

CRIMINAL PROCEDURE

CHAPTER TWO

PROCEEDINGS BEFORE TRIAL

Section 201. The Complaint

(a) **Complaint.** Every criminal proceeding shall be commenced by the filing of a criminal complaint. The complaint is a sworn written statement of the essential facts charging that a named individual(s) has committed a particular offense.

(b) **Contents of Complaint.** The complaint shall contain:

(1) The name and address of the court:

(2) The name of the defendant; if known or some other name if not known plus whatever description of the defendant is known;

(3) The signature of the Tribal Attorney General or his Assistant; and his typewritten name.

(4) A written statement describing in ordinary and plain language the facts of the offense alleged to have been committed including a reference to the time, date, and place as nearly as may be known. The offense may be alleged in the language of the statute violated

(5) The person against whom or against whose property the offense was committed and the names of the witnesses of the Tribe if known, otherwise no statement need be made;

(6) The general name and Tribal code title and section number of the alleged offense.

(7) If the offense(s) is punishable by banishment, the Attorney General may state in the complaint or an amendment of the complaint that banishment will be recommended as a punishment if the defendant is convicted. If such statement is not made banishment may not be imposed.

(c) **Error.** No minor omission from or error in the form of the complaint shall be grounds for dismissal of the case unless some significant prejudice against the defendant can be shown to result therefrom.

(d) **Time of filing complaint.** A complaint may be filed at any time within the period prescribed by Section 103 of this Title, provided, that if an accused has been arrested without a warrant the complaint shall be filed promptly and in no case later than the time of arraignment.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 202. Arrest Warrant or Summons to Appear

(a) If it appears from the complaint that an offense has been charged against the defendant, a judge of the Tribal Court shall issue a summons to the defendant to bring him before

CRIMINAL PROCEDURE

the court. An arrest warrant shall issue only upon a complaint charging an offense by the defendant against the law of the Tribe supported by the recorded ex parte testimony or affidavit of some person having knowledge of the facts of the case through which the judge can determine that probable cause exists to believe that an offense has been committed and that the defendant committed it.

(b) **Issuance of Arrest Warrants or Summons.** Unless the Tribal Judge has reasonable grounds to believe that the person will not appear on a summons, or unless the complaint charges an offense which is punishable by banishment, a summons shall be issued instead of an arrest warrant.

(c) **Contents of Arrest Warrants.** The warrant of arrest shall be signed by the Judge issuing it, and shall contain the name and address of the Court; the name of the defendant, or if the correct name is unknown, any name by which the defendant is known and the defendant's description; and, a description of the offense charged with a reference to the Section of the Tribal Code alleged to have been violated. It shall order and command the defendant be arrested and brought before a Judge of the Tribal Court to enter a plea. When two or more charges are made against the same person only one warrant shall be necessary to commit him to trial.

(d) **Contents of Summons.** A criminal summons shall contain the same information as an arrest warrant except, that instead of commanding the arrest of the accused, it shall order the defendant to appear before a Tribal Judge within five (5) days or on some certain day to enter a plea to the charge, and a notice that upon the defendant's failure to appear an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court. If the defendant fails to appear in response to a summons or refuses to accept the summons an arrest warrant shall issue.

(e) **Service of Arrest Warrants and Summons.**

(1) Warrants for Arrest and Criminal Summons may be served by any Tribal or Federal law enforcement officer or any adult person authorized in writing by the Tribal Judge. Service may be made at any place within the jurisdiction of the Tribe.

(2) Warrants of Arrest and Summons are to be served at a person's home only between the hours of 7:00 am and 9:00 pm, unless an authorization to serve such process at night is placed on the face thereof by a Tribal Judge.

(3) The date, time, and place of service or arrest shall be written on the warrant or summons along with the signature of the person serving such, and the warrant returned to the Court. A copy, so signed, shall be given to the person served or arrested at the time of arrest if reasonably possible, or as soon thereafter as is reasonable possible.

(4) An officer need not have the warrant in his possession at the time of arrest, but if not, he shall inform the defendant of the charge, that a warrant of arrest has been issued and shall provide the defendant a copy of the warrant not later than the time of arraignment.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

CRIMINAL PROCEDURE

Section 203. Criminal Citations

(a) Whenever a law enforcement officer would be empowered to make an arrest without a warrant for an offense not punishable by banishment but has reasonable grounds to believe an immediate arrest is not necessary to preserve the public peace and safety, he may, in his discretion, issue the defendant a citation instead of taking said person into custody. Such citation, signed by the law enforcement officer, shall be considered a court order, and may be filed in the action in lieu of a formal complaint, unless the Court orders that a formal complaint be filed.

(b) Contents of Citation.

(1) The citation shall contain the name and address of the Court, the name or alias and description of the defendant, a description of the offense charged, and the signature of the law enforcement officer who issued the citation.

(2) The citation shall contain an agreement by the defendant to appear before a Tribal Judge within five (5) days or on a day certain to answer to the charge, and the signature of the defendant.

(3) The citation shall contain a notice that upon defendant's failure to appear, an arrest warrant shall issue and that the defendant may be further charged with disobeying a lawful order of the court.

(4) One (1) copy of the citation shall be given to the defendant and two (2) copies shall be delivered to the Attorney General.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 204. Arraignment

(a) **Arraignment Defined.** Arraignment is the bringing of an accused person before the Court, informing him of the charge against him and of his rights, receiving his plea and setting bail. Arraignment shall be held in open court upon the appearance of an accused in response to a Criminal Summons or Citation or, if the accused was arrested and confined, within seventy-two (72) hours of the arrest, Saturdays, Sundays and legal holidays excepted.

(b) **Procedure at Arraignment.** Arraignments shall be conducted in the following order:

(1) The Judge or Magistrate should request the Attorney General to read the charges.

(2) The Attorney General should read the entire complaint, deliver a copy to the defendant unless he has previously received a copy thereof, and state the minimum and maximum authorized penalties.

(3) The Judge or Magistrate should determine that the accused understands the charge against him and explain to the defendant that he has the following rights:

(i) the right to remain silent.

CRIMINAL PROCEDURE

(ii) to be tried by a jury upon request.

(iii) to consult with an attorney at his own expense and that if he desires to consult with an attorney the arraignment will be postponed.

(4) The Judge or Magistrate shall ask the defendant if he wishes to obtain counsel and, if the defendant so desires, he will be given a reasonable time to obtain counsel. If the defendant shows his indigency and counsel is available for appointment under the rules relating to attorneys, counsel may be appointed. If the defendant is allowed time to obtain or consult with counsel, he shall not be required to enter a plea until the date set for his appearance.

(5) The Judge or Magistrate should then ask the defendant whether he wishes to plead "guilty", "nolo contendere", or "not guilty".

(c) **Receipt of Plea at Arraignment.** The defendant shall plead "guilty", "nolo contendere", or "not guilty" to the offense charged.

(1) If the defendant refuses to plead, the Judge shall enter a plea of "not guilty" for him.

(2) If the defendant pleads "not guilty", the Judge shall set a trial date and conditions for bail prior to trial.

(3) If the defendant pleads "nolo contendere" or "guilty" the Judge shall question the defendant personally to determine that he understands the nature of his action, the rights that he is waiving, and that his action is voluntary. The Judge may refuse to accept a guilty plea and enter a plea of "not guilty" for him. If the guilty plea is accepted, the Judge may immediately sentence the defendant or order a sentencing hearing.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 205. Commitments

No person shall be detained or jailed for a period longer than seventy-two (72) hours, Saturdays, Sundays, and legal holidays excepted, unless a commitment bearing the signature of a Judge or Magistrate of the Tribal Court has been issued.

(a) A temporary commitment shall be issued pending investigation of charges or trial.

(b) A final commitment shall be issued for those persons incarcerated as a result of a judgment and sentence of the Tribal Court.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 206. Joinder

(a) **Joinder of Offenses.** Two or more offenses may be charged in one complaint so long as they are set out in separate counts and:

CRIMINAL PROCEDURE

- (1) They are part of a common scheme or plan, or
- (2) They arose out of the same transaction.

(b) **Joinder of Defendants.** Two or more defendants may be joined in one complaint if they are alleged to have participated in a common act, scheme, or plan to commit one or more offenses. Each defendant need not be charged in each count.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 207. Pleas

(a) A defendant may plead guilty, nolo contendere, or not guilty. the Court shall not accept a plea of guilty or nolo contendere without first addressing the defendant personally and determining that the plea is made voluntarily with understanding of the nature of the charge and the consequences of the plea. If the defendant refuses to plead or if the Court refuses to accept a plea of guilty, or nolo contendere, the Court shall enter a plea of not guilty. The Court shall not enter a judgment upon a plea of guilty or nolo contendere unless it is satisfied that there is a factual basis for the plea.

(b) The defendant, with the consent of the Court and of the prosecuting attorney, may plead guilty to any lesser offense than that charged which is included in the offense charged in the complaint or to any lesser degree of the offense charged.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 208. Withdrawing Guilty Plea

A motion to withdraw a plea of guilty may be made only before a sentence is imposed, deferred, or suspended, except that the Court may allow a guilty plea to be withdrawn to correct a manifest injustice.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 209. Plea Bargaining

Whenever the defendant plead guilty as a result of a plea arrangement with the Attorney General, the full terms of such agreement shall be disclosed to the Judge. The Judge in his discretion, is not required to honor such agreement. In the event that the Judge decides not to honor such agreement, he should offer the defendant on opportunity to withdraw his plea and proceed to trial.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 210. Pleading and Motions Before Trial: Defenses and Objections

(a) Pleadings in criminal proceedings shall consist of the complaint or citation and the plea of either guilty, nolo contendere, or not guilty. All other pleas and motions shall be made in accordance with this Title.

CRIMINAL PROCEDURE

(b) Motions raising defenses and objections may be made as follows:

(1) Any defenses or objections which are capable of determination other than at trial may be raised before trial by motion.

(2) Defenses and objections based on defects in the institution of the prosecution of the complaint other than that it fails to show jurisdiction in the Court or fails to charge an offense may be raised on motion only before trial or such shall be deemed waived, unless the Court for good cause shown grants relief from such waiver. Lack of jurisdiction or failure to charge an offense may be raised as a defense or noticed by the Court on its own motion at any stage of the proceeding.

(3) Such motions shall be made in writing and filed with the Court at least five (5) business days before the day set for trial. Such motions will be argued before the Court on the date of trial unless the Court directs otherwise. Decision on such motions shall be made by the judge and not by the jury.

(4) If a motion is decided against a defendant, the trial shall proceed as if no motion were made. If a motion is decided in favor of a defendant, the judge shall alter the proceedings, allow an interlocutory appeal to be taken as provided in the Appellate Rules, or enter judgment as is appropriate in light of the decision.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 211. Concurrent Trial of Defendants or Charges

(a) The Court may order two or more defendants tried together if they could have been joined in a single complaint, or may order a single defendant tried on more than one complaint at a single trial.

(b) If it appears that a defendant or the Tribe is prejudiced by a joinder of offenses or other defendants for trial, the court may order separate complaints and may order separate trials or provide such other relief as justice requires. In ruling on a motion for severance, the Court may order the Tribe to deliver to the Court for inspection in chambers, any statements made by a defendant which the Tribe intends to introduce in evidence at the trial.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 212. Discovery and Inspection

(a) The police, or Attorney General, shall, upon request, permit the defendant or his attorney to inspect and copy any statements or confessions, or copies thereof, made by the defendant if such are within the possession or control of or reasonably obtainable by the police or prosecution. The police and prosecution shall make similarly available copies of reports of physical, mental or scientific test or examinations relating to or done on the defendant.

(b) The defendant or his attorney shall reveal by written notice to the Court and the Attorney General at least five (5) working days before trial the names and addresses of any witnesses upon whom the defense intends to rely to provide an alibi or insanity defense for the defendant. Failure to provide such notice will prevent the use of such witnesses by the defense unless it can be shown by the defense that prior notice was impossible or that no prejudice to the

CRIMINAL PROCEDURE

prosecution has resulted, in which case the judge may order the trial delayed or make such other orders as tend to assure a just determination of the case.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 213. Subpoena

(a) The defendant and the Attorney General shall have the right to subpoena any witnesses they deem necessary for the presentation of their case, including subpoenas issued in blank. Subpoenas in criminal cases shall be issued, served and returned as in civil cases.

(b) A subpoena may be served any place within the jurisdiction of the Tribal Court, and as provided for service in civil cases.

(c) Failure, without adequate excuse, to obey a properly served subpoena may be deemed a contempt of court, and prosecution thereof may proceed upon the order of the Court. No contempt shall be prosecuted unless a return of service of the subpoena has been made on which is endorsed the date, time and place of service and the person performing such service.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]