

still very small. The old court room is a former kitchen and it fits twenty (20) people at most. The jury pool for Hualapai is thirty (30) people. So, the court room cannot even be used to seat a jury effectively or to conduct a jury trial. However on a temporary basis the courtroom is better than the temporary room that has been in use.

**The court system needs new facilities, not just a new ceiling in a cramped courtroom. For the current case load, the tribal court should have two court rooms in operation, sixteen (16) office spaces to accommodate current court staff, a secure holding area, a jury deliberation room and a staff conference room. There should be a public entry way with access to the court rooms.** The staff requires office space that supports their job description with primary emphasis on maintenance of confidentiality. The current area for jury deliberation can be overheard by anyone outside the room because there is no ceiling on the room. The current entry to the court offices allows anyone in the entry way to hear conversations and phone calls made by the clerks in the front office. Due to the lack of office space for the clerks, one clerk must serve as receptionist that requires them to work on files and maintain calls in public view. Also, as a result of the cramped space, the hard copies of case files are kept in the common hallway used by all court staff and visitors.

The only court staff who have sufficient space are located outside of the facility and seem to have an obvious disconnect from the current state of the court. At the present time the prosecutor has the best office space in the old dialysis building where the interim court has been in operation. The public defenders have offices in the tribal administration building.

There are no basic security measures for the old court room. The entrance to the courtroom is unmonitored for security purposes. Someone may be armed when they enter the courtroom and the bailiff would have no time to react because she is unarmed and there is no security person or a weapons detection system outside the courtroom. There are no security instruments such as a metal detector or metal detecting wand available to the bailiff. Yet, there is a metal detector for the entrance to the prosecutors' offices.

While the evaluators were on-site, the software used to manage open cases was partially disabled causing a problem in the sequence of the case numbers in the database and partial loss of data entry associated with specific case numbers. Consequently, the clerks were required to make all entries manually. The court administrator was tasked with determining whether data had been lost or just disconnected from the primary case number.

The range of equipment for court operation is limited to the recording equipment used in the court room, court staff computers, copier, fax machine and basic minor office equipment. The equipment is in good working order and is used by the court staff. The copier and fax machine should be upgraded; however with the lack of space, it would be difficult to move in a larger copier with networked printing and scanning capacity. If the court staff had such a copier, it would facilitate the digitization of old court files currently housed in two storage units for records and supplies.

In the future, the tribal council and the court administrator should make sure that the court has video arraignment capacity. As detention space fills and causes adult

detainees to be moved to off-reservation jails, the court can minimize transportation costs using video arraignments.

***Recommendation K-1. Plan a New Court Facility for the Hualapai  
Judiciary***

As noted previously, the judiciary's administrative offices are housed in cramped quarters, separately from the prosecutor's office and the offices of the public defenders. The tribal council should commit to planning and building a new judicial complex that would house all the components of the judiciary: the judges' chambers, at least two (2) courtrooms, jury deliberation room, the prosecutor's office, the offices of the public defender, the probation department, the office of the court administrator, the office of the court clerks, the office of the bailiff and the process server, and the receptionist area. The judicial complex should be in close proximity of the adult jail and the juvenile detention center to avoid transportation issues. Whether the new facility is five to ten years from breaking ground, the commitment to plan a new facility must occur now. Until then, the severe problems caused by the various disconnected offices comprising the court must be addressed and the tensions eased.

***Recommendation K-2. Address the Issues Caused by the Existing  
Multiple Disconnected Offices and Facilities***

There are specific problems resulting from the current multiple and disconnected offices and facilities. The most problematic issues are communication and job performance for the prosecutor and the public defenders and the dysfunctional space of the probation officers.



The court administrator should have an administrative monitoring role over the prosecutor and the public defenders. However, that is not the case at this time. The prosecutor appears independent of all except the vice chair of the tribal council. The public defenders do not seem to be accountable to anyone; certainly, not to the court administrator. It is difficult for any one supervisor to monitor three separate sites, especially when the prosecutor and the public defenders exhibit no accountability to the court administrator in any way. The prosecutor and public defenders are perceived as very political and survive on political manipulation. Neither the prosecutor nor the public defenders rely on high level job performance. At the on-site visit the evaluators did not observe a high level of job performance for the prosecutor or public defenders. If they did engage in high level job performance, there is no one evaluating them on a consistent basis. The only way to achieve success here is to evaluate specific job performance indicators. The prosecutor and the public defenders would have to be tracked by performing basic tasks that the court administrator could measure. The performance of those tasks must have performance measurements. Those measurements would indicate whether these employees (prosecutor and defenders) performed at a satisfactory level. However, in this instance neither the prosecutor nor the public defenders view the court administrator as their supervisor. If the court administrator is not the supervisor of the public defenders and the prosecutor, an appropriate committee of the council should provide supervision. Reportedly, there is such a committee, but it is inactive and no one we interviewed knew about it. At any rate, supervision of officers of the court should be conducted by a component of the judicial system otherwise we may be dealing with a separation of powers problem.



## L. COMPUTER/WORD PROCESSING AND COURT FORMS

The members of the tribal court staff have sufficient computer resources; however, at the time of the site visit the case management software was inoperable and the service company was in Texas. It appears that the court administrator has the primary knowledge about the case management software and its stage of integration into the Hualapai Tribal Court System.

*Recommendation L-1. The Court Administrator Must Allocate Time For Case Management Training For Staff on the Software and What Is Available When the Software Becomes Inoperable*

Since the case management system was not working during the site visit, the evaluators were unable to make conclusions on the utility of the software. The fact that the software company is in Texas and no technician had visited or remotely accessed the software to fix the problem seemed symptomatic of an unsupported software system.

One of the most critical comments from the public about the court operations was a consequence of a failed “tickler system” to warn court staff that a specific action initiated by the court would be heard on a specific date. This situation most likely arose before the court purchased and implemented the case management software. Yet, the case management software should be able to provide that kind of “tickler system” and create a fail safe method for safeguarding clients of the court from any failure to take the required actions on time or from changes in the schedule initiated by court staff.

It is clear that the person with the primary knowledge of the software is the administrator. It is important that the court clerks master this software. It is part of their duties to know how the software works and how it can best serve the tribal court operations. Tailoring of the court forms and improving/streamlining the tickler system are productive places to start the transfer of knowledge to the court clerks from the administrator.

#### **M. CALENDARING SYSTEM**

The calendaring system, consisting of a weekly and general court schedule, is produced via word processor and published several days in advance.

***Recommendation M-1. Publish Periodic Calendar or General Court Schedule***

The court was scrutinized in several interviews concerning scheduling and rescheduling of court hearings for various reasons. While there are many plausible reasons for rescheduling a hearing such as lack of witness availability, many of these criticisms were directed at the judiciary, prosecutor, and public defenders on the basis of conflict of interest and in some interviews there were allegations that one judge refused to sit for the other judge who was unable to come to court without notice. Publishing a daily calendar on a Hualapai Tribal Court website to provide notice of a change from regularly posted hours would help to eliminate unwarranted criticism. Although the court staff directory is available on the website of the Hualapai Tribe, there is no tribal court website yet. The tribal court should have a website that provides basic court hours, court forms,

code provisions and the weekly or bi-weekly court calendar specifying location and time of the proceeding.

## **N. CASE RECORDS MANAGEMENT**

The most critical function in a clerk's office is the administrative control and management of cases flowing through the judicial system. The object or purpose should be accomplished with a view toward providing efficient service and current information to the judicial officers, and minimizing the efforts of the staff by developing labor efficient procedures. Generally, the case records management software system, as advertised on the Hill Country website and used in the Hualapai Tribal Court complies with minimum standards for case management systems. Due to the inoperability of the software during the evaluation, it is difficult to determine if the court clerks are using the software to its full extent. Beyond the software system, the clerks follow a system of case management using case numbering systems, filing procedures, and docketing. The system is not uniform nor is it equally used by the clerks. Generally, the Hualapai Tribal Court has transferred the manual system to a computerized system and has provided some users with specific training on use of the system.

### ***Recommendation N-1. Update the Case Filing Procedures to Improve Security and Confidentiality of Case Files***

During the onsite evaluation, the evaluators observed stacked case files on top of filing cabinets waiting to be filed in the file cabinets in the common hallway. The stack of files in question was located immediately next to the rear entrance/exit door leading to the courtroom and the bathrooms for which there was significant traffic. Although the



door is locked, there is enough traffic through the door allowing sufficient opportunity for an unauthorized person to enter the door and have access to the case files. The nearest office door to the entrance/exit is the probation office and if their office door is closed, the probation officers would not see anyone entering/leaving through the door.

## O. TRADITIONAL DISPUTE RESOLUTION FORUM

### *Recommendation O-1. Establish a Non-Adversarial Dispute Resolution Forum*

The Hualapai Reservation needs a dispute resolution forum that is suitable for intra-familial disputes and long standing family rivalries. The tribal court is an adversarial forum for disputes in which the parties can no longer work towards resolution. A separate non-adversarial process should be established. It could alleviate community tensions and relieve the burden upon the tribal court caseload.

The council may want to sponsor an open forum on the use of tradition and custom in dispute resolution which can be used by the court. Tribal leaders, council members, and religious leaders could all be valuable assets in determining the dispute resolution process as well as developing new sentencing and treatment alternatives for the court.

## P. ADULT JAIL/JUVENILE DETENTION FACILITIES

The **adult jail** located on the Hualapai Reservation is old and too small for its current operation as a regional BIA jail facility. Reportedly, the adult jail facility holds thirty-eight (38) to forty-five (45) people and it is always full. Presently, there is no room

for Hualapai offenders and the community members know this. This is **not** an acceptable situation; criminal defendants are being processed but there is no room to lock those up who need to be locked up. Alternatives to detention have to be used and must be developed before the detention population increases during the summer months.

Although the Hualapai Tribe has decided to take over operation of the adult jail, that may only serve as an interim fix for the current adult detainee population. There is a definite need for a new public safety center and specifically a new adult detention center.

However, it was not a task of this evaluation to address the police department facility needs.

***Recommendation P-1. Plan a New Adult Corrections Facility for  
Hualapai and Improve Court Procedures for  
Processing Adult Detainees***

The police chief at Hualapai complained that the jail is overcrowded; that the adult jail was defective from the beginning; and that the Hualapai Court and Hualapai Police deliver prisoners but often the court fails to provide follow up documents so that prisoners are in custody pursuant to a valid court order.

The **juvenile detention center** is state of the art with the capacity to house twenty (20) male and ten (10) female juvenile detainees. The case load during the site visit was five (5) juveniles. The tribal community should be proud of the facility that has been developed. The facility provides the basic detention requirements but goes much further to provide and develop programs that will enhance the social development and reintegration of the youth upon release. During our visit, we toured the facility, met with staff and had the opportunity to observe their interactions with the juvenile detainees.

The juvenile detention center is one of the strongest and healthiest components of the Hualapai Justice System at this time. Hopefully, the juvenile detention center will not lose its effectiveness for the Hualapai community once it begins taking juveniles from other communities. The consequences of the overcrowded adult jail should be informative for the juvenile detention facility. One of very few issues that arose concerning the interaction between the tribal court staff and the detention center staff was the delivery of court orders. The detention center has mail boxes at the court facility but some clerks fax orders as a courtesy service. This is inconsistent but has become relied upon by the detention center staff. The responsibility for checking the mail box currently resides with the detention center staff. A discussion of shifting the delivery by fax as a rule should occur between the court staff and detention center staff. **A monthly meeting between the court staff and the detention center staff is highly recommended.**

## **Q. SENTENCING ALTERNATIVES/TREATMENT SERVICES**

### ***Recommendation Q-1. Assess the Sentencing Alternatives/Treatment***

#### ***Services Available to the Court***

The court must have adequate evaluation and treatment services available in order to effectively meet the needs of the Hualapai Reservation. The provision of these services is a vital issue which must be addressed by the court, social services, and other tribal agencies. Costs must be determined for the available services and the court must be cognizant of the resource limitations. When the judge sentences someone to treatment or anger management classes, the person is required to attend. Enforcement of the court



order is the task of the probation officers. Obviously, the probation department needs to correct this situation.

While onsite the evaluators learned that most of the alternative programs, other than informal community service, are coordinated through the behavioral health department. Due to the immediate need for alternative sentencing resources, the tribal council must impress upon all agencies the need for alternative sentencing projects, activities and resources. If this is not coordinated soon, the whole community will realize that there are minimal consequences for offenses committed at Hualapai.

***Recommendation Q-2. Draft Sentencing Guidelines for the Tribal Court Judges***

While the judges have discretion in sentencing, guidelines should be drafted to establish the community standard for sentencing for certain types of offences. The guidelines should be a starting point from which a judge varies according to the individual circumstances of the case. The guidelines should serve as a baseline and the judge should supply a statement on the record as to the variation from that baseline. These guidelines will prevent the judges from using their discretion to sentence indiscriminately, a perception that is shared by some in the community.

**R. REPORTING OF COURT STATISTICS**

The tribal court should be routinely collecting, analyzing, and reporting certain types of data about its caseload. Such information can be useful to grant writers, financial managers, and law enforcement. Such information should also be published and distributed to the community in an effort to show the trends within the community

concerning criminal offenses. Case management software should produce such data. In the meantime, members of the court staff should produce the statistics in a reasonable time frame. Statistics produced by the court could be improved by showing additional information such as the number of cases filed in a given time period and cases cleared indicating where multiple charges are part of a single case so that statistics are not misperceived.

Presently, the only consistent communication between the tribal court and the tribal council concerning the court's case load is during the annual orientation for the tribal council members in which the court staff provides history of the court, overview of staff roles and case load. This is not sufficient. The court should start by developing a bi-annual report to the tribal council that outlines the current case load differentiating cases by type/offense, aging (reportedly a case from 1996 is still active), disposition. The report should include an overview of the number of cases filed and brought to court as well as the cases that did not have sufficient reporting to bring charges.

If the tribal council really wants to know the current case load of the Hualapai Justice System, it needs input from the tribal police department, prosecutors and the judges. An overview of the current cases pending is just a small picture of the court's caseload. To get a full picture of the scope and type of offenses being committed, more information is needed. Informally, the prosecutor reports and the police department concurs that 98%+ of the offenses occurring at Hualapai are alcohol related and concern repeat offenders who move from juvenile to adult age groups. If Hualapai could document this caseload, it would support grant proposals for projects to address underage drinking and driving, fetal alcohol syndrome, maternal health, just to name a few of the

major areas of grant making by United States Department of Health and Human Services and the United States Department of Justice. A full picture of the caseload would support additional funding requests specifically from United States Department of Justice for both the tribal court and law enforcement. The failure to develop a bi-annual report is an unreasonable move to frustrate the work of this court system and to avoid addressing the scope of the issues facing the Hualapai community.

**S. COURT RELATIONS WITH OTHER AGENCIES AND THE  
COMMUNITY**

***Recommendation S-1. The Court Should Seek to Promote Positive  
Community and Interagency Relations***

Agencies of government often become isolated on both an inter- and intra-agency level. In such circumstances, public services are impeded and governmental operations are criticized. In order to avoid the failure associated with lack of communication in government, there must be a vehicle established to promote communication and the exchange of information. The establishment of periodic meetings can provide this vehicle. Complaints can be aired, information exchanged, and explanations made about new policies and procedures. Planned communication is essential to effective governmental operation. The chief judge and the administrator should take the lead role in representing the tribal court at general agency events or in organizing meetings between the judicial system agencies and the council. General meetings should be ongoing. A member of the staff of the tribal court should attend such meetings but there is also a duty of the council to provide notice several weeks prior to the meeting. Court



schedules are difficult to change, especially when the hearing dates have been confirmed (i.e. jury trials). The tribal council should not be requesting mandatory appearances from court staff with little to no notice.

***Recommendation S-2. Develop Community Education Programs***

Community education cannot be overstated. There needs to be communication from the court to the communities of the Hualapai Reservation. Members of the tribal communities need to know how the court serves them; otherwise misperceptions occur and the credibility of the court suffers. This communication must be grounded in a basic plan for disseminating information to community members. The court staff can provide brochures to visitors to the court and brochures should be available at the council offices. More should be done. Outreach programs to schools and community groups should be pursued by all members of the court staff, particularly the chief judge. The court staff should be encouraged to make presentations at group functions and community events. The goal of these presentations should be to inform the public that the court is a positive resource that should be respected and supported as an institution of the government of the Hualapai Tribe. The court staff currently participates in the annual Career Day event and the Halloween Haunted House event. This is excellent public relations but they may need to support these outreach efforts with more information about the court and its processes. Whether it's a simple brochure, coloring pages or copies of the timeline for a juvenile case to be processed through a court, the goal is to convey what the court actually does in the community.

## **T. THE BAILIFF ROLE**

The basic Role of the bailiff is to provide order and security for the courtroom proceeding. Additionally, the bailiff needs to be prepared to take any action ordered by the judge like taking someone into custody who is causing a disturbance in the courtroom.

### ***Recommendation T-1. Formal Attire***

The attire worn by the bailiff does not indicate to courtroom observers that she is the bailiff. If she does not wear a particular uniform, the bailiff should dress in business attire. The bailiff needs to appear to symbolize the authority of the court.

### ***Recommendation T-2. Security Duties***

The bailiff needs to assure that everyone is safe in the courtroom. There have been courtroom outbursts in the past that could have erupted into acts of violence. The bailiff must be prepared to take action if necessary. However, preventative measures should be the order of business so that intervention does not become necessary. All visitors to the courtroom must understand that no weapons are to be brought into the courtroom. The bailiff must have a working protocol with police officers in the courtroom should an incident arise. All avenues of precaution must be examined and a written protocol developed by the bailiff for approval by the chief judge.

### **III. CONCLUSION**

The Hualapai Tribal Court needs to engage in self-improvement. The basics are there for an operational system but the facilities are poor; training is less than adequate and community education is lacking. Energies need to be channeled and lines of communication established in the form of "team work". Petty bickering needs to give way to the mission of the court: To provide fair and equal justice to the Hualapai people. If the bickering cannot be halted, then court staff must be replaced.

### **TIME LINE IMPLEMENTING MAJOR RECOMMENDATIONS**

The following time line is included as a guideline for implementing major recommendations of this report. The tribal court and the council must determine which recommendations are appropriate for the Hualapai Reservation communities and worthy of implementation.

#### ***Six (6) Months Following this Evaluation:***

1. Establish structure to the probation department for both adult and juvenile probation matters. A department is needed and an equal distribution of cases implemented immediately. A written protocol must be created.
2. The two (2) probation officers need separate offices.
3. Implement the service process log and monitor process server's performance by the court administrator.
4. Require the bailiff to wear a uniform or business attire and assure more security at hearings. Presently, security is inadequate.



5. Conduct periodic meetings between the court and the police to review transportation of prisoner issues.
6. Draft sentencing guidelines for judges.
7. Immediately address the communication and morale issues of the staff. All members of the court system must work a full time schedule if these individuals are being paid for full time work. Individuals must not be allowed to just disappear during the normal work hours.

***One (1) Year Following this Evaluation:***

1. Upgrade compensation for court staff.
2. Plan community service program and increase rehabilitative efforts within the community.
3. Hire additional probation officer (or balance the caseload of the juvenile probation officer to the adult probation cases) and establish a probation department that is supervised by the chief judge.
4. Develop community education programs.
5. Revise tribal code as suggested herein.
6. Provide training for new staff and periodic training on federal Indian law for the judges, prosecutor, and public defenders.

*Five (5) Years Following this Evaluation:*

1. Make an assessment of the implementation of the recommendations made in this evaluation report.
2. Develop and implement plans for a new Judicial Center.
3. Develop tribal lay advocates program, including a training schedule.
4. Develop and conduct community education programs, as a continuing responsibility.

## **GENERAL INFORMATION SECTION**



**SAMPLE  
General Principles  
&  
Guidelines for Tribal Court Clerks/Do's & Don'ts**

## GENERAL PRINCIPLES

- A. Court staff have an obligation to explain court processes and procedures to litigants, the media, and other interested citizens.
- B. Court staff have an obligation to inform litigants, and potential litigants, how to bring their problems before the court for resolution.
- C. Court staff cannot advise litigants whether to bring their problems before the court, or what remedies to seek.
- D. Court staff must always remember the absolute duty of impartiality. They must never give advice or information for the purpose of giving one party an advantage over another. They must never give advice or information to one party that they would not give to an opponent.
- E. Court staff should be mindful of the basic principle that counsel may not communicate with the judge *ex parte*. Court staff should not let themselves be used to circumvent that principle, or fail to respect it, in acting on matters delegated to them for decision.

— DRAFT —

## GUIDELINES IN RESPONDING TO QUESTIONS

<b>Court Clerks Can Provide</b>	<b>Court Clerks Cannot Provide</b>
Provide information contained in docket reports, case files, indexes, and other reports.	Disclose confidential information about court operations or <i>ex parte</i> communications because it can give one side an unfair advantage. Do not provide information to one party that is not public information or that you would be unwilling or unable to provide to all parties.
Answer questions concerning court rules, court procedures, and administrative practices. Such questions often contain the words “Can I?” or “How do I?”	Advise litigants whether to take a particular course of action. Do not answer questions that contain the words “Should I?”. Suggest the questioners refer such issues to a lawyer.
Show or tell self-represented litigants where to find pertinent statutes or rules of procedure. Have copies of court rules and most commonly used statutes available.	Research statutes, court rules and ordinances for parties because it would be considered the unauthorized practice of law and violates the concepts of impartiality and neutrality.
Identify and provide forms that might meet the needs of self represented litigants.	Take sides in a case or proceeding pending before the court. Court clerks must remain impartial and neutral at all times.
Legal terminology can be confusing. Providing definitions of legal terms or procedures helps the public understand the court system and does not involve the unauthorized practice of law.	Provide legal interpretations. Court clerks cannot apply legal terms to the facts of a specific case in order to advise a litigant.



— DRAFT —

<b>Court Clerks Can Provide</b>	<b>Court Clerks Cannot Provide</b>
Answer questions about how to complete forms ( <i>e.g.</i> , where to write in types of information), but not questions about how the litigant should phrase responses on the forms.	Fill out forms for parties because it violates principles of neutrality and impartiality. However, if a litigant, as a result of a disability or illiteracy, is unable to fill in a form then a staff member may fill in a form. The staff member must write down the <i>exact words</i> provided by the litigant, and another staff member must witness the action.
Provide phone numbers for legal services, such as the local bar association, legal aide, district attorney, public defender, or other public counsel.	Provide referrals to private attorneys or private agencies.
Answer questions concerning and deadlines and due dates as authorized by the presiding judge.	Calculate actual deadlines or due dates for litigants.

**SAMPLE**  
**Education and Outreach Brochures**

Developed by the  
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The Red Cliff  
Tribal Court:  
its duties and powers



Red Cliff Band  
of

Lake Superior Chippewas

Layman's Library Pamphlet Series #2

April 1992



## Introduction

The authority to establish a Tribal Court system and to define its duties and powers comes from the Red Cliff Constitution. The Red Cliff Tribal Council used this power to define the structure, procedures and duties of Court personnel.

## Judges

The Council appoints one Chief Judge and one Associate Judge. Judges serve an indefinite term. Judges can be removed from office only for illegal conduct or physical or mental inability to fulfill their duties. The Chief Judge presides at hearings and trials and decides a case based on the facts presented. The Chief Judge assigns cases to the Associate Judges at his/her discretion on a case by case basis.

## Prosecutor

The Council appoints one or more persons to represent the Tribe in Court. The Prosecutor serves a one year term and can be reappointed. A Prosecutor may be removed for cause by the Council. The Prosecutor may issue complaints based on information received from enforcement officers, individuals or his/her own investigation. S/he can decide to dismiss a complaint which s/he feels it is not justified.

## Court Clerk

The Council appoints the Clerk. The terms and conditions are the same as the Prosecutor. The Clerk is responsible for administration of the Court with the following duties:

- 1) schedules all hearings/trials.
- 2) maintains case files confidentially and securely.
- 3) notifies all parties of court actions.
- 4) attends all hearings/trials.
- 5) prepare written summaries of hearings/trials
- 6) accurately account for money received and spent

- 7) turns in the records and money held to the Tribal Treasurer monthly.
- 8) prepares a list of persons convicted or held in contempt monthly.

## Forfeiture Actions

Actions to collect fines are civil actions on behalf of the Tribe and are heard in the Tribal Court. An action is started either by a ticket or by a complaint and summons to come to court.

A ticket given to a suspect by an enforcement officer is considered enough to give the Tribal Court jurisdiction. The ticket must be filed with the Court and state which regulation has been violated and the time and place of a hearing.

When the defendant is not a resident, or cannot be found, service is made by mailing a copy of the summons and complaint to the defendant's last known address by certified mail. The postal receipt is evidence of service. Service can also be by publication in some instances.

Persons accused of violations may be permitted to pay the fine instead of coming to Court.

In Court, a defendant may enter a plea of no contest, guilty or not guilty. If a defendant enters a plea of not guilty, s/he is entitled to a trial. If a person is found guilty, s/he pays the Court costs.

All monies shall be placed in tribal accounts for the administration of the Court.

Enforcement officers can confiscate all fish, game and equipment as evidence of violations of the conservation codes. Confiscated equipment shall be returned to the defendant, if found not guilty. If the defendant is found guilty, the equipment is returned when the fine is paid. If the fine is not paid in 15 days, the court can order the equipment sold to pay the fine. Arrangements for delayed payments can be made with the Judge.

## Subpoena Power

The Court can subpoena witnesses and physical evidence. Subpoenas must be signed by a Judge. Failure to obey a subpoena is contempt of Court. Subpoenas can be enforced through Red Cliff Tribal Law Enforcement to assure a witness's appearance in Court.

## Contempt Power

Where the Court finds that a person has purposely ignored a subpoena, or other Court order, the Court may find the person in contempt and fine the person or send the person to jail until they follow the Court order. A person can be fined \$5,000 per day or be jailed up to 90 days.

## Warrants

A warrant must have a Judge's signature, must reference the violation charged, and the date of issuance.

A search warrant can be issued if there is strong reason to believe that property is being or could be used to commit a crime, or that property is evidence of a crime.

A search warrant must name the person or property to be searched, a description of the property to be taken, the date issued and the effective dates. The warrant must be returned to the clerk. The warrant is good for 3 days from the date issued.

The officer applying for a search warrant must make a sworn statement of the reasons why it should be issued. Only enforcement officers can carry out a warrant. Interfering with execution of a warrant is cause for contempt.

## Affidavits

An affidavit is a written statement attesting to certain facts, sworn to and signed in the presence of a notary who



signs their name and stamps their seal beneath the signature.

## Searches

Officers may search without a warrant:

- A. When making a lawful arrest, or
- B. When the search is consented to, or
- C. If the officer has strong reason to believe that a violation has been committed, is being committed, or is about to be committed, and the officer is holding a person for questioning, or is issuing a ticket and the officer suspects that s/he or someone else is in danger of physical injury.

## Arrests

Officers may make an arrest without a warrant if there is strong reason to believe that a crime is being committed or has been committed, and:

- A. A person refuses to accept a ticket or make a deposit on a fine, or
- B. If a person refuses to identify himself or herself, or if the officer believes they are giving false information, or
- C. Arrest is necessary to prevent bodily harm to a person or the officer.

In all cases, a person must be brought before a Judge without delay.

## Burden of Proof

In most actions, the complainant must convince the Judge with evidence that is clear, satisfactory and convincing. However, each chapter in the Code of Laws should be thoroughly reviewed because different burdens do exist (See Chapter 26).

## Continuing Violations

In addition to a fine, the Court can order a defendant to do or stop from doing certain acts, under threat of Contempt.

## Revocation

The Court has the power to revoke or suspend a license or permit for misuse. When a permit/license is revoked, a person is barred from getting the same license for 1 year.

A person can be excluded from the reservation or denied business privileges. This can only be done if a person has committed 3 violations in a 24 month period. Two of the violations must carry a fine of \$100 or more.

## Maximum Fine

For first offense is \$5000 unless the code says otherwise.

## Irregularities

If a ticket, complaint, summons, warrant or similar document does not conform to the requirement in the code, it is not invalid if it achieves the purpose of the code.

## Advocates

A person involved in a Court action has the right to be represented by an Advocate at all hearings, at his/her own expense.

No Advocate shall be allowed to practice before the Tribal Court until they have passed a written examination testing their knowledge of Indian Law and the Red Cliff Code. Upon passing, the Advocate becomes a member of the Red Cliff Bar Association.



## Juvenile Court

Jurisdiction of the Tribal Court includes the power to appoint guardians for children entitled to tribal membership who have not reached the age of 18 years.

## Statute of Limitations

All court actions must be filed within 36 months from the incident or be forever barred.

## Appellate Court

### Definitions:

**Appellate Judge:** A Judge approved by the Tribal Council in Appellate Court.

**Appeal:** A written request to have the decision of the Tribal Court reviewed by the Appellate Court.

## Composition of the Appellate Court

The Appellate Court is a 3 Judge panel selected by the Court Clerk from a list approved by the Tribal Council.

## Jurisdiction and Scope of Review

The Appellate Court has the right to review all orders of the Tribal Court.

## Right of Appeal

Any person not satisfied by a final Tribal Court decision may appeal.

## Time for Filing and Service of Notice of Appeal

Written Notice of Appeal from a decision of the Tribal Court must be filed within 48 hours of the decision in open Court, or within 48 hours of receiving a notice of decision.

## Appellate Procedure

Written Notice of Appeal must be filed within 48 hours of announcement or receiving the notice of decision. Copies of the notice should be sent to all parties.

The cost of filing is \$100. The Court may waive this fee upon written motion to the Court, if it determines that the Appellant cannot pay.

An Appellant must file the grounds for appeal in writing within 10 days of filing the notice of appeal. Within 20 days of filing the Notice of Appeal, the Appellant may file a written brief to support his or her position. The Respondent has 10 days after receiving the appellate brief to respond by filing a responsive brief. All statements, briefs and memoranda must be served to all parties.

An oral hearing on the appeal of matters of law may be ordered.

All appellate decisions are written and must be issued by the Court no later than 30 days after oral argument.

A Judge who has presided over the case at issue, or who has interest in the outcome of the proceedings may not act as a judge.

If an appeal is determined by the Appellate Court to be frivolous, the Court may dismiss the appeal and award costs to the Respondent.

## Waivers

The time frame requirements for filing and scheduling of hearings can be waived if:

- 1) all parties to an action agree, and
- 2) such action would not result in harm to the parties concerned.

The Court, upon its determination, may grant a waiver in either written or oral form. In some instances the Court may at its discretion grant a waiver when all parties do not agree. This action may occur if:

- 1) the Court determines the waiver to be for good cause, and
- 2) there is no evidence to suggest probable harm to those parties concerned.

## NOTE:

This pamphlet only contains a summary of the subject matter. It is recommended that the full document be reviewed in its entirety. This pamphlet reflects the laws at the time of publishing.