least four (4) years of previous experience as a Judicial Officer for some recognized Court.

(Amended by PBP TC No. 99-36, March 16, 1999.)

Section 2-2-3. Manner of Selection.

Justices and Judges of the Tribe shall be nominated and confirmed by the General Council upon a vacancy occurring in a judicial office in the following manner:

(A) Within thirty (30) days after a vacancy occurs a notice of the vacancy stating the minimum qualifications, salary, and any other pertinent information shall be published for two (2) consecutive weeks in a newspaper of general circulation in the tribal jurisdiction. The notice shall direct that inquiries, nominations and applications be directed to the Tribal Court or their delegated representatives, who shall keep a permanent record of responses to such notices.

(B) No sooner than twenty (20), nor more than thirty (30) days after the date on which last required notice was published or posted, the Court shall deliver the names and files of all persons nominated or applying for the Judicial Office to the General Council. The General Council shall review and select a qualified candidate for each vacancy.

(C) In making a selection, preference shall be given to those candidates who:

- (1) have more formal education and experience in the legal field.
- (2) by written examination conducted by the Court of Appeals or by interview have shown that they are familiar with the Constitution, Code and Common laws of the Tribe.
- (3) have demonstrated decision making ability.

(D) If the nominee for the Judicial Office is confirmed by the General Council, the nominee shall be sworn into office.

(E) If the nominee is not confirmed, the confirmation process shall continue until some nominee be confirmed.

(F) Upon the expiration of a judicial term of office, the Judicial Officer is entitled upon request, filed with the Secretary not less than sixty (60) days prior to the expiration of his term, to be re-considered for confirmation. If a General Council does not confirm the outgoing officer, they shall so declare and begin the selection process. The outgoing judicial officer's term shall expire upon confirmation of the new Judge or Justice.

Section 2-2-4. Term of Office.

All Judges and Justices shall serve four (4) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or by death or resignation. The first appointments of Judges and Justices shall be for terms which may vary in order to provide for staggered terms of office.

Section 2-2-5. Oath of Office.

Before assuming office each Judge or Justice shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all causes coming before the Court, without regard to the individuals.

Section 2-2-6. General Duties and Powers.

All Judges and Justices in cases within their authority, shall have the duty and power to conduct all court proceedings, and issue all orders and papers in order to administer justice in all matters unless disqualified for conflict of interest or cause. In doing so the Court shall:

- (A) Be responsible for creating and maintaining the regulations and rules of the Court, not conflicting with the Tribal Code for the orderly and efficient administration of justice. Such rules must be filed in the office of the Court Clerk before becoming effective.
- (B) Hold Court regularly at a designated time and place.
- (C) Undertake all duties and exercise all authority of a judicial officer under the law.
- (D) Hear and decide all cases properly brought before the Court.
- (E) Enter all appropriate orders and judgments.
- (F) Issue all appropriate warrants and subpoenas.
- (G) Keep all records as may be required.

Section 2-2-7. Additional Duties and Powers.

The District Judge shall also be the Administrative Judge for the District Court and shall be responsible for:

- (A) The administration of all District Courts and shall determine, where not otherwise provided by law, what actions may be taken by a single judge of the court.
- (B) The performance of any and all other duties as may be required for the operation of the District Court.
- (C) The supervision of the actions of the District Court and all personnel and officers of the Court.
- (D) In the event there is more than one District Judge or Magistrate, the Tribal Council shall determine who will serve as Administrative District Judge.

Justices of the Appeals Court shall also be responsible for:

- (A) The administration of the Appeals Court and performing any and all other duties as may be required for the operation of said Court.
- (B) The hearing of appeals from the District Courts.
- (C) The supervision of the actions of the Appeals Court and all personnel and officers of the Appeals Court.
- (D) In the event there is more than one Appeals Court Judge the Tribal Council shall determine who shall serve as Administrative Justice.

(Amended by PBP TC No. 99-36, March 16, 1999.)

Section 2-2-8. Special Appointments.

Until the tribal court system is fully operational, and whenever an additional Judicial Officer is needed to efficiently dispense with the business of the Court due to vacancies in office, disqualification of Judges, or any other cause, the Tribal Council or the Court of Appeals may designate one or more special judges to hear specific named cases. No special procedure need to be followed in making such appointments. Special Judges may be compensated from the Court fund in such reasonable amounts as the Court of Appeals or Tribal Council shall order.

(Amended by PBP TC No. 92-68, December 1992; PBP TC No. 99-36, March 16, 1999.)

Section 2-2-9. Compensation.

- (A) The compensation of all Justices and Judges shall be set by the Tribal Council from available funds. No Judge shall have his compensation reduced during this term of office, except if funds are unavailable, the compensation of all judicial officers may be reduced proportionately to the availability of funds.
- (B) The compensation of all Special Judges shall be set by the Tribal Council from available funds, or from funds made available pursuant to an agreement entered into according to Section 2-4-3.

(Amended by PBP TC No. 92-68, December 1992.)

Section 2-2-10. Removal.

(A) District Court Judges shall be removed only for cause by the General Council upon the recommendation of the Court of Appeals. Neither the Court of Appeals, nor the General Council may remove independently, but the Court of Appeals must first recommend the removal.

(B) Court of Appeals Justices may not be removed from office, except upon final conviction of a felony or an offense involving moral turpitude, or from neglect of duty or gross misuse of office, in which case the Court of Appeals shall enter its order disbaring and expelling such Justice from the Court and declaring that Judicial Office vacant.

(C) A special judge appointed by the Tribal Council pursuant to Section 2-2-8, may be removed by the Tribal Council only for cause or upon completion of the specific named cases he was appointed to hear.

(Amended by PBP TC No. 92-68, December 1992.)

Section 2-2-11. Disqualifications, Conflict of Interest.

(A) No Judge shall hear any case when he has a direct financial, personal or other interest in the outcome of such case or is immediately related by blood or marriage to one or both of the parties. A Judge should attempt to prevent even the appearance of partiality or impropriety.

(B) Either party of interest in such case or the Judge may raise the question of conflict of interest. Upon decision by the Court of Appeals that disqualification is appropriate, another Judge shall be assigned to hear the matter before the Court.

(C) Any Judge may hear a case if all parties are informed of the blood or marriage relationship on the record in open Court and of their right to have a different Judge hear the case, and consent to further action by that Judge in the case open Court upon the record, or in a writing filed in the record, in spite of the conflict of interest.

Section 2-2-12. Decisions.

Each decision of the Court shall be recorded on a form approved by the Administrative District Court Judge for such purpose. The form shall provide for recording the date of the decision, the case number, the names of all parties, the substance of the complaint or the issues presented on appeal, the relevant facts found by the Court to be true, the Court's decision, and the conclusions of law supporting the Court's decision. The

decision form shall be placed in the case file as an official document of the case. A written opinion may be filed in lieu of the form in Court of Appeals decisions. Such opinion shall be part of the permanent record.

(Amended by PBP TC No. 99-36, March 16, 1999.)

Section 2-2-13. Records.

The District Court shall be a Court of Record. To preserve such records:

(A) In all Court proceedings, the Court Reporter, shall record the proceedings of the Court by electronic or stenographic means. The recording shall be identified by case number and kept for five (5) years for use in appeals or collateral proceedings in which the events of the hearing are in issue. The Reporter shall cause a transcript to be made as a permanent part of the case record.

(B) To preserve the integrity of the electronic record, the Reporter shall store the recording in a safe place and release it only to the relevant Court or pursuant to an Order of a Tribal Judge or Justice.

(C) The Clerk shall keep in a file bearing the case name and number every written document filed in the case.

(D) All Court records shall be public records except as otherwise provided by law.

(E) Court records may be reproduced on space saving record keeping modes, provided, that at least one hard copy of such stored data shall be kept at all times.

Section 2-2-14. Files.

(A) Except as otherwise provided by law, Court files are generally open to the public. Any person may inspect the records of a case and obtain copies of documents contained therein during normal business hours.

(B) Any person desiring to inspect the records may inspect such files only during the ordinary working hours of the Clerk, or a Judge and in their presence to insure the integrity of Court records. Under no circumstances shall anyone, except a Judge, licensed advocate, attorney or the Clerk, take a file from the Clerk's office.

(C) A copy of any document contained in such a file may be obtained from the Clerk for a reasonable copy fee. The Clerk is hereby authorized to certify under the seal of his office that such copies are accurate reproductions of those documents on file in his office.

Section 2-2-15. Practice Before the Court.

(A) No person shall be denied the right to have a member of the Bar of the Court represent him and present his case before the Courts.

(B) The Administrative District Judge, after conferring with the Administrative Appeals Judge, shall make rules which shall govern who may practice before that District Court and the Court of Appeals. Such rules shall be filed in the office of the Clerk.

(Amended by PBP TC No. 99-36, March 16, 1999.)

Section 2-2-16. Rules of the Court.

The Administrative District Judge with approval of the Administrative Appeals Judge shall establish rules concerning the administration of the Courts and conduct in the Court of Appeals and District Courts not inconsistent with Tribal law or the Tribal Constitution. Such rules shall govern the conduct, demeanor, and decorum of those in the Court as well as the form and filing of appeals, briefs, pleadings, and other matters which will make the Court function more efficiently. Such rules shall be filed in the Court Clerk's office.

(Amended by PBP TC No. 99-36, March 16, 1999.)

Section 2-2-17. Action on Appeals.

In any appeal before it, the Court of Appeals shall have full authority to affirm, reverse, modify, or vacate any action of the District Court or other entity from whom the appeal is taken as authorized by law, and may enter such order as is just or remand the case for the entry of a specified judgment, for a new trial, or for such further action in accordance with the Court of Appeal's opinion or instructions as shall be just.

Section 2-2-18. Court Receipts

(A) Records.

The Clerk of the Court will deposit into the General Fund all fines, fees, penalties, costs, and other monies authorized or required by law to be paid to the Court which are not to be distributed to any party to a case and for which no requirement is imposed by law for the deposit of such funds into a particular account. The Clerk shall keep and maintain accurate, complete, and detailed records which reflect all fines, fees, penalties, costs, and other monies received by the Court. These records shall be submitted to the Treasurer's Office no later than the 10th of each month.

(B) Distribution of Funds.

Funds collected by the Court shall become part of and included in the General Fund of the Prairie Band Potawatomi Nation and shall be subject to the annual budgeting process for distribution in accordance with a budget approved by a majority vote of the Tribal Council. No monies shall be released or expended from the Fund except

upon approval by the Tribal Council or a party or parties designated by Council

(Amended by PBP TC No. 2005-028, March 17, 2005.)

CHAPTER 2-3 COURT CLERK

Section 2-3-1. Establishment Judicial Administrator's Office.

There is hereby established a Court Clerk's Office to be administered by one (1) Court Clerk and such Deputy Court Clerks as may be necessary. The Judicial Administrator and Court Clerk shall be Appointed by the Administrative District Judge, and shall serve at the pleasure of the Administrative District Judge. The Judicial Administrator with the approval of the Administrative District Judge shall appoint all other non-judicial personnel.

(Amended by PBP TC No. 99-36, March 16, 1999; amended by PBP TC No. 99-123, September 10, 1999)

Section 2-3-2. Service to all Courts.

Until such time as the Court of Appeals determines that separate Clerks are necessary to efficiently administer the business of the Courts and funding is available, the Court Clerk shall serve as the Clerk of the Court of Appeals and the Clerk of the District Court.

Section 2-3-3. Judicial Administrator as Department Director.

The Court Clerk is a supervisory administrative position of the Judicial Branch of the Government of the Tribe with the same rank as Department Director. The Judicial Administrator shall be the Director of the Judicial Branch of Tribal Government and shall be responsible for the preparation of the Court's budget and supervise the Court Clerk in performance of his/her duties.

(Amended by PBP TC No. 99-123, September 10, 1999)

Section 2-3-4. Powers and Duties.

The Court Clerk shall have the following powers and duties:

- (A) To undertake all duties and functions otherwise authorized by law, or necessary and proper to the exercise of a duty.
- (B) To supervise and direct work of all employees in his office.
- (C) To collect all fines, fees, and costs authorized by law, and to receipt and to deliver to the Court fund.
- (D) To accept, when ordered by the Court, monies for the payment of civil judgments and to pay same by check to the party entitled to them.

- (E) To be audited at least once each year.
- (F) To have a fidelity or performance bond to guarantee the funds deposited in such amount, as the Administrative District Judge shall direct.
- (G) To administer oaths, certify a true copy of Court records, and to accurately keep each and every record of the Court of Appeals and District Courts.
- (H) To provide a record in the absence of a Court Reporter to accurately and completely record all proceedings and hearings of the Courts.
- (I) To provide clerical services to the Court.
- (J) To act as librarian, and to keep and maintain the Court's law library.
- (K) To undertake all other duties assigned or delegated to the Clerk's office by Tribal law or Court Rule.

(Amended by PBP TC No. 99-36, March 16, 1999.)

Section 2-3-5. Seal.

The Court Clerk is authorized to have and use a seal which shall be circular in form and contain the words, "District Court Clerk", or "Court of Appeals Clerk", and the name of the Tribe around the edge. The seal shall be impressed upon all authorized documents, as evidence of their authenticity.

Section 2-3-6. Certification of True Copies

The Court Clerk is authorized to certify that a copy of any record in his office is a true and accurate copy of the record on file by signed stamp or writing placed on such copy, sealed with the seal of the Court Clerk's office.

Certified copies of records shall be admissible as evidence without further authentication in all judicial and administrative proceeding of this Tribe.

Section 2-3-7. Notice or Orders or Judgments.

Upon the entry of an order or judgment, the Clerk shall serve a notice of the entry by mail upon each party who is not in default, and shall make a note in the docket. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by law. Any party may also serve a notice of such entry in the manner provided in the Civil Procedure Act for the service of papers.

Section 2-3-8. Clerk's Books, Records and Entries.

(A) The Clerk shall keep a "Docket" book as prescribed by the Administrative District Judge and shall enter therein each civil action. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereupon the first entry of the action is made. All papers filed with the Clerk shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number.

(B) The Clerk shall also keep such other books and records as may be required from time to time by law or by the Court Judges or Justices.

(Amended by PBP TC No. 99-36, March 16, 1999.)

Section 2-3-9. Separate Case Files.

The papers in each case shall be kept in a separate file marked with the title and number of the case.

Section 2-3-10. Memorializing Record.

It is the duty of the Court to write out, sign, and record its orders, judgments, and decrees within a reasonable time after their rendition. To aid in the performance of this duty, the Court may direct counsel or the Court Clerk to prepare the written memorialization for its signature and, after it is signed, to file it in the case record, or, the Court may direct the Clerk to prepare the written memorialization dictated by the Court and sign and file the same on the Court's behalf.

Section 2-3-11. Statistical Information.

The Clerk shall keep the records and books and papers appertaining to the Court and record its proceeding, and exercise the powers and perform the duties imposed upon him by Tribal statute, order of the Court, or Court rule. The Clerk is directed to furnish annually, or at such times shall be requested, such statistical information including, but not limited to, the number and classification of cases:

- (A) Filed with the Court.
- (B) Disposed of by the Court.
- (C) The cases pending before the Court.

**CHAPTER 2-4
MISCELLANEOUS**

Section 2-4-1. Publications.

(A) Every daily or weekly newspaper published continuously for a period of two (2) years in any county in which a portion of the tribal jurisdiction lies, or within or adjacent to the tribal jurisdiction, shall be recognized and authorized to publish all publications and notices required or permitted to be published by the Tribal Code.

Section 2-4-2. Immaterial Errors.

The Court, in every stage of action, must disregard any error or defect in the pleadings or proceedings which does not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such immaterial or harmless error or defect.

Section 2-4-3. Sharing of Judicial Officers.

Notwithstanding any other provision of this Title, the Tribal Council is hereby authorized to negotiate an agreement for the shared use of Court personnel, Court support personnel, facilities and financial resources.

Section 2-4-4. Copies of Laws.

The Court law library shall be provided with copies of all Federal, Tribal, and State laws and the regulations of the Bureau of Indian Affairs which may be applicable to the conduct of any persons within the tribal jurisdiction.

Section 2-4-5. Effect of Prior Decisions.

The prior decisions of the Courts acting for the Tribe shall be binding upon the parties thereto. The rules of law stated in such decisions, not inconsistent with Tribal statutes enacted after such decisions, shall be precedent in the Courts subject to modification or being overruled by subsequent opinion of the Court as in other cases.

Section 2-4-6. Judicial Review.

The District Court and Court of Appeals shall have the authority to review any act, brought before the Court, of the Tribal Council, or any tribal officer, agent, or employee to determine whether that action, and the procedure or manner of taking that action, is Constitutional and not prohibited by the Indian Civil Rights Act, statute or common law. If the Court finds such action, or the manner of its exercise, to be lawful, it may refuse to recognize the unlawful action or refuse to apply the law or statute in question. If the Court finds such action, or the manner of its exercise, to be unlawfully authorized, the Court shall dismiss the case. The Court shall not otherwise review the exercise of any authority

committed to the discretion of a tribal officer, agency, agent, or employee by Tribal law unless some specific provision of law authorizes judicial review of the merits of the discretionary decision or action.

Section 2-4-7. Action When No Procedure Provided.

Whenever no specific procedure is provided in the Tribal Code, the Court may proceed in any lawful fashion.

**CHAPTER 2-5
PEACEMAKERS**

Section 2-5-1. Peacemakers Circle.

(A) **Purpose.** The peacemakers circle shall have the responsibility for mediating disputes voluntarily submitted to them by the parties.

(B) **Appointment and term.** The General Council shall determine the number of peacemakers and select them at a General Council Meeting. They shall have four year terms.

(C) **Peacemaker functions.** The function of the peacemakers is to assist the parties in reaching a mutually acceptable agreement to settle informal or formal disputes between them. The peacemakers shall aid the parties in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and finding points of agreement. An agreement reached by the parties is to be based upon the decisions of the parties and not the decisions of the peacemaker.

(D) **Duties of the peacemakers.** Peacemakers shall:

- (1) inform the parties that there shall be no charge for the mediation,
- (2) advise the parties that the peacemaker does not represent either or both of the parties,
- (3) define and describe the process of mediation,
- (4) disclose the nature and extent of any relationship with the parties and any personal, financial or other interests which could result in bias or conflict of interest,
- (5) advise each of the parties to obtain independent legal advice,
- (6) allow only the parties to attend the mediation sessions,
- (7) disclose to the parties' attorneys, if any, any factual documentation revealed during the mediation if at the end of the mediation process the disclosure is agreed to by the parties,
- (8) if children are involved, ensure the parties consider fully the best interests of the children and the parties understand the consequences of any decision they reach concerning the children, and

(9) inform the parties of the extent to which information obtained from and about the participants through the mediation process is not privileged and may be subject to disclosure.

(E) The peacemaker may meet with the children of any party and, with the consent of the parties, may meet with other persons.

(F) The peacemaker shall make a written summary of understanding reached by the parties. A copy of the summary shall be provided to the parties and their attorneys, if any. Any understanding reached by the parties as a result of mediation shall not be binding upon the parties nor admissible in court until it is reduced to writing, signed by the parties and their attorneys, if any, and approved by the court if there is a pending proceeding.

(G) **Termination of mediation.** At any time after the second mediation session, either party may terminate mediation. The peacemaker shall terminate mediation whenever the peacemaker believes that: (1) continuation of the process would harm or prejudice one or more of the parties or the children or (2) the ability or willingness of any party to participate meaningfully in mediation is so lacking that a reasonable agreement is unlikely. If applicable, the peacemaker shall report the termination of mediation to the court. The peacemaker shall not state the reason for termination except when the termination is due to a conflict of interest or bias on the part of the peacemaker.

(H) A peacekeeper shall treat all verbal or written information transmitted between any party to a dispute and a peacekeeper conducting the proceeding, or the staff of an approved program, as confidential communications. No admission, representation or statement made in the proceeding shall be admissible as evidence or subject to discovery. A peacekeeper shall not be subject to process requiring the disclosure of any matter discussed during the mediation unless all the parties consent to a waiver. Any party and the peacekeeper or staff of an approved program conducting the proceeding, participating in the proceeding has a privilege in any action to refuse to disclose, and to prevent a witness from disclosing, any communication made in the course of the proceeding. The privilege may be claimed by the party or the peacemaker or anyone the party or the peacemaker authorizes to claim the privilege. A peacemaker conducting the proceeding shall not be subject to process requiring the disclosure of any matter discussed within the proceedings unless all parties consent to a waiver. The confidentiality and privilege requirements of this section shall not apply to:

(1) information that is reasonably necessary to allow investigation of or action for ethical violations against the peacemaker conducting the proceeding or for the defense of the peacemaker or staff of an approved program conducting the proceeding in an action against the peacemaker or staff of an approved program if the action is filed by a party to the proceeding;

- (2) any information under which there is a suspicion that a child has been harmed as a result of physical, mental or emotional abuse or neglect or sexual abuse;
- (3) any information that is reasonably necessary to stop the commission of an ongoing crime or fraud or to prevent the commission of a crime or fraud in the future for which there was an expressed intent to commit such crime or fraud;
- (4) any information that the me peacemaker is required to report or communicate under the specific provisions of any statute or in order to comply with orders of the court; or
- (5) any report to the court that a party has issued a threat of physical violence against a party, a party's dependent or family member, the peacemaker or an officer or employee of the court with the apparent intention of carrying out such threat.

(Amended by PBP TC No. 2008-156, July 2, 2008)

(Enacted by PBP TC No. 92-56, Title 2, December 1992; amended by PBP TC No 92-68, December 1992; amended by PBP TC No. 99-36, March 16, 1999; amended by PPB TC No. 99-123, September 10, 1999; amended by PBP TC No. 2002-081, June 14, 2002; amended by PBP TC No. 2005-028, March 17, 2005; amended by PBP TC No. 2008-156, July 2, 2008)

