

CHAPTER 1

ADMINISTRATION OF LAW AND ORDER (TRIBAL COURT)

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## CHAPTER I.

## ADMINISTRATION OF LAW AND ORDER (TRIBAL COURT)

Section 1. Jurisdiction. (See Clarification of this Section in Preface).

The Blackfeet Tribal Court shall have jurisdiction over all offenses enumerated in Chapter 5, when committed by an Indian (person) as defined by this Section, within the Blackfeet Indian Reservation. With respect to any of the offenses enumerated in Chapter 5, over which federal or state courts may have lawful jurisdiction, the jurisdiction of the Court shall be concurrent and not exclusive. It shall be the duty of said Court to order delivery to the proper authorities of the State or Federal Government or of any other tribe or reservation for prosecution, any offender, there to be dealt with according to law or regulations authorized by law, where such authorities consent to exercise jurisdiction lawfully vested in them over the said offender. The Blackfeet Tribal Court is a court of "limited jurisdiction". This means that the Court can handle certain types of cases, but cannot handle other types. In order to know whether the Court can handle any particular criminal cases, it is necessary first to know where the offense took place, who is said to have committed the offense, and what offense is charged. Where: The Blackfeet Tribal Court has jurisdiction over matters arising on land within the exterior boundaries of the Blackfeet Indian Reservation. In addition to trust lands belonging to the Tribe or to individual Indians, this includes fee patented lands, townsites, roads and other right-of-ways, and tracts reserved for school, agency or other governmental purposes. Who: The Blackfeet Tribal Court has jurisdiction over all persons of

Indian descent who are members of the Blackfeet Tribe of Montana and over all other American Indians unless its authority is restricted by an Order of the Secretary of the Interior. The Court does not have jurisdiction over non-Indians or over Indians from Canada. An Indian subject to the jurisdiction of the Blackfeet Tribal Court, including members of the Blackfeet Tribe, who also is employed in the Bureau of Indian Affairs, has a right to appeal from any sentence of the Court to the Secretary of the Interior, and the sentence if so appealed, does not become effective until approved by the Secretary.

What Crimes: The Federal Courts have jurisdiction over the so-called "ten major crimes"; murder, manslaughter, rape, incest, assault with intent to kill, assault with a dangerous weapon, arson, burglary, robbery, larceny, and carnal knowledge; and the Federal offenses, such as counterfeiting, mail fraud, etc. As a practical matter, the Federal authorities sometimes turn over to Tribal authorities cases of aggravated assault or petty larceny.

The Blackfeet Tribal Court has exclusive jurisdiction over all crimes set forth in Chapter 5 of the Blackfeet Law and Order Code, which are committed by an Indian, as defined above, against another Indian within the Blackfeet Reservation. These crimes may not be tried in any court other than the Tribal Court. The Blackfeet Tribal Court has concurrent jurisdiction over all offenses within the Blackfeet Reservation, other than the ten major crimes, committed by an Indian against a non-Indian or an Indian from Canada. What "concurrent" means, very simply, is that the Federal Court and the Tribal Court both have power to try an offense by an Indian against a non-Indian. Specifically, if the Federal authorities consent to take such a case

prior to conviction in the Tribal Court, the Tribal Judge, must deliver the accused to the Government for prosecution and all proceedings in the Tribal Court then stop. If the accused already has been punished in the Tribal Court on the other hand, the Federal authorities are prohibited from prosecuting him again.

Other cases: A non-Indian who commits an offense against an Indian within the boundaries of the Blackfeet Reservation is punishable in Federal Court in accordance with either the general laws of the United States or State Law, depending upon the circumstances. A non-Indian who commits a crime against another non-Indian is, of course, punishable in State Court. A member of the Blackfeet Tribe who commits a crime of any nature outside the Reservation is subject to the law of the jurisdiction in which the offense occurs.

#### Section 2. Appointment of Judges.

The Court shall consist of one or more judges, one of whom shall be designated as Chief Judge, and the others as Associate Judges. Each Judge shall be appointed by the Tribal Business Council and Law and Order Committee with the approval of the Commissioner of Indian Affairs. Their salary may be fixed and paid by the Commissioner of Indian Affairs or by the Tribe. Each judge shall hold office for an indefinite period of time, unless sooner removed for cause or by reason of the abolition of said office. In the latter case, he shall be eligible for reappointment.

A person shall be eligible to appointment as judge of the Court only if he: (1) is a member of the Blackfeet Tribe; and (2) has never been convicted of a felony, or within one year then past, of a misdemeanor. The age limit of judges shall not be less than twenty-one

(21) years of age. He must also have a high school education, and preferable be a commercial law student at the time of the original appointment.

Section 3. Removal of Judges

After notice and hearing, any judge of the Court may be suspended, dismissed or removed by the Law and Order Committee and Tribal Business Council, with the approval of the Commissioner of Indian Affairs.

Section 4. Court Procedure.

The trial of cases shall be conducted by the Chief Judge, or by such Associate Judge, as the Chief Judge, shall designate. The time and place for the trial of cases shall be designated by the Chief Judge.

Rules of Court prepared by the Chief Judge and approved by the Tribal Business Council may be promulgated to govern the procedures and appearances by parties and attorneys before the Court.

Trial procedures involving the introduction of evidence shall be governed by the following procedures.

A. Real or physical evidence: Real or demonstrative evidence is that proof which can be brought into court and exhibited to the court and jury, such as the instruments and devices used in the commission of crime, and the exhibition of the person as well as objects; the use of photographs, moving pictures, and X-rays, and the conducting of experiments and tests either in or out of Court. It is always proper, when a fact in issue may be explained by producing an article or object to which the testimony relates, to bring such articles or objects into Court and exhibit them.

B. Oral testimony of witnesses: Testimony is the evidence of a living witness given under oath at a trial. The general rule with reference to the admissibility of oral testimony of witnesses is that their testimony should be limited to facts of which they have personal knowledge or are personally cognizant, gives in open Court.

All persons who have organs of sense, can perceive, can make known to others their perceptions, and can be witnesses. They must be able to receive and impart TRUE impressions.

The trier of facts, whether the Court or the jury, is the exclusive Judge of the credibility of a witness may be attacked or impeached by the opposition because of any of the following:

- (1) The manner in which a witness testifies.
- (2) The character or type of testimony being given by the witness.
- (3) The reputation of the witness. Proof may be shown by the opposition of a criminal record of the witness, or of other evidence of unreliability of the witness.
- (4) The witness shows that he has personal motive or prejudice in testifying.
- (5) The witness gives contradictory evidence.

Persons who are insane may not be witnesses. However, a witness who is judged sound of mind at the time of the trial may testify. Children who appear incapable of receiving or imparting true facts may not be called as witnesses. It is the duty of the Judge to decide if the child is competent. Husband and wife are not competent to testify against each other except by mutual agreement, or in cases of criminal assault of one by the other, and in cases of non-support and desertion.

There is no set number of witnesses who may appear in any trial, except, perjury cases, when there are at least two.

The same witness may not be called by both the defendant and the plaintiff, unless he is called by the opposite side as "an adverse witness". Facts useful to the opposition may be obtained by cross-examination of a witness. If the rule of exclusion of witnesses is invoked, persons called to testify.

C. Privileged Communications: Public policy prohibits disclosures of information received by one party holding a confidential relationship to another party unless the other party consents. These include:

- (1) Legal representative and client.
- (2) Doctor and patient.
- (3) Clergymen and penitent.
- (4) Husband and wife.

D. Judicial Knowledge: This is evidence of facts of general and common knowledge, which persons of ordinary intelligence are presumed to know. Such facts need not be proved. Courts will take judicial notice of:

- (1) The statutes and ordinances of the United States, the Tribe and the State.
- (2) The boundaries and other geographical features of the State and Reservation.
- (3) The situation of the respective counties.
- (4) The names of the courts.
- (5) The county seat of the county.
- (6) The court's own records on the case.

- (7) The calendar subdivision of the year.
- (8) The system of standard time.
- (9) When the sun rises and sets.
- (10) The changes of the moon.
- (11) That alcohol, whiskey, wine, brandy, rum, gin, beer, and ale are intoxicating liquors.

E. Presumption:

(1) In the Law the Courts infer facts exist or do not exist following proof of other facts. There are two types of presumptive evidence:

(a) Everyone is conclusively presumed to know the law; ignorance of the law is no excuse.

(b) Children under a certain age conclusively presumed to be incapable of committing a crime.

(c) Every person charged with a crime is presumed innocent until the contrary is proved by competent evidence beyond a reasonable doubt.

(2) Presumptions of Fact, such as:

(a) Presumption of death after unaccounted absence of seven (7) years.

(b) Presumption that a posted letter has reached its destination.

(c) Presumption of legitimacy of children.

(d) Presumption of validity of a marriage.

(e) Presumption of good character, chastity, etc.

(f) Presumption of sanity.

(g) Presumption that an officer properly performs his tasks.



(h) Presumption that one intends the natural consequences of his acts.

F. Documentary Evidence

Records, writing, all kinds of documents are generally divided into two principal classes.

(1) Private writings include contracts, deeds, receipts, bills, releases, family records and Bibles, letters and telegrams, maps, plates, and survey, mortality tables of a business company, photographs, etc.

(2) Public writings include public or official records and reports, reports of public administrative officers, official statistical tables, acts of the legislature, judicial records, etc.

G. Best and Secondary Evidence

In presenting documentary evidence, it is an elementary principle of law that the best evidence, such as the original of all documents, must always be produced in proof of every disputed fact. Secondary evidence, or copies and photostats of documents, is never admissible unless the primary evidence is unavailable, where it is shown that the original has been lost or destroyed, is beyond the jurisdiction of the court, or is in the hands of the opposite party, who, on due notice, fails to produce it.

H. Opinion Evidence

It is well established that when it is not possible or practicable to place before the jury all of the primary facts and circumstances in such a way as to enable the jury to form an intelligent conclusion from the facts, witnesses who have had the means of personal observation may

state their opinions, conclusions, and impressions formed from such facts and observations as come under their observation.

(1) Matters of color, weight, size, quantity, light and darkness.

(2) Matters involving taste, smell and touch.

(3) Matters of visibility and sound.

(4) Estimates of a person's age.

(5) Implications as to a person's race, nationality, or language.

(6) The state of emotion exhibited by a person.

(7) The apparent physical condition of a person.

(8) Identification of a person by his voice.

(9) Intoxication of a person.

(10) Footprint resemblance as disclosed by tracks left at scene.

(11) The speed of trains, motor vehicles, etc.

(12) The value of property and services.

(13) The authenticity of another's handwriting.

#### I. Tests of Admissibility:

Objections may be raised in court as to the relevance, materiality and competency of evidence.

(1) Relevancy, evidence is relevant if it relates to the subject, when it touches upon the issues which the parties have made by their pleadings so as to assist in getting at the truth of acts disputed. Evidentiary matters considered relevant are those bearing on:

(a) Intent.

- (b) Motive for a crime.
- (c) Ability of the defendant to commit a crime.
- (d) Opportunity to commit a crime.
- (e) Threats of expressions of ill-will by the excused.
- (f) Means of committing the offense and the articles connected.
- (h) Conduct and declarations of accused at time of arrest or flight.
- (i) Concealment of identity.
- (j) Fabrication and destruction of evidence.
- (k) Escape and attempted escape.
- (l) Possession of property, or sudden possession of money.
- (m) Confessions and surrounding circumstances.
- (n) Preparations for the Commission of crime.
- (o) Presence near scene of crime.
- (p) Offers of bribes.

(2) Materiality: Evidence must affect a fact or issues significantly in order for the Court to permit its introduction. It must have probative force of value. The Court uses its sound discretion as to whether the evidence is of consequence. Evidence is immaterial if it is too remote in time, or too conjectural or too uncertain in its nature.

(3) Competency: This generally considers the qualifications of the witness to produce the particular evidence. Evidence may be both relevant and material. But the particular witness may not be

qualified to testify to the facts. Affidavits are not considered competent evidence because the affidavit.

J. Evidence of Other Offenses: The general rule is that in a prosecution for a particular crime, evidence which in any manner shows or tends to show that the accused has committed another crime of the same sort, is irrelevant, and admissible, except:

(1) Where the crimes are inseparably connected so that the proof of one necessarily involves proving the other.

(2) Where the nature of the crime is such that guilty knowledge must be proved, in which case evidence is admissible to prove that at another time and place not too remote the accused committed or attempted to commit a crime similar to that charge.

(3) Where the commission of a crime is proved, in which case evidence to identify the accused as the person who committed it is not to be excluded solely because it proves to tend to prove that he was guilty of another or independent crime.

(4) Evidence of other crimes similar to that charged becomes relevant and admissible when it shows or tends to show a particular criminal intent which is necessary to constitute the crime charged.

(5) When malice is an element in the crime charged, in which case evidence of another similar act by the accused against the same plaintiff is admissible to show malice.

(6) Evidence to show the motive promoting the commission of the crime, notwithstanding that it also shows the commission by the accused or another crime of similar or a dissimilar character.

(7) Where the crime charged is part of a plan or system of criminal action, in which case evidence of other crimes near to it in

time and of similar character is relevant and admissible to show the knowledge and intent of the accused and that the act charged was not the result of accident advertance.

(8) Where the offense is charged is a continuing one, in which case evidence of other acts than that charged is admissible, to explain or to corroborate the evidence showing the act charged.

K. The Hearsay Rule: The term "hearsay" in evidence includes or signifies everything not founded upon the personal knowledge of the witness. Hearsay is NOT admissible in court except for the type of evidence listed below as exceptions to the rule. Reasons for this general rule on hearsay are:

(1) The possibility of error is great where information is relayed from one person to another before it is given in court.

(2) The defendant has the right to be confronted by his accuser in person.

(3) The jury and/or the judge are entitled to see and observe the witness to help them in determining the truth of the statements made by the witness.

(4) The defense and the prosecution both have the right to cross-examine the witness who made the original statement. They cannot do this when the information is relayed by another.

L. Exceptions to Inadmissibility of Hearsay: No relayed statement of a person not present, including writings and actions, may be received in evidence to provide the truth or falsity of the matter asserted unless it falls within one of the following exceptions to the hearsay rule.

(1) Confession - which is a voluntary admission against interest made by a defendant in a criminal case. It is a voluntary statement or admission by an accused person that he or she committed the offense, or assisted in its commission.

(2) Judicial Confession - which includes all statements or formal pleas of guilty made upon arraignment at a preliminary or during the course of other judicial proceedings in the trial court.

(3) Tacit Confession - A person can incriminate himself not only by his statement, but by his remaining silent when accused. The accusation must be oral and made in the presence of the defendant and understood by him and must not be made by one in authority. In court, the accusation must be presented in its entirety and in the identical language used and must describe the actions of the defendant who remained silent when accused. Conversation which was conducted in the presence of the defendant may be used a tacit confession, if notes were taken reproducing the conversation and showing the actions of the defendant who remained silent.

(4) Admissions - In the law of evidence, admissions or statements made by a party, or someone identified with him in legal interest, of the existence of a fact against his own interest and relevant to the cause of his adversary are admissible in evidence in the trial.

(5) Dying Declaration - This is a statement concerning the cause of death made by a person who at the time of statement knew he was dying and felt that death was imminent and inescapable. In order to be valid in evidence, a dying declaration must meet these tests:

(a) The Declarant must be dying at time of statement.

- (b) He must show that he is dying.
- (c) He must have given up all hope of recovery.
- (d) The Declarant has died at time of hearing.
- (e) The declaration is being used at a criminal homicide.

(6) Res Gestae - This legal term refers to spontaneous acts or words, instinctive reactions, usually made in a situation of forethought or deliberated design. Observations and notes made on such evidence by the offers are admissible in court if the acts or words relate to the main event and explain or characterize that event. It shall be the duty of the judges of the court to make recommendations to the Tribal Business Council for the enactment of amendment of such Rules of Court in the interests of improved judicial procedure.

Section 5. Appellate Proceedings: (Repealed by Ordinance No. 46, adopted December 13, 1974, by the Blackfeet Tribal Business Council. See Chapter 11 of this Code for Appellate Proceedings of the Blackfeet Court System).

Section 6. Juries.

In any case where, upon preliminary hearing by the Court, a substantial question of fact is raised, the defendant may demand a jury trial. A list of eligible jurors shall be prepared by the Tribal Business Council each year.

In any case, a jury shall consist of six (6) residents selected from the list of eligible jurors by the Judge.

The Judge shall instruct the jury in the law governing the case and the jury shall bring a verdict for the complainant or the defendant. The Judge shall render judgment in accordance with the

verdict and existing law. If the jury is unable to reach a unanimous verdict, verdict may be rendered by a majority vote.

Each juror who serves upon a jury shall be entitled to a fee of Five Dollars (\$5.00) a day for each day his services are required in Court.

All male and female Blackfeet residents of the Reservation between the ages of 21 to 65, inclusive, shall be eligible for jury service.

Section 7. Witnesses.

The several judges of the Court shall have the power to issue a subpoena for the attendance of witnesses whether on their own motion or on a request of the Police Commissioner or Superintendent or either parties of the case, which subpoena shall bear the signature of the judge issuing it. A limit of five (5) paid witnesses for each side is hereby established. Each witness answering such subpoena shall be entitled to a fee of Two Dollars Fifty Cents (\$2.50) a day for each day his services are required in Court. Failure to obey such subpoena shall be deemed an offense as provided in Chapter 5, Section 33 of these Ordinances. Service of such subpoena shall be by a regularly acting member of the Indian Police or by an Indian appointed by the Court for that purpose.

Witnesses who testify voluntarily shall be paid their reasonable expenses by the party calling them.

Section 8. Professional Attorneys.

Unless otherwise directed by Congress or this Code, professional attorneys shall not appear in any proceeding before the Court unless Rules of Court have been adopted as set forth in Section 4 of this Chapter, prescribing conditions governing their admission and practice



before the Court. The defendant may be represented by lay counsel, who is a member of the Blackfeet Tribe. (See Rule 10, Chapter 9, for update).

Section 9. Clerks.

The Law and Order Committee may detail a clerk to act as Clerk of Court. The Clerk of the Court shall render assistance to the Court, to the police force of the Reservation, and to individual members of the Tribe in drafting complaints, subpoenas, warrants, and commitments and any other documents incidental to the lawful functions of the Court. It shall be the further duty of said Clerk to administer oaths of witnesses and jury-men, to collect fines paid and to pay out all fees authorized by these ordinances and to make an accounting therefore to the Treasurer of the Blackfeet Indian Tribe and to the accounting thereof to the Treasurer of the Blackfeet Indian Tribe, and to the Tribal Business Council. Clerks of Court are to be bonded for not less than One Thousand Dollars (\$1,000.00) by the Tribal Council and Law and Order Committee.

Section 10. Records.

The Court shall be required to keep, for inspection by duly qualified officials, a record of all proceedings of the Court, which record shall reflect the title of the case, the names of the parties, the substances of the complaint, the names and addresses of all witnesses, the date of hearing or trial, by whom conducted, the findings of the Court or jury, and the judgment, together with any other facts or circumstances deemed of importance to the case.

Section 11. Complaints to be Sworn.

No complaint filed in the Court shall be valid unless it shall bear the signature of the complainant or complaining witness, witnessed by a duly authorized judge of the Court or by an authorized representative.

Section 12. Warrants to Apprehend.

The Chief Judge of the Court shall have the authority to issue Warrants to Apprehend and shall have the power to delegate this authority to Associate Judge, said warrant to issue in the discretion of the Court only after a written complaint shall have been filed, bearing the signature of the complaining witness. Service of such warrants shall be made by a duly qualified member of the Indian Police or other police officers of the Blackfeet Tribe or of the United States Indian Service. No Warrant to Apprehend shall be valid unless it shall bear the signature of a duly qualified Judge of the Court.

Section 13. Arrest.

No member of the Indian Police shall arrest any person for any offense defined by these regulations or Federal Law, except when such offense shall occur in the presence of the arresting officer or he shall have reasonable evidence that the person arrested has committed an offense or the officer shall have a warrant commanding him to apprehend such person.

Section 14. Search Warrants.

The Judges of the Court shall have authority to issue warrants for search and seizure of the premises and property of any person under the jurisdiction of said Court. However, not warrant of Search and Seizure shall be issued except upon a duly signed and written application by

the officer requesting the search warrant, setting out the following under oath:

(1) The reason for requesting the warrant. The Judge shall insist that the officer set forth facts to establish probable cause for issuing of the warrant. (Mere believe is not enough).

(2) A description of the property and things to be searched for.

(3) A description of the property and place to be searched. The place to be searched must be described so that a normal person can find the place. If the officer making application does not have sufficient basis to make the above statement on his own knowledge, he should be permitted to produce witnesses who can made a statement that will substantiate his application. The issuing judge has the responsibility to refuse the issuance of a search warrant if he deems complaint insufficient, or the reasons unwarranted. The warrant must be directed to the officer and served by him. It must be served in the daytime unless sufficient reason is given why it cannot be. If the Judge grants permission to serve the warrant at night, he must so specify in the warrant.

The warrant must be served in ten (10) days.

After the officer completes service of the warrant a return must be made to the Judge. The return will show whether any property was seized, and a list of seized property must be included with the return.

#### Section 15. Commitments.

No person shall be detained, jailed or imprisoned under those ordinances for a longer period than forty-eight (48) hours, unless there is issued a commitment bearing the signature of a duly qualified

Judge of the Court. There shall be issued, for each person held for trial, a Temporary Commitment on the forms prescribed in this Code.

Section 16. Bail or Bond.

Every person charged with an offense by the Court will be admitted to bail. The bail shall be by cash and the maximum amount of bail shall not exceed Five Hundred Dollars (\$500.00). In exceptional cases and at the discretion of the Court, the person charged may be released on his own recognizance. (This Section amended February 5, 1971, by the Blackfeet Tribal Business Council, Resolution No. 92-70).

Section 17. Definition of Signature.

The term "signature" as used in these regulations shall be defined as the written signature, official seal, or the witness, thumbprint or mark of any individual.

Section 18. Relation with the Court.

The Court may request employees of the Indian Health Service, particularly those who are engaged in social services, health and educational work, to assist in the preparation of the facts in any case and in the proper treatment of individual offenders.1

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NOTE: Any conflict between this Chapter and Chapter 9 of this Code on Rules of Procedure shall be resolved in favor of Chapter 9.