

SPIRIT LAKE LAW AND ORDER CODE

TITLE 2: COURTS

Chapter One: Establishment and Operation

§ 2-1-101 Establishment of Court.

There is hereby established the Spirit Lake Tribal Court.

§ 2-1-102 Appropriations.

- (1) The Tribal Council shall appropriate and authorize the expenditure of Tribal funds for the operation of the Courts of the Tribe. The Tribal Council shall appropriate such sums determined to be consistent with the needs of the Tribal Courts for proper administration of justice. To assist the Tribal Council in making such appropriations, the Chief Judge of the Tribal Court shall submit proposed budgets and reports of expenses and expenditures to the Tribal Council, at such intervals and in such form as may be prescribed by the Tribal Council. Such budgets and reports shall include the operation of the office of the Judicial Clerk.
- (2) The Tribal Council may prescribe a system of accounting for funds received from any source by the Courts of the Tribe and the Judicial Clerk.

Chapter 2: Jurisdiction

§ 2-2-101 Spirit Lake Tribal Court Jurisdiction.

The jurisdiction of the Tribal Court shall extend to:

- (1) The Reservation, including all lands, islands, waters, roads, and bridges or any interests therein, whether trust or non-trust status and notwithstanding the issuance of any patent or right-of-way, within the boundaries of the Reservation as established in Article IV of the Treaty of February 19, 1867, and such other lands, islands, waters or any interest therein hereafter added to the Reservation.
- (2) All persons within any geographical area referred to in Subsection (1) above that are subject to the jurisdiction and governmental power of the Tribe, to the extent not prohibited by federal law.
- (3) All members of the Tribe, wherever located, exercising any tribal rights pursuant to federal, tribe or state law.
- (4) All persons and property outside the exterior boundaries of the Reservation included within the jurisdiction of the Tribe pursuant to federal or tribal law, including any person who personally or through an agent does any of the following insofar as the cause of action brought arises from the doing of such act:
 - (a) The transaction of any business on the Spirit Lake Reservation;

- (b) The commission of a tortious act on the Spirit Lake Reservation;
- (c) Contracting to insure any person, property or risk located on the Spirit Lake Reservation at the time of contracting;
- (d) The act of sexual intercourse on the Spirit Lake Reservation with respect to which a child may have been conceived;
- (e) With respect to domestic cases, as set forth in Title 9 of the Spirit Lake Law and Order Code.

§ 2-2-102 No Acceptance of State Jurisdiction.

Nothing in this Code shall be deemed to constitute acceptance or waiver of jurisdiction to the State of North Dakota over any matter criminal or civil, over which the Tribal Court has jurisdiction as previously enumerated.

§ 2-2-103 Suits Against the Tribe.

- (1) Sovereign Immunity of the Tribe. The sovereign immunity of the Tribe and every elected Tribal Council member or tribal official with respect to any action taken in an official capacity or in the exercise of the official powers of any such office, against suit in any court, federal, state, or tribal is hereby affirmed, and nothing contained within this Code shall be deemed to constitute a waiver of such sovereign immunity. The Tribal Court shall have no jurisdiction over any suit brought against the Tribe without consent of the Tribe.

- (3) Tribal Action Not a Waiver of Sovereign Immunity. Nothing in this Code, and no enforcement action taken pursuant to this Code, including the filing of an action by the Tribe or any agency of the Tribe in the Tribal Court, shall constitute a waiver of sovereign immunity of the Tribe, or any elected Tribal Council member or tribal official with respect to any action taken in an official capacity, or in the exercise of the official powers of any such office, either as to any counterclaim, regardless of whether the counterclaim arises out of the same transaction or occurrence, or in any other respect.
- (4) Waiver of Sovereign Immunity. Sovereign immunity of the Tribe and any elected Tribal Council member or tribal official with respect to any action taken in an official capacity, or in the exercise of the official powers of any such office, in any action filed in the Tribal Court with respect thereto, may be waived only by express resolution of the Tribal Council after consultation with its attorneys. All waivers of sovereign immunity must be preserved with resolutions of the Tribal Council. Waivers of sovereign immunity are disfavored. Waivers of sovereign immunity shall be specific and limited as to duration, grantee, action, and property or funds, if any, of the Tribe or any agency of the Tribe subject thereto. No express waiver of sovereign immunity by resolution of the Tribal Council shall be deemed consent to the levy of any judgment, lien or attachment upon property of the Tribe or any agency of the Tribe other than property specifically pledged or assigned.

§ 2-2-104 ~~Concurrent Jurisdiction; Exhaustion of Tribal Remedies.~~

The jurisdiction invoked by this Code over any person, cause or subject shall be concurrent with any valid federal jurisdiction by the courts of the United States, provided, however, this Code does not recognize, grant, or cede jurisdiction to any other political or governmental entity. Nothing in this Code waives the requirement of exhaustion of tribal remedies, both administrative and judicial, which may only waived by the Tribal Council in the same manner as it may waive sovereign immunity.

Chapter 3: Judicial Clerk

§2-3-101 Appointment, Salary, Discharge.

A person shall be appointed by the Tribal Council, with the approval of the Chief Judge of the Tribal Court, to serve all of the courts of the Tribe, as Clerk, and such person shall be designated as the Judicial Clerk. The Chief Judge of the Tribal Court may appoint assistants for the Judicial Clerk. The Tribal Council shall prescribe the salaries of the Judicial Clerk and any assistants, which shall be paid by the Tribe. The salary of a person appointed and serving as Judicial Clerk or as an Assistant Judicial Clerk shall not be reduced while he/she is so serving without the approval of the Chief Judge of the Tribal Court. The Chief Judge of the Tribal Court may discharge any person serving as Judicial Clerk or as Assistant Judicial Clerk.

§ 2-3-102 Duties.

The Judicial Clerk shall be responsible to the Tribal Courts for the administrative functioning of the Tribal Courts, and for such other administrative and ministerial duties as may be prescribed by this Code or assigned to him/her by the Chief Judge. The duties of the Judicial Clerk shall include but shall not be limited to the following:

- (1) Maintaining the records of all Tribal Court proceedings to include identification of the title, nature of the case, the names of the parties, the substance of the complaint, the names and addresses of all witnesses, the dates of all hearings and/or trials, all Tribal Court and jury rulings, findings, orders and judgments, and any other facts or

- circumstances designated by the judges of the Tribal Courts or deemed of importance by the Judicial Clerk.
- (2) Maintaining all pleadings, documents and other materials filed with the Tribal Courts.
 - (3) Maintaining all evidentiary materials, transcripts, and records of testimony filed with the Tribal Courts.
 - (4) Collecting and accounting for fines and other moneys and properties taken into the custody of the Tribal Courts.
 - (5) Preparing and serving notices, summonses, subpoenas, warrants, rulings, findings, opinions, and orders as prescribed by this Code and as may be designated by the Judges of the Tribal Courts.
 - (6) Assisting other persons in the drafting and execution of complaints, petitions, answers, motions and other pleadings and documents for Tribal Court proceedings; provided, however, the Judicial Clerk and his/her assistants shall not give advice on questions of law, nor shall they appear to act on behalf of any person in any Tribal Court proceeding.
 - (7) Administer oaths and witnessing execution of documents.
 - (8) Maintaining a supply of blank forms as prescribed by the Tribal Courts for use by all persons having business before the Tribal Courts.
 - (9) Providing copies of documents in Tribal Court files to other persons upon request, and upon receipt of a charge theretofore prescribed by the Judicial Clerk to cover the costs of such service; provided, however, there shall be no charge for such services to the Judges of the Tribal Court, and provided further, no copies of documents or materials shall be provided

from confidential files. The confidential nature of any file may be determined pursuant to the provisions of this Code, other ordinances of the Tribe or any Tribal Court Order.

- (10) Providing security for all files, documents and materials filed with or in the custody of the Tribal Courts, and insuring that the files are not removed from the offices of the Judicial Clerk and the Tribal Courts except upon the specific instructions of a Judge of the Tribal Courts.
- (11) Maintaining a library of laws, regulations, orders, opinions, and decisions of the United States, United States administrative agencies and courts, the Tribal Council, the Courts of the Tribe, and various states, insofar as they may be pertinent to the administration of justice. The acquisition of such materials shall be subject to appropriations of funds therefore by the Tribal Council. Materials in the library shall be available for use in the office of the Judicial Clerk during normal working hours by any person subject to the jurisdiction of the Tribal Courts.
- (12) Performing such other duties related to the operation of the Court, other than those specifically performed by a judge, as the Chief Judge shall designate.

Chapter 4: Counsel

§2-4-101 Right to Counsel.

Any person who is a party in any civil trial or proceeding and any defendant in any criminal trial, before any of the Courts of the Tribe, may represent himself/herself, or be represented by any other member of the Tribe, except the Judicial Clerk, an Assistant Judicial Clerk, a Judge of any of the Courts of the Tribe, a member of the Tribal Council, a member of the Tribal Police Department, or a Tribal Game Warden. Any person who is a party to a civil trial or proceeding and any defendant in any criminal trial before the Courts of the Tribe may be represented by a professional attorney licensed to practice pursuant to § 2-4-103 of this Code.

§ 2-4-102 Appointment and Authorities of Prosecutors.

(1) In any and all criminal proceedings, the Chief Judge, with the concurrence of the Tribal Council, may appoint a Prosecutor for a prescribed period of time to appear before the Tribal Courts. The Prosecutor's authorities shall include, but are not limited to the following:

(a) Regular or Permanent Appointment. Delegated power and authority to sign, file and present any and all complaints, reviewing for probable cause, recommending prosecutions or dismissal, sign file and present any subpoenas, affidavits, motions, processes and papers of any kind and to appear before all Tribal Courts, commissions, or tribunals in any criminal proceeding within the Tribe's jurisdiction.

(b) Temporary Appointment. Appointment for trial and appellate sessions only; delegated authority to sign, file, and present any and all complaints, subpoenas, affidavits, motions, processes and papers of any kind to appear before all Trial Courts, commissions, or tribunals in any criminal proceedings within the Tribe's jurisdiction.

(2) The Chief Judge, with the concurrence of the Tribal Council, shall appoint a person to represent the prosecution in appeals of criminal trials and matters from the Tribal Courts to the Northern Plains Intertribal Court of Appeals. This appointment may be either for individual cases or may be a continuing appointment.

§ 2-4-103 Tribal Licensing of Attorneys.

Professional attorneys who are not members of the Tribe, may appear on behalf of any party (except for a complaining witness in a criminal case or for a person claiming to be injured by the alleged criminal offense), in any trial or proceeding before the Courts of the Tribe, provided that they have a license in force to practice law before the Courts of the Tribe, issued by the Judicial Clerk and approved by the Chief Judge of the Tribal Courts. Such a license shall be issued and approved upon the applicant complying with all of the following:

- (1) Filing with the Judicial Clerk an affidavit that the applicant is licensed to practice law before a United States District Court and the Supreme Court of a State of the United States.
- (2) Filing with the Judicial Clerk an affidavit that the applicant has studied and is familiar with the Constitution and Bylaws of the Spirit Lake

Tribe, this Code, all other ordinances of the Tribe, Title 25 of the United States Code, and Title 25 of the Code of Federal Regulations

- (3) Paying an annual license fee as prescribed by the Tribal Council.
- (4) Taking the following oath before the Judicial Clerk:

"I do solemnly swear (or affirm) that I will support the Constitution of the Spirit Lake Tribe and the Constitution of the United State;

I will maintain the respect due to the Tribal Courts and their judicial officers; I will not counsel or maintain any suit or proceeding, which shall appear to me to be unjust, nor any defense unless I believe it to be honestly valid or debatable under color of law;

I will employ only such means as are consistent with truth and honor, and I will never seek to mislead any judge or jury by any artifice, or by false statement or misrepresentation of fact or law;

I will employ the highest degree of ethics and moral standards with which my profession is charged, and I will be guided at all times by the quest for truth and justice;

In the conduct of my duties as an attorney, I will not impugn the morals, character, honesty, good faith, or competence of any person, nor advance any fact prejudicial to honor or reputation of any person, unless

required by justice of the cause for which I am charged."

§ 2-4-104 Revocation of Attorneys Tribal License.

A license issued pursuant to this Code, may be revoked or suspended by the Tribal Court. Such action may be taken by the Court on its own motion or upon sworn complaint by any member of the Tribe. Revocation or suspension shall be ordered only after written notice to the licensee of the motion or complaint and after a hearing before the Tribal Court. Following such a hearing, the Tribal Court may revoke or suspend the license upon a finding that the licensee has been disbarred or suspended from the practice of law by any court of the United States or any State, or has filed a false affidavit with the Judicial Clerk, or has violated the oath made before the Judicial Clerk, or has been guilty of misconduct or unethical conduct in the performance of his/her duties as an attorney, or has been guilty of contemptuous conduct toward any of the Tribal Courts.

Chapter 5: Contempt of Tribal Court

§ 2-5-101 Definition of Contempt.

Willful and unjustifiable misbehavior by any person, which disrupts, obstructs, or otherwise interferes with the conduct of any proceeding by any of the Tribal Courts, or which obstructs or interferes with the administration of justice, or which constitutes disobedience or resistance to or interference with any lawful summons, subpoena, process, order, rule, decree or command of any Tribal Court, or any other interference with the processes, proceedings or dignity of the Tribal Court while in the performance of Tribal Court duties shall constitute contempt of Tribal Court. In addition, the willful or negligent failure of a party to comply with the terms of a judgment, decree or order directed against him/her, with which he/she is able to comply, shall be contempt of the Tribal Court.

(a) Civil Contempt. Imposition of sanctions for contempt of Court is a civil matter if its purpose is to compel obedience to a Court process, judgment, decree, order and if the sanctions imposed terminate when the person complies with a Court process, judgment, decree or order. When the civil contempt is committed outside the presence of the Court, the Court shall proceed with a contempt hearing. No jury trial is afforded for civil contempt. The burden of proof for civil contempt shall be by clear and convincing evidence. Contempt shall be punished in a manner prescribed by Section 2-5-104 of this Code.

(b) Criminal Contempt. Imposition of sanctions for contempt of Court is a criminal matter if its purpose is to punish the person who is in contempt or if the sanctions imposed continue in effect past the time of compliance with the process,

judgment, decree or order or the termination of the act of contempt. Criminal contempt that is committed outside the presence of the Court, shall be brought by the Tribal Prosecutor and the defendant shall be afforded a jury trial unless a jury trial is waived by the defendant in writing. All rights afforded to criminal defendants in this Code shall apply to criminal contempt proceedings. The burden of proof for criminal contempt shall be beyond a reasonable doubt.

§ 2-5-102 Contempt in the Presence of the Court.

When either civil or criminal contempt is committed in the presence of the Tribal Court or witnessed by the Tribal Court, it may be punished summarily by the Tribal Court. No hearing shall be afforded if the contempt is committed in the presence of the Court. In such cases, an order shall then be made reciting the facts constituting the contempt, adjudging the person guilty of contempt, and prescribing the punishment in accord with §2-5-104 of this Code.

§ 2-5-103 Contempt Outside Presence of Court.

When it appears to the Tribal Court that a civil or criminal contempt may have been committed out of the presence of the Court or not directly witnessed by the Court, the Court may issue a summons to the person so charged directing him/her to appear at a time and place designated for a hearing on the matter in accordance with Section 2-5-101. If such person served with the summons fails to appear at the time and place so designated, the Court may order his/her arrest and the delivery of him/her forthwith before the Court for a hearing.

§ 2-5-104 Punishment for Contempt.

(a) Civil Contempt. Any person found in civil contempt of Court as specified in this Section or elsewhere in this Code or any ordinances of the Tribe, may be ordered to compensate the aggrieved party or may be ordered to do or refrain from doing some act as provided for in a Court process, judgment, command, decree or order of the Court. The Court may imprison the party committing the contempt until such time as that party complies with the Court process, judgment, command, decree or order of the Court and/or fine the party committing the contempt. No person shall be imprisoned for civil contempt for more than 30 days or subject to a monetary fine of more than \$200.00.

(b) Any Indian found in criminal contempt of Court as specified in this Section or elsewhere in this Code or any ordinances of the Tribe, may be sentenced by the Court to imprisonment for a period not to exceed one year, or to a fine not to exceed \$5000.00 or both.

Chapter 6: Judges

§ 2-6-101 Number of Judges.

There shall be a Tribal Court consisting of a Chief Judge and at least one Associate Judge. By ordinance, the Tribal Council may increase the number of Associate Judges and, subject to the requirement that there always be one Associate Judge, it may by similar action, decrease the number of Associate Judges; provided, however, there shall be no reduction in the number of Associate Judges if it would have the consequence of removing any incumbent Associate Judge prior to the expiration of his/her term of office, or prior to his/her removal by death, resignation or for cause.

§ 2-6-102 Terms.

Each Judge of the Tribal Court shall hold office for a term of two years and shall be eligible for reappointment to successive terms of two years each. A person appointed to fill an existing vacancy created by the death, resignation, or removal for cause of a Judge shall be appointed initially only for the un-expired portion of the term for which the appointment is made, subject to eligibility for reappointment for the next full term. For the current Tribal Judges, the first term shall commence on the date on which this Code becomes effective, and those terms shall expire two years thereafter. If the number of Associate Judges is increased pursuant to any ordinance, to be effective on some date other than the commencement of judicial terms as prescribed by this Code, the additional offices shall be filled by initial appointment as though they were vacancies, for the period of time prior to the commencement of the next full judicial term.

§ 2-6-103 Appointment.

All Judges of the Tribal Court shall be appointed by the Tribal Council. By enactment of this Code, the individual serving immediately prior to its effective date as Chief Judge and Associate Judges of the Tribal Court, as constituted prior to the effective date of this Code, are appointed as Chief Judge and Associate Judges, respectively.

§ 2-6-104 Qualifications.

Any person of the age of 25 years or older shall be eligible to serve as a Judge of the Tribal Court, except the following:

- (1) The Judicial Clerk, Assistant Judicial Clerks, members of the Tribal Council, members of the Tribal Police Department and Tribal Game Wardens.
- (2) Those who have been convicted by a court of the United States or of any State of the United States of a felony, as a felony is defined by the laws of the convicting jurisdiction.
- (3) Those who have been convicted by the Tribal Court for an offense under this Code or any other ordinance of the Tribe for which the penalty could have been imprisonment for 60 days or more, whether or not the sentence included such imprisonment, and whether or not the sentence was suspended.

For their initial judicial term only, commencing with the effective date of this Code, the disqualification under Subsection (1) above shall not apply to those persons serving as Chief Judge

and Associate Judges of the Tribal Court prior to the effective date of this Code, who, by virtue of that service, are appointed by this Code as Chief Judge and Associate Judges of the Tribal Court under this Code. Subject only to the foregoing, any basis of ineligibility existing, arising, or disclosed subsequent to appointment of any Judge shall disqualify him/her from further service.

§ 2-6-105 Juvenile Judge and Court.

The Associate Judges, in addition to their general duties, may serve as Juvenile Court Judges. The designation of a Juvenile Court Judge from among the Associate Judges shall be made by the Chief Judge. An incumbent Associate Judge serving as a Juvenile Judge shall not be relieve of his/her duties during the term as Associate Judge, except upon request to the Chief Judge or upon his/her removal for cause. The Juvenile Court shall be a division of the Tribal Court but shall conduct its functions and proceedings separately from all other functions and proceedings of the Tribal Court.

§ 2-6-106 Salary.

The Chief Judge and the Associate Judges shall be paid a salary to be determined by the Tribal Council. The salary of the Chief Judge or Associate Judges shall not be reduced during his/her term of office.

§ 2-6-107 Conflicts of Interest.

No Judge shall officiate in any proceeding in which he/she has any personal interest, personal bias, or in which any party,

witness or counsel is related to the Judge by blood or marriage within the third degree, or in which any party, witness or counsel stands in the relationship to the Judge of ward, attorney, client, employer, employee, landlord, tenant, business associate, creditor or debtor. A Judge shall be knowledgeable about the personal and fiduciary financial interests of his/her spouse and minor children in the Judge's household. For these purposes, service as a Judge for the Tribe shall not constitute disqualification by virtue of such employment by the Tribe.

§ 2-6-108 Disqualification of Judge.

The Tribal Judge shall exercise his/her own best judgment and discretion, based upon the Judge's integrity, when determining when and if a Judge should disqualify himself/herself from a proceeding.

In a matter that requires disqualification, the Tribal Judge, may, instead of withdrawing from the case, disclose on the record the basis for the disqualification. If, based upon the disqualification, the parties and lawyers all agree in writing that the Judge's relationship is immaterial, or that the Judge's financial interest is insubstantial, the Judge is no longer disqualified, and may participate in the proceeding. The agreement signed by all parties, lawyers and Judge shall be incorporated in the record of the proceeding.

§2-6-109 Special Judges.

The Chief Judge, with the approval of the Tribal Council or the Law and Order Committee, shall maintain a list of Special Judges and shall from time to time appoint Special Judges as needed for the administration of justice. The Special Judges shall be licensed to practice law in a state of the United

States and licensed to practice law in the Spirit Lake Tribal Court

§ 2-6-110 Oath of Office.

Each person, prior to assuming the office of Judge of the Tribal Court, shall take the following oath before the Chairman of the Tribal Council or a person designated by the Chairman of the Tribal Council to administer such oaths:

"I swear (or affirm) that I will support and defend the Constitution of and Bylaws of the Spirit Lake Tribe, and the Constitution of the United States, and that I will faithfully and diligently perform the duties of the Tribal Court of the Spirit Lake Tribe, to the utmost of my ability, with impartiality and without improper favor, to the end that justice may be fully served."

§ 2-6-111 Removal from Office.

The Tribal Council may remove any Judge of the Tribal Court for cause based upon any of the following grounds:

- (1) Misconduct or incompetence in the performance of his/her duties as Judge.
- (2) Personal conduct, including that which involves moral turpitude or which brings the prestige of his/her office or that of the Tribe into public disrepute.
- (3) Habitual neglect of his/her duties as Judge.
- (4) Persistent illness or other disability that renders him/her incapable or otherwise unable to regularly perform his/her duties as Judge.

Such removal shall be by an affirmative vote of two-thirds of the number of members of the Tribal Council present at a valid

meeting called for the purpose of considering such removal, provided that the subject Judge shall be given a full hearing prior to any action conducted by the Spirit Lake Tribal Council. The hearing shall include a fair opportunity to present testimony and evidence in his/her behalf, and to cross-examine and rebut all witnesses and evidence considered by the Tribal Council in support of such removal. The subject Judge shall be given not less than five days advance, written notice of the hearing, which notice shall include an itemized statement of the charges or grounds for removal that are being considered. Such notice shall be served by registered or certified mail, or delivered personally to him/her by a party duly authorized by the Tribal Council

Chapter 7: General Court Procedures

§ 2-7-101 Assignment of Cases to Judges.

Subject to the provisions of this Code for jurisdiction of the Juvenile Court, the Chief Judge shall be responsible for the assignment of cases and other matters for determination or disposition to the respective Judges of the Tribal Court.

§ 2-7-102 Court Rules and Procedures.

The Chief Judge and Associate Judges of the Tribal Court may establish and promulgate rules of procedure for the conduct of its proceedings which are not inconsistent with this Code or other governing and applicable law.

§ 2-7-103 Sessions of Court.

The Tribal Court shall hold regular sessions. Such regular sessions shall be held at the designated Courtroom of the Spirit Lake Tribal Court. The Chief Judge may at any time call special sessions of the Tribal Court or, in his/her absence by an Associate Judge. Individual Judges may conduct trials or other proceedings for individual cases assigned to them at such times as they may designate, and such trials or proceedings may be recessed and re-convened from time to time by the Judges until they have been completed.

§ 2-7-104 Means to Carry Jurisdiction Into Effect.

When jurisdiction is vested in the Court, all the means necessary to carry such jurisdiction into effect are also included; and in the exercise of its jurisdiction, if the course of the proceeding is not specified in this Code, or the rules promulgated by the Court pursuant to § 2-7-102, the Court may

adopt any suitable process or mode of proceeding that appears to the Court to be fair, just and most consistent with the spirit of Tribal Law for application on the Spirit Lake Reservation.

§ 2-7-105 BIA Relations with the Court.

No employee of the Bureau of Indian Affairs shall obstruct, interfere with, or control the functions of the Court, nor shall he/she influence such functions in any manner except as permitted by this Code.

§ 2-7-106 Law Applicable in Civil Actions.

- (1) In all civil actions, the Tribal Court shall apply this Code, all amendments, all tribal laws enacted hereafter and all customs and usages of the Tribe. In the event any doubt arises as to the customs and usages of the Tribe, the Court may request the advice of tribal members familiar with tribal customs and usages.
- (2) In the event an issue arises in an action that is not covered by this Code, all amendments, all tribal laws enacted hereafter and all customs and usages of the Tribe, the Court may apply statutes, regulations and case law of the federal government or any tribe or state.

Chapter 8: Juries

§ 2-8-101 Right to a Jury.

All trials of criminal matters shall be in accordance with the Spirit Lake Law and Order Code. The Defendant may waive a jury trial in writing at anytime prior to 15 days before the trial date. All trials of civil or non-criminal matters shall be without a jury unless any party to the trial requests a jury in accordance with §4-1-142. All requests for trial by jury in a civil case are subject to the discretion of the Tribal Court pursuant to §4-1-143.

§ 2-8-102 Number of Jurors.

A jury for any trial shall comprise 6 persons, and at least one or more designated alternate jurors, as determined in the sole discretion of the Tribal Court; provided, however, upon written consent of all parties to a trial that is to be conducted before a jury, that trial may be conducted with fewer than 6 jurors, with one or more designated alternate jurors.

If after the proceedings begin, but before the case is submitted to the jury for their verdict, a juror becomes unable or disqualified to perform his/her duties, an alternate juror shall take his/her place. If all alternate jurors have already been selected to replace other jurors, the parties may agree to complete the action with the remaining jurors. If no agreement can be reached, the Judge shall declare a mistrial, discharge the jury, and the case shall be tried with a new jury.

§ 2-8-103 Eligibility.

All members of the Tribe, age 18 or older, shall be eligible to serve as jurors in all trials before the Tribal Court except:

- (1) Judges of the Courts of the Tribe, the Judicial Clerk, Assistant Judicial Clerks, members of the Tribal Council, members of the Tribal Police Department, and Tribal Game Wardens.
- (2) Those who have been convicted by a Court of the United States or any state of the United States of a felony as a felony is defined by the laws of the convicting jurisdiction.
- (3) Those who have been convicted by the Tribal Court of an offense under this Code or its predecessor or any ordinance of the Tribe for which the penalty was imprisonment for 60 days or more.

Upon application of an individual subject to the disqualifications set forth in (2) and (3) above, the Tribal Council, by resolution, may waive such disqualification as to the conviction or convictions that were the subject of the application and consideration by the Tribal Council. Thereafter, the individual shall not be disqualified for service as a juror as a result of the waiver of those convictions only.

§ 2-8-104 Jury Roster.

The Chief Clerk shall maintain a current roster of all persons eligible to serve as jurors for the Tribal Court. When requested by any Judge of the Tribal Court, the Judicial Clerk shall prepare a list of not less than 25 persons from the jury roster to constitute a jury panel.

Those designated for the jury panel shall be drawn by random lot or chance by means designed to insure that no person or group of persons included on the jury roster is either deliberately or consciously excluded from or included on the jury panel. The process of designation of a jury panel shall be conducted by the Judicial Clerk and witnessed by at least two other persons who are 18 years of age or older.

§2-8-105 Exclusion from Roster.

Upon a satisfactory showing to the Judicial Clerk, the following persons, upon their request, may be excluded from the jury roster and jury panels:

- (1) Persons who reside outside the Reservation boundaries or more than 50 miles from the nearest exterior boundary of the Reservation.
- (2) Persons of such advanced age, or such permanent infirmity or illness that would cause jury service to be an undue hardship.
- (3) Persons burdened by other circumstances or subject to other demands that jury service would cause extraordinary hardship for them. Such hardship shall be substantially greater than would be ordinarily experienced by other persons serving as jurors.

§2-8-106 Summons to Appear as Juror.

Each member of a designated jury panel shall be served with a summons, signed by a Clerk of the Tribal Court, indicating the place and time that the person is to appear for jury service. The notice shall be served by the Judicial Clerk, an Assistant Judicial Clerk, a member of the Tribal Police Department, or any

other person who may be authorized to serve such documents by the Tribal Court. The notice shall be served not less than 72 hours prior to the designated time for the initial appearance for duty. After such initial appearance for duty, the times and places for attendance by those persons included on the jury panel shall be prescribed by the Court.

§2-8-107 Failure to Appear, Absence, Unfit to Serve on Jury Duty.

A person summonsed to serve as a juror who has not been excused pursuant to any provisions of this Code, or by Order of the Tribal Court, who fails to appear where and when summonsed, or who having so appeared absents himself/herself without the permission of the Tribal Court, or who renders himself/herself unfit to commence or continue his/her duties as a juror, may be in contempt of Court. In addition to the penalties of contempt as prescribed by this Code, he/she may be charged with any costs incurred by the Tribal Court or any other persons that resulted from his/her failure to be present.

§2-8-109 Jury Selection.

The Clerk shall draw lots and seat 6 potential jurors from the panel and one or more alternate jurors. The Clerk shall replace any juror for whom a challenge for cause is allowed until a full jury of 6, and as many alternates as are determined necessary by the Tribal Court, are passed for cause. The parties shall then exercise peremptory challenges. Each side may exercise 3 peremptory challenges. After exercise of each peremptory challenge, the clerk shall replace any juror removed by a peremptory challenge until a full jury of 6, and as many alternated determined necessary by the Tribal Court, are seated.

The Clerk shall then administer the oath to the jury and alternates. The oath will state that the jurors will fairly deliberate on the case before them and render a true verdict according to the Court's instructions.

§2-8-109 Challenges for Cause.

Each party to a trial that is scheduled shall have the right to obtain a copy of the designated jury panel from which the jury for that trial will be selected not less than five days prior to the commencement of the trial. Any juror may be challenged for cause by any party to a case to be tried on any of the grounds set forth below. If the challenge for cause is sustained by the Tribal Court, that juror shall be excused from the trial. Each party may question the prospective jurors subject to such reasonable restrictions as may be imposed by the Tribal Court in the interests of justice and expediency. In addition to challenges for cause made by the parties, a presiding Judge, on his/her own motion, may excuse a juror or prospective juror for cause. The grounds for a challenge for cause are that a juror:

- (1) is ineligible or disqualified from service as a juror under the provisions of this Code; or
- (2) is of unsound mind, or has such defect in the abilities of the mind or body as to render him/her incapable of performing the duties of a juror; or
- (3) is related by blood or marriage within the third degree to any party to the trial, or to any person likely to be called as a witness for any party, or to the counsel for any party; or
- (4) stands in relationship of guardian, ward, attorney, client, employee, employer, landlord, tenant,

creditor, debtor, or business associate of any party
in the trial or the counsel for any party; or

- (5) is or has been a party, witness or juror in any other civil or criminal proceeding in which any party or likely witness in the present trial is or has been a party, witness, or juror; or
- (6) has been a member of a jury formerly sworn to try the same case and whose verdict was set aside or reversed, or which was discharged without a verdict, after the case was submitted to the jury; or
- (7) is a surety or guarantor of any bond or undertaking of any party or likely witness, or engaged in business with any party or likely witness, or with the person alleged to be injured by the offense charged or on whose complaint the trial was instituted, or with the counsel for any party; or
- (8) is a witness on behalf of any party, or has any personal knowledge of the subject of the trial beyond that which is generally held by the members of the Tribe that may influence his/her decisions as a juror; or
- (9) has a state of mind, knowledge or belief in reference to the subject matter of the trial, or to any party, or to the counsel for any party, or to any person alleged to have been injured by the offense charged or on whose complaint the trial was instituted, that will prevent him/her from acting objectively, impartially, and without prejudice to the substantial rights of any party.

§2-8-110 Peremptory Challenges.

In addition to challenges for cause, each party may peremptorily excuse not more than three jurors each. The peremptory challenges may be used at the completion of the qualification of a jury, prior to the opening statements or the presentation of testimony or evidence. The prospective jurors replacing the jurors removed by the peremptory challenges shall be subject to challenges for cause, and questioned accordingly, in the same manner as those originally participating as jurors.

§2-8-111 Number of Jurors Required for Verdict, Findings or Decisions.

No person may be convicted of a criminal offense by jury verdict other than by unanimous decision of all jurors hearing the trial. In civil cases, all findings and decisions of the jury shall be with the concurrence of at least one more than half of the 6 jurors.

§2-8-112 Jury Panel; Deliberations.

- (1) Jury View. The Tribal Court may, in its discretion, allow the jury to view a location or piece of property or place of occurrence of a disputed or otherwise relevant fact or event.
- (2) Cautionary Instruction. At any time prior to the verdict, when the jurors are allowed to leave the Courtroom, the Judge shall admonish the jury not to converse with or listen to any other person on the subject of the trial, and further, admonish the jury not to form or express any opinions on the case until the case is submitted to them for their decision.

- (3) Jury Deliberation. Once the case is submitted to the jury, they shall retire to deliberate in private under the charge of an officer of the Tribal Court. He/she will refrain from communicating with them or allowing any other person to communicate with them except to inquire whether they have reached a verdict.
- (4) Jury Examination of Exhibits. During deliberations, the jury may take into the jury room the Tribal Court's instructions, all documents received in evidence and any notes taken by the jurors themselves.
- (5) Additional Instructions. If the jury has any questions regarding an instruction, point of law or other area of inquiry, the jury may request additional instructions of the Tribal Court. Such questions shall be answered by the Tribal Court after notice to parties and their counsel.
- (6) Hung Jury. If the jury is unable, after a reasonable length of time, to reach a verdict under these rules, the Tribal Court shall declare a mistrial and set the action for a new trial.

§2-8-113 Jury Compensation.

Jurors shall be paid the sum of \$50.00 for service as a juror in a case pending before the Spirit Lake Tribal Court.

Chapter 9: Witness Subpoenas

§2-9-101 Subpoenas in Civil Cases.

In a civil case, the Judicial Clerk or any Tribal Judge, upon application of any party or his/her attorney, may issue a subpoena for a witness to attend any hearing or trial or for the taking of a deposition.

§2-9-102 Subpoenas in Criminal Cases.

In a criminal case, the Judicial Clerk or any Tribal Judge, either upon his/her own motion, the request of a police officer or any party or his/her attorney, shall issue a subpoena for the attendance of a witness or any of the parties in the case.

§2-9-103 Content of a Subpoena.

A subpoena shall state the name of the Tribal Court, title of the action, and shall command the person to whom it is directed to attend and/or give testimony or produce documents, books, papers, or other tangible pieces of evidence stated in the subpoena at a time and place specified in the subpoena. It shall state the name of the party or parties for whom the testimony or documents are required.

§2-9-104 Service of a Subpoena.

A subpoena may be served by any officer or person qualified to make service of a summons and complaint, and shall be served in the same manner as a summons and complaint except that no service by publication shall be allowed. A subpoena must be served sufficiently in advance of the date of required appearance to allow the witness to reach the appearance place by the ordinary or usual method of transportation.

~~§2-9-106 Failure to Comply with a Subpoena.~~

A person who has been properly served with a subpoena and fails to appear or produce such documents as were required, may be deemed in contempt of Tribal Court and punished according to this Code.

§2-9-107 Testimony Required without Subpoena.

A person present in Tribal Court or before a judicial officer may be required to testify in the same manner as if he had been served with a subpoena.

Chapter 10: Property

§2-10-101 Property Received as Costs or Fines.

All money or other property received by the Tribal Court or the Judicial Clerk for payment of costs or fines shall be the property of the Tribe and shall be the subject of such accounting procedure and disposition as may be designated by the Tribal Court.

§2-10-102 Other Property in Custody.

The disposition of all other money, goods or property of any person taken into the custody of the Tribal Court, Judicial Clerk or Tribal Police Department pursuant to this Code or any other ordinance of the Tribe shall be determined by the Tribal Court, with a hearing and notice to parties who may claim an interest therein.

- (1) Upon satisfactory proof of ownership or entitlement thereto, the Tribal Court shall order such property to be delivered to the owner or person entitled thereto except in the following circumstances:
 - (a) If such property is required as evidence in any case, before the Tribal Court, such property shall be retained by the Judicial Clerk or Tribal Court, or by the Tribal Police Department subject to the direction of the Tribal Court, until final judgment and determination of the case, including an appeal.
 - (b) If private possession of such property is unlawful, the property shall be declared by the Tribal Court to be tribal property and transferred to the Tribal Council for disposition.

(c) If the possession of such property, or the manner of the property's possession, constitutes a criminal offense under any provision of this Code or any other ordinance of the Tribe, upon conviction of any person of such an offense and a determination that the property is owned by him it shall become the property of the Tribe. Upon a final determination of such case, the property shall be transferred to the Tribal Council for disposition.

TITLE TWO (2)

CHAPTER ELEVEN

SPIRIT LAKE TRIBE APPELLATE COURT

2-11-125 Appellate Court Establishment

By adoption of this Code, the Spirit Lake Tribe Appellate Court is hereby established.

2-11-150 Number of Appellate Court Judges

There shall be three (3) Appellate Court Judges consisting of the following: One (1) Chief Appellate Court Judge and two (2) Associate Appellate Court Judges.

2-11-175 Terms of Appellate Court Judges

- A. Each Appellate Court Judge shall hold office for a term of two (2) years and shall be eligible for reappointment to successive terms of two (2) years each.
- B. The first term of the initial Appellate Court Judges shall commence on the first of the month following the date in which this Code becomes effective and shall expire two (2) years thereafter.
- C. All subsequent terms of Appellate Court Judges shall expire on the first day of the same month bi-annually thereafter.
- D. A person appointed to fill an existing vacancy created by the death, resignation or removal for cause of an Appellate Court Judge shall initially be appointed only for the unexpired portion of the term for which the appointment is made and shall be eligible for reappointment to the next full term.
- E. If the number of Appellate Court Judges is increased pursuant to resolution of the Tribe to become effective on some date other than the commencement of terms described above, the additional offices shall be filled by initial appointment as though they were vacancies from the period of appointment to the commencement of the next full judicial term consistent with 2-11-250(D) above.

2-11-200 Appointment of Judges

- A. All Appellate Court Judges shall be appointed by the Tribal Council.
- B. The Chief Appellate Court Judge shall be specifically appointed by the Tribal Council to that specific office.

2-11-225 Eligibility and Qualifications of Judges

- A. The requirements, qualifications and disqualifications as they pertain to Spirit Lake Tribal Court Judges and as set out in Section 2-6-104 of the Spirit Lake Law and Order Code shall also apply to Appellate Court Judges appointed under this Code.
- B. In addition to the requirements, qualifications and disqualifications set out in Section 2-6-104, the following shall also apply:
 - 1. At a minimum, all Appellate Court Judges shall have a Juris Doctorate from an accredited law school; licensed attorneys are preferred.
 - 2. If an Associate Appellate Court Judge is temporarily absent or otherwise unavailable, the Chief Appellate Court Judge may designate a Spirit Lake Tribal Court Judge to sit as a temporary Associate Appellate Court Judge.
 - 3. If a Spirit Lake Tribal Court Judge is designated to sit as a temporary Associate Appellate Court Judge pursuant to section 2-11-225(B) (2), the additional requirement set out in section 2-11-225(B) (1) shall be waived.
 - 4. If the Chief Appellate Court Judge is temporarily absent or otherwise unavailable, he/she may designate an Associate Appellate Court Judge to serve as temporary Chief Appellate Court Judge as well as designate a Spirit Tribal Court Judge to sit as a temporary Associate Appellate Court Judge in accordance with section 2-11-225(B) (2).
 - 5. No Spirit Lake Tribal Court Judge designated to sit as an Associate Appellate Court Judge in accordance with sections 2-11-225(B) (2) or (B) (4) shall consider the appeal of any case, decision or other matter in which he/she participated as a member of the Spirit Lake Tribal Court.

2-11-250 Salaries of Appellate Court Judges

- A. The Appellate Court Judges shall be compensated in such amounts and in such a manner as may be determined and contracted through and by the Tribal Council.
- B. The rate and method of compensation of Appellate Court Judges shall not be reduced during their respective terms of office.

2-11-275 Removal from Office

The grounds, procedures and provisions set forth in Section 2-6-111 of the Spirit Lake Law and Order Code for the removal of Spirit Lake Tribal Court Judges shall also apply to the removal of Appellate Court Judges.

2-11-300 Conflicts of Interest; Disqualification of Judges

The grounds, procedures and provisions set forth in Section 2-6-107 and 2-6-108 of the Spirit Lake Law and Order Code as they pertain to Conflicts of Interest and Disqualification of Judges shall also apply to Appellate Court Judges.

APPELLATE COURT PROCEDURE

2-11-325 Right to Petition for Appeal

Any party to any Order or Judgment of the Spirit Lake Tribal Court shall have the right to petition for appeal of that Order or Judgment to the Spirit Lake Tribe Appellate Court.

2-11-350 Filing a Petition

- A. A party wishing to appeal shall file a Petition for Appeal with the Clerk of Court for the division of the Spirit Lake Tribal Court where the case was originally heard.
- B. The Petition for Appeal must be filed within twenty (20) days after entry by the Spirit Lake Tribal Court of the Order or Judgment from which appeal is sought.
- C. The Petition shall be accompanied by a filing fee of fifty dollars (\$50) unless otherwise waived pursuant to already existing policies and procedures of the Spirit Law Tribal Court.

2-11-375 Grounds for Appeal

The Petition for Appeal shall state the grounds for the appeal, which shall be limited to the following:

- A. The Spirit Lake Tribal Court lacked jurisdiction to hear the case.
- B. Irregularities or improprieties in the proceedings, or by the Spirit Lake Tribal Court, the jury, any witnesses or any party that were substantially prejudicial to the rights of the Petitioner.
- C. The Spirit Lake Tribal Court Judge misapplied applicable law.
- D. The verdict, decision, order or judgment of the Spirit Lake Tribal Court Judge was clearly erroneous because it was not supported by evidence and/or testimony presented.

- E. The verdict or decision of the trial Court jury was unreasonable because no evidence or testimony existed to support the verdict or decision.
- F. The Spirit Lake Tribal Court Judge abused his/her discretion in making a decision or ruling which prevented a fair hearing or trial for the Petitioner.
- G. The Spirit Lake Tribal Court has denied a request for reconsideration or a new hearing upon the assertion of newly found evidence that would not have been reasonably available at the initial hearing and said evidence is reasonably likely to result in a different verdict, decision order or judgment.
- H. The sentence in a criminal action exceeds the legally permissible sentence or is so excessive as to constitute an abuse of discretion.
- I. The form or amount of damages or relief awarded in a civil case constitutes an abuse of discretion or misapplication of applicable law.

2-11-400 Review and Grant or Denial of Petition

- A. Upon receipt of a Petition for Appeal, the Clerk of Court shall promptly notify the Appellate Court which shall review the Petition. The initial review of the Petition:
 - 1. Must involve review by all Appellate Court Judges.
 - 2. May be done in person and on the record or via reliable electronic means that includes but is not limited to: email, teleconference or video conferencing.
 - 3. Must be reviewed liberally in favor of the Petitioner.
- B. Upon initial review, if it appears to a unanimous Appellate Court that the Petition for Appeal on its face has no merit or fails to state grounds for appeal as set forth in Section 2-11-375, the Petition shall be denied.
- C. If the Petition is denied pursuant to Section 2-11-400(B), the Appellate Court shall state in a written Order that the Order or Judgment of the Spirit Lake Tribal Court shall be executed.
- D. Copies of the Appellate Court Order denying the Petition shall be served by the Clerk of Court upon all parties to the proceedings of the Spirit Lake Tribal Court.
- E. Upon initial review, if it appears to one or more Appellate Court Judges that the Petition has merit, the Appellate

Court shall grant the Petition and set the matter for hearing.

2-11-425 Notice of Hearing

- A. All parties must have been served with the Petition and Notice of Hearing at least twenty (20) days prior to the hearing.
- B. Unless continued for good cause by the Appellate Court or pursuant to agreement of all parties involved, the hearing must be held no later than forty-five (45) days after the Petition is granted.

2-11-450 Record

At any Appellate Court hearing, the Clerk of Court shall make all records and materials in the Tribal Court case file available to the Appellate Court and the Appellate Court shall consider the same.

2-11-475 Argument

Each party to the appeal shall be granted an opportunity to:

- A. Present an argument on all issues raised by the Petition for Appeal.
- B. To discuss and comment on all evidence presented to or considered by the Spirit Lake Tribal Court, insofar as they pertain to the issues raised in the Petition for Appeal.
- C. To discuss and comment on all findings, verdicts, decisions orders or judgments of the Spirit Lake Tribal Court and/or jury insofar as they pertain to the issues raised in the Petition for Appeal.

2-11-500 Scope of Review

- A. The Appellate Court shall not conduct a new trial.
- B. Witnesses shall not appear before the Appellate Court to give testimony.
- C. Unless the appeal is taken pursuant to grounds asserted in 2-11-375(G), new evidence shall not be presented before the Appellate Court.

2-11-525 Written Opinion and Decision

In deciding an Appeal, the Appellate Court shall prepare a written opinion and decision setting forth its conclusion(s), reasoning(s) and order(s). The decision shall be in the form of an Order of one of the following:

- A. That the verdict, decision, order, judgment or sentence of the Spirit Lake Tribal Court Judge or jury is affirmed and shall be executed.
- B. That the verdict, decision, order, judgment or sentence of the Spirit Lake Tribal Court Judge be reversed, as a matter of law because of a misapplication of law, and the case be dismissed or remanded to the Spirit Lake Tribal Court for further the entry of a verdict, decision, order, judgment or sentence judgment consistent with the Order of the Appellate Court.
- C. That the sentence of a criminal case be reduced because it exceeds the legally permissible sentence or is so excessive as to constitute an abuse of discretion.
- D. That the form or amount of damages or relief awarded in a civil case by the Spirit Lake Tribal Court be reduced, increased or modified because it constitutes an abuse of discretion or misapplication of applicable law.
- E. That the verdict, decision, order, judgment or sentence of the Spirit Lake Tribal Court be reversed and/or the case be remanded to the Spirit Lake Tribal Court for correction of errors, deficiencies, irregularities, improprieties, abuse of discretion or misapplication of law.
- F. That the verdict, decision, order or judgment of the Spirit Lake Tribal Court be reversed and/or remanded to the Spirit Lake Tribal Court for a new hearing on each issue which was the subject of such defect.
- G. That an appeal taken pursuant to 2-11-375(G) is granted and the case be remanded to the Spirit Lake Tribal Court for reconsideration and/or a new hearing.

2-11-550 Rules of Procedure

The Appellate Court may promulgate rules of procedure for the conduct of its proceedings which are consistent with this Code, the Spirit Lake Law and Order Code generally and other applicable law.