

**FILED**

FEB - 2 2018

Clerk, U S District Court  
District Of Montana  
Billings

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

MICHAEL F. LAFORGE,

Plaintiff,

vs.

JANICE GETS DOWN, NATASHA J. MORTON,  
LEROY NOT AFRAID, SHEILA WILKINSON NOT  
AFRAID

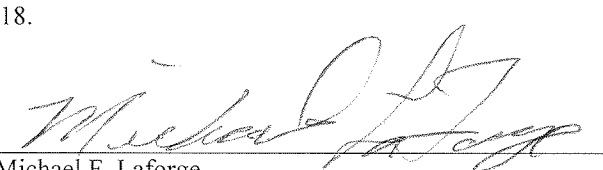
Defendant

Case No.: CV-17-48-BLG-BMM-TJC

MOTION TO FILE EVIDENCE

COMES NOW PLAINTIFF MICHAEL F. LAFORGE, Is submitting a Motion to file evidence.

Dated this 2nd of February 2018.

  
Michael F. Laforge

MOTION TO FILE EVIDENCE - 1



IN REPLY REFER TO:  
Indian Services, Code 360

United States Department of the Interior  
BUREAU OF INDIAN AFFAIRS  
Rocky Mountain Regional Office  
2021 4<sup>th</sup> Avenue North  
Billings, Montana 59101

Alvin "A.J." Not Afraid, Chairman  
Crow Tribal Council  
P.O. Box 159  
Crow Agency, Montana 59022

JAN 08 2018

Dear Chairman Not Afraid:

The FY 2017 Awarding Official's Technical Representative (AOTR) Report on the Crow Tribal Court, P.L. 93-638 Contract No. A12AV00409 is enclosed. The contract is in noncompliance and requires that the enclosed Corrective Action Plan be implemented.

The Crow Tribal Court does not adhere to the established Crow Tribal Management Systems for Financial Management when program income is received, nor when procuring items and services for the Court. The Court lacks compliance with Crow Tribe Personnel Policies and Procedures: 1) by hiring temporary employees without background checks, 2) issuing payroll to temporary employees from a bank account not monitored by Tribal Finance, 3) issuing severance pay to ex-elected official, 4) disregarding nepotism policies by rehiring the ex-elected official to another position in the Court, 5) not following the Crow Law and Order Code for staff salaries, and 6) creating a hostile work environment for the new elected official and Federal employees by issuing standing orders preventing access to the court and court records.

The Chief Judge insists the Tribal Court (Judicial Branch) operates independently from the Executive and Legislative Branches and does not have to follow the established Crow Tribal Management Systems for Financial Management or Personnel.

The Regional Awarding Official has been made aware of these deficiencies and is reviewing expenditures for allow ability and she has the discretion to take further action as warranted.

If you have any questions, please contact Jo-Ellen Cree, Tribal Operations Officer/Awarding Officer's Technical Representative, at (406) 247-7964 or Louise Zokan-Delos Reyes, Indian Services Officer at (406) 247-7989.

Sincerely,

Regional Director

Enclosures

cc: Superintendent, Crow Agency  
Chief Judge, Crow Tribal Court  
Self-Determination Officer, Rocky Mtn Region  
Self-Determination Specialist for Crow Agency

CROW TRIBAL COURT – CORRECTIVE ACTION PLAN – FY2017

<i><b>Finding</b></i>	<i><b>Corrective Action Need</b></i>	<i><b>Target Date</b></i>	<i><b>Comments</b></i>
1. Separation of Powers used to justify lack of compliance with Crow Tribal Management systems	Provide tribal clarification to the court and the BIA on the Separation of Powers and the administration of the P.L. 93-638 contract.	90 days	This was noted in 2016 review
2. Financial information provided by the Tribal Court Administrator (TCA) is unclear and contradicts Tribal finance policies and tribal code.	Clarify compliance with Tribal finance policies, tribal code, revise budget and carefully monitor as needed.	90 days	Tribal judges' salaries and changes in salaries during election term etc. are not in compliance with tribal code. This was noted in 2016 review.
3. Funds at the FIB (fines, fees & bonds) are used as needed by the Court. The funds are comingled and not reported to Tribal Finance. An approved budget and usage plan was not in place. Bond funds should be maintained separate from other program income and not used by Court until deemed property of the Court.	Incorporate into P.L. 93-638 contract budget, and do not allow tribal contract loans from FIB. Program income should be deposited with tribal finance (Federal Law, 25 USC 5325(m)(1); the P.L. 93-638 contract; CLOC 3-6-602(2); and the Crow Tribe's Fiscal Management systems).	90 days	The overall budget for the court needs to be planned for and not manipulated at will. An audit of all fines and fees collected at Tribal Court needs to be completed and provided to Tribal Finance. Copies of the FIB statements need to be shared with Tribal Finance and provided to BIA as these are considered program income.
4. Tribal personnel policies, position descriptions and salary limits are not complied with; the Tribal Court Manual is reportedly used instead.	Clarify which personnel policies will be complied with including salary limits and nepotism requirements, and who will be responsible to insure the court is adhering to these policies.	30 days	Currently the Chief Judge can revise policies, provide 30 days' notice to employees and they become effective. He is in the process of revising the current Court Manual.
5. Court staff received bonus pay (incentive & Christmas); associate judges' severance pay of \$21,320, hiring temporary personnel without background checks; and contract loans.	Unallowable costs cannot be charged to Federal funds. Adhere to established Tribal Financial and Personnel Management systems. Stop hiring staff without background checks. Stop using FIB funds: 1) to pay temporary personnel and 2) for items not identified in approved budget.	30 days	Explain and repay severance pay as it is not supported in the Tribal or Federal management systems (2 CFR § 200.431).
6. Tribal Court Administrator received multiple paychecks in August 2017.	SF-425 shows two paychecks were issued on 8/3/2017, document nos. 303095 and 303107 each for \$1,304.00. Then on 8/10/2017, document no. 303696 shows \$1,304.00 was paid. On 8/15/2017 document no. 303768 shows payment of \$2,608.00.	30 days	An audit is needed for the multiple payments since these charges were paid from 638 funding.

## CROW TRIBAL COURT – CORRECTIVE ACTION PLAN – FY2017

7. Weekly payroll issued for judges and tribal court administrator.	Adhere to Tribal Personnel Management and only allow bi-weekly checks to be distributed to Tribal employees	30 days	The Crow Tribe is on high risk status which mandates a reimbursable draw down of Federal funds. Court employees receiving weekly checks from Federal funds create multiple accounting transactions. All employees of Crow Tribe should be treated equally.
8. 2016 Chevy Tahoe V8, purchase with 638 contract funds of \$44,804.00; location unknown.	Locate vehicle and provide supporting purchase documentation.	30 days	Noncompliance will be considered a disallowed cost and a bill for collection will be issued as Federal funds were used for this purchase. [25 CFR 900.48(f), 25 CFR 900.52(a) and established Tribal Policies were not followed.]
8. No law trained judges (graduated with juris doctorate). A legal advisor was reportedly approved but not confirmed by the legislature.	Revisit chief judge's educational requirements or contract for legal consultation with confirmation by the legislature if needed.	90 days	Provide legal expertise to court staff to ensure tribal court procedures comply with federal law and tribal code.
9. TCA did not attend Judicial college for Tribal Court Administrator training.	TCA should attend Tribal Court Administrator training at National Judicial College	90 days	This was recommended in 2016 review.
10. Chief Judge questioned the use of Just Ware and the need for a more current case management system e.g. Full Court	Review the court case management system needs and tribal staff competency on current systems before considering new system	60 days	Changing court management systems is costly and current usage needs to be evaluated prior to change.
11. OJS provided funding for tribal court staff training for the Judicial Academy.	Provide appropriate training to court staff relevant to carrying out their duties.	90 days	Provide copies of completed training certificates.
12. Court has a limited interpretation of the Statement of Work (SOW)	Clarify expectations/outcomes based on the current SOW or revise as needed	30 days	This should be done in conjunction with the self-determination specialist and AOTR.
13. Chief Judge wrote a Dec. 4, 2017 standing order to limit the BIA review and the new associate judges access to the court and court records	Rescind the standing order as written. A tribal court cannot interfere with a federal employee(s) or 638 employees from doing their required work.	30 days	The order as written could be seen as setting up a hostile work environment and contrary to federal law.

## AOTR PROGRAM EVALUATION

**Contractor's Name:** Crow Tribe  
**Telephone:** (406) 638-7400  
**Address:** Crow Tribe of Indians  
P.O. Box 159  
Crow Agency, Montana 59022

**Contract No:** A12AV00409 (this contract also includes the Housing Improvement Program and the Adult Vocational Training Program)

**Contract:** Crow Tribal Courts **Mature:** ☐ Yes ☒ No

**Contract Award Term:** October 1, 2016 - September 30, 2017  
**Date of Official Monitoring Visit:** December 5-6, 2017

**Names and Titles of Monitoring Team:**  
Louise Zokan-Delos Reyes, Indian Services Officer, Rocky Mountain Region (RMR)  
Jo-Ellen Cree, Tribal Operations Officer, RMR  
Joan White, Acting Administrative Officer, Crow Agency

**Contract Representatives:** Chief Judge, Leroy Not Afraid, and Tribal Court Administrator (TCA), Ginger Goes Ahead

**Persons Also Present:** Crow Tribal Court staff; Lane Simpson, Contracts; Kirby King, Chief Financial Officer; and BIA Crow Agency Superintendent.

### GRANT ADMINISTRATION

<b>Satisfactory</b> <input type="checkbox"/> <b>Unsatisfactory</b> <input checked="" type="checkbox"/>
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**1. Does the Tribal Program Director have a complete copy of the Contract Agreement?** Yes, the TCA had a complete copy of the Contract Agreement.

**2. Are all expenditures under the Contract properly documented and supported?**  
Not all the expenditures were properly documented and supported. An attempt was made to provide technical assistance, but the TCA was very confrontational and did not want any recommendations on how she documented or maintained expenditures. She appeared to have very little understanding of what a P.L. 93-638 contract was and what was required to verify expenditures.

**3. Is the Tribal Program Director involved in the vouchering, financial reporting process for this contract?** The TCA completes all vouchering. She takes voucher sheets to Tribal Finance for payment when General or 638 funds are used. The TCA also issues checks from a bank account which was setup at the First Interstate Bank (FIB). She stated she is not responsible for financial reporting on the contract. She continually referred the review team back to Tribal Finance for reports that had not been received. The TCA continues to use a signature stamp in place of the Chief Judge's actual signature on verifying vouchering, payroll, etc. She reported this was authorized to do this by a standing order from the Chief Judge which she provided.

On the voucher sheets provided to Tribal Finance, there is a signature line for the Tribal Chairman to authorize payment of the voucher. The TCA said when the Chairman is not available to sign she has her husband, the Vice-Chairman, sign the voucher sheets for payment.

The FIB checking account contains the fines, fees, and bonds collected at the Tribal Court. The TCA showed reviewers a notebook of FIB deposits. In front of each deposit, there was a monthly tally sheet splitting the fines and fees and bonds. Behind this sheet was a listing of individuals who made payments to the Tribal Court. A review of a FIB statement showed the funds are being comingled and bonds are being used for Tribal Court expenditures not paid by Tribal Finance. Reviewers observed vouchers processed for contract loans, temporary personnel, vendor payments, etc. It was undetermined if temporary personnel had tax withholdings or would be issued MISC-1099s for income. The TCA stated she would soon be issuing Tribal Court payroll checks once she had the QuickBooks program operational.

The TCA stated the Court is not following established Crow Tribe's Procurement procedures.

When a bond is paid, it is not necessarily the property of the Court until the person is deemed not exonerated. The bond funds in the FIB account should not be used without knowing they are the actual property of the Tribe's Judicial system.

**4. Does the Program Director maintain a cuff account system?** The TCA maintains a "cuff account" on excel spreadsheets provided by the previous Tribal Finance staff. She said she is in the process of converting data into QuickBooks. She states she works closely with the Judges to monitor the Court funds. In discussion with the Tribal Finance Officer, he was unaware of some of the procedures the Court has established concerning their finances. He was unaware of the Court staff establishing a separate bank account for program income. He explained the Court's program income/revenue affects the Tribe's audit. The Crow Tribe has established Financial Management procedures for handling program income. The Crow Tribe Law and Order Code (CLOC), Title 3, Chapter VI, 3-6-602(2) states "collected fees and funds should be



given to the Crow Tribal Finance Director weekly." The FIB account is being used with no specific plan or accounting to Tribal Finance.

The TCA moves budget items from 638 funding to general funds, so that reviewers would not need to review general funds. However, when reviewing the SF-425s, items that should have been charged to general fund were paid with Federal fund, e.g., vehicle, incentive bonus, etc.

**FINDINGS/RECOMMENDATIONS:** It was recommended that the TCA attend the Judicial College training for Tribal Court Administrators previously, but this has not happened. She stated she is the administrator for the Just Ware system; however, she does not know how to use Just Ware to assign administrative controls for clerks in the program. She has focused on the administrative duties of procuring vendors, hiring temporary employees, remodeling the inside of the court buildings, and adjusting budgets.

Partial salaries for the judges, TCA and one clerk were included in the contract. The FY 2016 AOTR review raised questions why this was done and why salaries were not consistent with the CLOC. The response was that salaries were split to address the salary limits identified in the code. The limit only applied to 638 funds and not to the general funds, which enabled the court to pay the judges twice as much as indicated in the code. The CLOC does not separate salary. The Tribe would need to reaffirm this interpretation; otherwise this will be considered noncompliance with the Code.

Budget line items and expenditures are maneuvered between the General Fund and P.L. 93-638 funds. This seems to have implications for the indirect cost rate established with the Tribe. The BIA contracts with the Tribe, but the TCA and Chief Judge continued to insist they were a separate entity due to the Separation of Powers. The Chief Judge and TCA broadly interpret the Separation of Powers and Constitution to meet the court's needs.

This issue needs to be addressed by the Tribe since accountability is a significant problem. An expenditure of \$44,804.00 for a vehicle was questioned. The TCA had no idea where it was. She stated it was purchased under the previous administration and she said it was from general funds; therefore, it was not the reviewers concern. The SF-425, 10/1/2016-12/31/2016 shows 638 funds paid for the missing vehicle (violates 25 CFR § 900.48 (f); 25 CFR 900.52(a) and established Tribal policies). It appears that general funds and 638 funds are comingled, e.g. the TCA indicated she was going to move the judges' salaries to general funds and then we wouldn't have to review them. She had indicated on other budget items that were questioned that she could move them to the other category without any formal procedure or approval.

Tribal Court staff is not complying with the established Crow Tribe's management controls for program income (fines, fees, bonds). A check and balance system needs to

be implemented immediately. The TCA makes the bank deposits, writes checks from that account and is using a debit/credit bank card. Two signatures are required on the FIB checks. The signatures observed were the TCA and the clerk she supervises. These two employees have also received contract loans from the deposited fines and fees account (stated on fines and fees listing received 12/5/2017).

The TCA stated the Judicial Branch has IT services separate from the Tribe to avoid outside email tampering of judicial staff email.

## FINANCE MANAGEMENT

Satisfactory [ ]	Unsatisfactory [ x ]
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### 1. Finance Status (SF-425 dtd. 11/1/17)

Total Contract Amount (Courts, AVT & HIP contract combined funding):

Cash Receipts	\$4,429,735.73
Total Expended (year to date)	\$6,010,418.36
Balance Remaining	\$124,451.37

Payment Methodology: **High Risk\***

Carry-Over from FY 15 & 16: \$381,008.52

Combined Budget: \$1,371,711.52

Fines and fees: \$31,555 (stated on listing received 12/5/2017)

*\*The contract was designated high risk which requires the Tribe to work on reimbursable terms, e.g., the Tribe shows the funds were expended and then Federal funds can be drawn down from ASAP.*

A budget spreadsheet provided by the TCA indicated the following FY 2017 funding:

General Fund: \$ 650,932.00

P.L. 93-638: \$ 390,991.00

FY 15 638 carryover: \$153,638.48

FY 16 Direct Contract Support: \$44,108.00

FY 15 Direct Contract Support: \$113,092.64

Judicial Academy c/o: \$27,600.00

FY 15 Traffic carryover: \$23,784.80

FY 15 CASA carryover: \$18,784.60

In reviewing the SF-425s and Expanded General Ledger account dated 10/26/2017, court employees received "Courts/Incentive." These funds are being charged to the Appeals accounting line code under "Benefits." On the "Statement of Revenues and Expenditures for 4/1/2017-6/30/2017" there is \$22,697.42 paid from the Appeal accounting line. The expenditures consist of the court incentives, training, travel, and an appeals Judge. The Tribe/Court needs to explain "incentive" and why court employees would be paid an "incentive" from the appeals budget (using Federal funds).



The SF-425 and Expanded General Ledger for the period of 7/1/2017 through 9/30/2017, shows the TCA received two paychecks on 8/3/2017. Document nos. 303095 and 303107 each for \$1,304.00. Then on 8/10/2017, document no. 303696 shows \$1,304.00 was paid. On 8/15/2017 document no. 303768 shows a payment of \$2,608.00 was issued to the TCA. An explanation is needed for the multiple payments since this was charged to 638 funding.

**2. Does the Tribal Program maintain Financial Records?** The Tribal Finance Department is mainly responsible for the program's financial records, but the TCA has taken on significant responsibility for the internal financial operations of the court. The past review indicated there were issues with the timely refunds of bonds paid. The TCA has revised procedures to expedite the return of these funds. A separate bank account was made at FIB. According to staff interviewed, three individuals are able to access these funds. Fines, fees and bonds are collected at the court and not Tribal Finance. The FIB statements reviewed showed the bonds are comingled. The FIB funds are being used by Court staff for a variety of items and services. The TCA accounted for the purchases through bank checks which require two signatures. According to listings provided for the FIB account, a bank debit/credit card is being used too. An explanation of who has the credit cards is needed.

The TCA provided listings for: 1) fines and fees collected and 2) bonds collected and exonerated. It should be noted the beginning balance of the fines and fees deposit, states \$2,053.99 of traffic funds and the beginning balance of the bonds list was \$12,640.00. Reviewers did not research the initial funds sources to verify payment sources.

The fines and fees listing showed deposits and checks issued for contract loans, declined credit card purchases, jury duty payments, donations, food, training stipends, supplies, gas, etc. It is unknown if the deposits match collections or enacted court orders.

The bonds listing has bonds deposits and exonerated (returned to tribal member).

Federal Law, 25 USC 5325(m)(1), the P.L. 93-638 contract, CLOC 3-6-602(2), and the Crow Tribe's Fiscal Management Act of 2007, require that Tribal Finance reassume responsibility for the program income generated by the Court. A full accounting needs to be completed for funds paid from individuals and those funds spent by the Court. It is a concern that there is no oversight of the administrative operation of the Court, other than the Chief Judge. Other Tribal Courts that operate under a separation of powers do not establish their own internal management controls that separate personnel, finances, and procurement. These Courts also have elected judges with law degrees, licensed professionals with State bars.

The Chief Judge completed law courses through the National Judicial College. He does not have a bachelor or juris doctorate degree. In the previous year's review, the Chief Judge using the 638 contract funds contracted with a licensed attorney, William Eggers, on legal matters. Mr. Eggers has provided reviewers correspondence of outstanding invoices the Crow Court owes him for completed work. He states he is owed for legal services for November 2017.

The new legal (court) adviser, Heidi Adams began her agreement with the Court starting November 2017. The agreement has the same terms as Mr. Eggers' contract. It provides \$2,000 per month flat rate for 20 hours and \$100.00 per hour thereafter. She will be provided an online account for Westlaw and/or LexisNexis and monthly expenses for travel, mileage, per diem and postage up to \$500.00 per month. Ms. Adams was a former Prosecutor for the Crow Tribe and has a private practice in Hardin, Montana. The Chief Judge states this position was authorized by the same legislation that increased the judges salaries in 2009 CLB09-03.

The fines and fees (program income) listing provided by the TCA, showed court employees issued contract loans as, specifically, employees who sign the FIB checks. Even though, the listing shows the funds were repaid it is not an acceptable practice to allow employees who have check signature authorization to write themselves checks or borrow funds from program income. It appeared that a bank debit card/credit card is used for purchases too. On July 28, 2017, one of the associate judges was provided a contract loan for \$1,000 using the debit/credit card ATM. It appeared the loan was repaid, however, reviewers did not verify the transaction with the bank statement. In addition, the TCA stated she claims mileage for work related business from this account. (The credit card ATM withdraws violates Crow Tribe's Financial Management § 08.700, "cash advances on credit cards are not allowed.")

Other Court income to be noted is the "petty cash" fund that consists of actual cash. According to a notebook maintained by the TCA, in FY 2017, there was \$1,144.96 in this fund. These funds are collected from individuals wanting copies of court documents. The TCA said these funds are used for doughnuts for meetings. The FIB listing funds, showed doughnuts purchased out of that account.

There were three safes observed in the Court building. One small safe at the reception desk was used for deposit of petty cash funds. A second safe in the reception area was for fines, fees, and bonds collected at the reception window and, the third safe was located in the TCA's office. According to the window receptionist, only the TCA had access to the two safes in her area. The TCA said she makes deposits at FIB monthly because she did not have time to do weekly or daily deposits. She did not report to Tribal Finance the deposits at FIB as Court income. The lack of communication between Tribal programs is concerning. Without proper checks and balances, the avenue for the misuse of funds is an open invitation and a direct violation of CLOC 3-6-602(2).

**FINDINGS/COMMENTS:** The Chief Judge and TCA maintain the need for a "true separation of powers." They want the finances of the Court to be handled by Tribal Court staff. The Federal funds for the Court are allocated by the Tribal Priority Allocation to the Tribe through a P.L. 93-638 contract. The separation that the Chief Judge and TCA propose does not provide accountability for funding. Administrative accountability for this contract remains with the Tribe, who is responsible for the funds being used to provide judicial services to the tribal community in accordance with federal law. The Chief Judge said the Legislature approves the court's budget, as his only form of accountability.

In the previous year's review it was noted the Chief Judge and the TCA have credit cards that are reconciled to the Tribe's general fund. There is an appearance that the Tribe's general fund is a bottomless pit and the Judicial Branch can expend without a check and balance system. A number of payment vouchers were processed for items outside of the normal financial responsibilities of the Court. Some of the more concerning items are:

- 1) Severance pay of \$21,320.00 (90 days wages) for the ex-associate judge (the spouse of the Chief Judge). The TCA reported the ex-judge will be hired as a court employee. She said the Chief Judge needed a personal assistant at the Court.
- 2) Incentive payments for Court staff, mental health day activities/staff appreciation meals, boat rentals, Christmas bonus, travel childcare provider, etc. (September 1, 2017 incentive bonus of \$9,234.74)
- 3) Contract loans for individuals outside the court and employees of the court. This includes employees who have check signature authority, e.g., TCA and Deputy Court Clerk.
- 4) Mileage reimbursement for TCA. The court has GSA vehicles available for use however; she chooses to claim mileage reimbursement to avoid the appearance of mis-use of a government vehicle.
- 5) Purchase of 2016 Chevy Tahoe V8, November 10, 2016, for \$44,804.00 which the TCA says they can't locate. The court has multiple GSA vehicles and should have a mileage log for each vehicle.

Immediate action is required on this contract to comply with the Crow Tribe's Fiscal Management Acts, Policies, and Procedures which states all program income must be turned in weekly to Tribal Finance. Court staff should not be writing checks from the FIB account to each other. Even in the cases where the funds appear to be replaced. The FIB funds consist of fines, fees, and bonds (comingled). Bonds are not legally the Tribes property until deemed by a Court Order.

The ability of the TCA to have her husband sign payment vouchers when the Chairman is not available is not an acceptable practice. The Crow Tribe and the Judicial Personnel Policy address nepotism; nevertheless, nepotism has become a common practice. The previous associate judge (the spouse of the chief judge) was elected by

the Crow Nation. Her employment, bonus pay and severance pay, was signed by her husband (or applied name stamp). Severance pay is not in the Tribe's Personnel Policy, nor was it an allowable expense as identified in Federal Regulations (2 CFR § 200.431). These funds should be returned to the Crow Tribe.

The awarding official will be provided a copy of the listings and expenditures identified during this review in order to determine allow ability and contract compliance.

### CONTRACT PERSONNEL

Satisfactory [ ] Unsatisfactory [ x ]

**1. How many people are employed under this grant?** Five people are identified as employed under this contract. Eleven other positions are funded through general funds. All of the Judges are elected positions for a 4-year term. Prior to running for the elected judges' positions, background checks are completed. A letter from the TCA dated 9/23/2016 to the Superintendent states background investigations are completed by Edward Investigations. They do not adjudicate the background in accordance with 25 CFR Part 63, but the TCA indicated in her letter the Tribe adjudicated them and employees backgrounds complied with the requirements in 25 CFR Part 63. In reviewing financial documents it appears that the TCA also hires contract employees for limited periods of time with no background checks. This does not comply with the Crow Tribe's Personnel Policies and Procedures § 4.5 and Crow Tribe's Financial Management Systems Policies and Procedures § 06.600.

### 2. Staffing:

Name	Title	Salary	Education Level	Yrs Law Exp.
Leroy Not Afraid	Chief Judge (1040 hours) Total salary	\$48/hr \$100,000/yr	High school and completed Judicial training.	11 – Bench Big Horn County
Shelia Not Afraid	Associate Judge Total salary	\$40/hr \$83,000/yr		11+
Kari Covers Up	Associate Judge Total salary	\$40/hr \$83,000/yr	Master's of Social Work	11+
Ginger Goes Ahead	Court Administrator Total salary	\$31.25/hr \$65,000/yr	Bachelor's Degree	1 Law and 10 management
Roseanna Denny, Clerk of Court	Deputy Clerk/ Juvenile Court Clerk Total salary	\$23/hr \$47,840/yr		

\*Annual salary based on 2080 hours (year) and salaries identified in budget

**3. Is there a position description for each position?** Some position descriptions are included in the Judicial Branch Personnel Manual established by a Court Order signed by the Chief Judge Angela Russell in November 2005. The Manual did not include position descriptions for the Chief Judge or the Associate Judges. The salaries identified in the Judicial Branch Personnel Manual only address a degreed Chief Judge and the Associate Judges salaries exceeded the amount for Associate Judges (degreed) in the classification system. The Tribal Court Administrator's salary is at the 14/9 level on the classification system, even though the TCA has only been employed at the Court for one year.

The Tribal Judges positions are addressed in the Crow Law and Order Code 3-3-303, and their salaries in CLOC 3-8-103. The Judges current salaries are more than what is authorized in the code. As indicated in the FY 2016 review the Chief Judge stated that the annual salary indicated in the code only applied to money from the Crow Nation General Fund. The Code does not indicate that.

He also stated that the Crow Nation Legislature agreed with this permissive interpretation and that the salary in the code was merely a "baseline and not a cap". He said the Tribe can pay the judges more since they are using funds from two sources, the general fund and the P.L. 93-638 contract.

The budget spreadsheet provided by the TCA included a drug court coordinator and some funding for an administrative assistant. The TCA did say these positions were not funded, although carryover is identified in the budget.

**4. Are there annual employee performance reviews?** In 2016 performance reviews were not completed. Personnel files were not reviewed this year, but the TCA assured the team that annual performance reviews were completed. She provided the team blank copies of the Tribal Court Performance Evaluation.

Nepotism continues to be an issue within the Crow Tribal Court. The previous Associate Judge (Shelia Not Afraid) is married to the Chief Judge and was not re-elected. She was not available for an interview. The newly elected Associate Judge was present, but reviewers were specifically told by the TCA not to talk to the new judge, as the review was for the FY 2017 contract. The TCA proceeded to inform the review team that the newly elected judge did not meet the qualification to be a judge and made derogatory comments about the ethics of the newly elected judge. As stated prior, the TCA stated the previous Associate Judge Shelia (the Chief Judge's spouse) would be working in the Tribal Court again.

It appeared a hostile work environment was being created for the newly elected judge (refer to Judges Standing Order issued Dec. 4, 2017). Her office was located in the Court Room building. The newly elected associate judge's salary was observed in the personnel notebook the TCA showed reviewers and it was not equal to the previous



associate judge's salary (the new judge is being paid less than the current clerk of court).

The notebook contained the Judicial Personnel Manual and personnel actions for court staff. Multiple personnel actions were in the handbook including retroactive personnel actions ranging from salary changes to leave increases. There was a salary bonus voucher of \$9,234.74 and the severance benefits package for \$21,320.00 for the spouse of the chief judge.

**5. Administration: Are payroll checks supported by time sheets, etc?** Tribal court employees submit timesheets. Judges do not use time cards and are not required to work a minimum amount of time at the court. This question was raised since the Chief Judge is paid for a fulltime position, but is also a magistrate for Big Horn County. A court calendar is kept and they are expected to be at their scheduled hearings, and be responsive to law enforcement requests 24 hours a day, seven days a week. The TCA had purchased a digital time clock system, but she said she does not have anyone who knows how to install it.

The fact that the Chief Judge is a fulltime judge for the Tribal Court and a County Magistrate and the previous Associate Judge is the spouse of the Chief Judge raises ethical concerns. The Model Rules of Judicial Conduct Adopted by the American Bar Association reportedly have been adopted by the Tribe and identify conflicts of interest that may result.

The Judges and the TCA are allowed to receive weekly paychecks, but the other Court staff must wait for the bi-weekly schedule to receive their checks.

**FINDINGS/RECOMMENDATIONS:** The Tribal Court has personnel policies and procedures separate from the Tribe, which are not approved by the Tribe, only by the Chief Judge. The question of how Judges' salaries were determined was raised, since they vary and do not match the tribal code or the classification system in the Judicial Branch Personnel Manual. The classification system included in the Judicial Branch Personnel Manual leaves flexibility to the Chief Judge to determine the individual's rating. If the Manual was adhered to it appears the degreed Associate Judges would start at \$24.36/hr. and a Chief Judge with a law degree would start at \$39.02/hr. A degreed court administrator would start at the same rate as the Associate Judge. The Chief Judge does not have a law degree, but has attended training at the Judicial College and received a certificate. One associate judge has a master's degree in social work and has attended the Judicial College, but she received the same pay as the other associate judge (Chief Judge's spouse) without the degree.

In 2016 reviewers were provided Bill No CLB09-03, which amends the Crow Law and Order Code Section 3-3-303.1 Chief Judge's qualifications." The Bill includes a section 3-3-303.1.3, Court Advisor. The Bill was passed by the Legislators 4/17/2009, but did

**5. Was Property acquired in accordance with the Procurement Management System? No.**

**6. Is Property being maintained in accordance with the Property Management System? No**

**7. Is there an up-to-date Property Inventory Listing?** A property listing for FY 2017, which 638 funding was used to purchase was provided to reviewers.

**COMMENTS:** Reviewers were informed only one GSA vehicle was paid from the 638 contract; however, review of the SF-425s shows multiple GSA vehicles. The Court Personnel Manual indicates the vehicle can only be used for Court related business. The expenditure report identified a \$44,804.00 vehicle purchase, but the TCA did not know where it was nor was it listed on the property listing.

The court is currently using Just Ware, but the Chief Judge said he would prefer using Full Court and wanted to see if additional funds could be provided for that. He realized it would be expensive to change the court case management system, but that Full Court would help with jury selection and is more updated.

#### **CONTRACT SCOPE**

<b>Satisfactory</b> [ <input type="checkbox"/> ] <b>Unsatisfactory</b> [ <input checked="" type="checkbox"/> ]
----------------------------------------------------------------------------------------------------------------

**1. Is the Contractor performing all required functions of the Contract in accordance with the Statement of Work (SOW): Including compliance with Federal Regulation and law (25 CFR 20, 23, 63,115).** The Chief Judge believes the Court is completely separate from the Tribe due to the Separation of Powers enacted with the 2001 Crow Tribal Constitution. This includes financial control of the contract.

The P.L. 93-638 contract is with the Tribe, and the Tribe is held accountable for the use of federal funds and compliance with federal law.

The Crow Law and Order Code 3-3-303(2) gives the Chief Judge authority to draft personnel policies and procedures specifically for Court staff. The Chief Judge does not supervise the prosecutors. There are no public defenders. These positions fall under the Executive Branch of the Crow Tribal Government. The Tribe did contract with 406 Law to represent clients in court, but that contract was cancelled. Most court clients are pro se, and must represent themselves. This was a concern expressed by the Associate Judge, and prosecution is included in the current SOW.

The Chief Judge also indicated they did not have funding for the Wellness Court. He would like to pursue additional funds to enable them to operate the Wellness Court again.

Below is a summary chart of caseload data provided by the TCA. The number for the Civil Juvenile Caseload is only for four months although the narrative identifies the number for October 1, 2016 through September 30, 2017.

<b>FY 2017 Crow Tribal Court</b>	<b>Caseload</b>
<b>Criminal Caseload</b>	<b>1517 - 575 or 38% of criminal cases-disorderly conduct, persons under the influence, and public nuisance</b>
<b>Civil Juvenile Cases</b>	<b>15 (4 months identified)</b>
<b>Youth in Need of Supervision (Delinquency)</b>	<b>160</b>
<b>Civil Caseload</b>	<b>199</b>
<b>Total Caseload</b>	<b>1,891*</b>

\*This number does not appear accurate for the year, when compared to tribal courts of similar size.

**2. Has the Contract provided the necessary personnel, as indicated in the Agreement, to provide the required services?** The necessary personnel are being provided as stated in the 638 contract. Federal funding is provided for specific services and positions. Any funding not used as identified in the contract's statement of work and budget, may be considered misuse of appropriations (31 USC § 1301). Any modifications to the use of federal funds must be identified in writing, approved by the local BIA Superintendent and properly documented in the 638 contract. The TCA discussed moving salaries between P.L. 93-638 and general funds, and did not indicate the need for approval of changes beyond the Chief Judge. This process must be clarified with the TCA to ensure the integrity of the funding approved in the contract.

Financial statements identify contract loans to current employees and contract employees coming out of fines and fees and not identified in the budget. It is unclear why this is done and what is accomplished. The TCA indicated she used this process with current employees when funding wasn't available and the employee would repay the system once they got paid.

**3. Are services being provided in accordance with the Agreement?** Court services are being provided in accordance with the statement of work (SOW) which is very general and is open to interpretation. The TCA interpreted the SOW rigidly, which set up barriers to discuss legal procedures. It does indicate that the court will be staffed with professional qualified judges. None of the judges have a law degree. Two of the judges have attended the National Judicial College and have received a certificate.

The SOW also includes prosecution, which is under the Executive Branch and is not part of this contract. As stated earlier, customers of the court do not have legal representation.

The court docket was posted one day of the review for public viewing. It was not kept current and readily accessible. It was on the website, but out of date.

The Associate Judge said the community needed education on the court system and access to it. She had a mobile court project earlier in 2017 and intends to start it again after the New Year. The opportunity to educate the community about court procedures would facilitate court operations.

**4. Has the Contractor submitted all reports required under the Agreement?** Yes, the annual report was received. The SF-425s were not received until a few days prior to the review.

**5. Recordkeeping**

**Are records maintained in a secure place?** Yes.

**Are records accessible only to authorized persons?** Yes.

**Records are uniformly organized?** Yes.

**COMMENTS:** SF-425 financial and narrative reports need to be provided timely. The annual report is due by the end of the month. Backgrounds should be completed and adjudicated in accordance with 25 CFR Part 63 prior to the individual starting employment and as identified in the Crow Tribe's Personnel Policies. Records were not reviewed during this review.

**TRAVEL**

<b>Satisfactory</b> <input checked="" type="checkbox"/> <b>Unsatisfactory</b> <input type="checkbox"/>
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**1. Is Travel an allowable item under this Contract?** Yes, travel is an allowable expense in this contract. Significant training costs have been expended. The Office of Justice Services had provided additional funding for the Judicial Academy.

**2. Are expenditures for travel properly documented showing expenditures, purpose of travel, who was traveling and what was accomplished?** A review of completed travel expenditures was not done. The awarding official will be provided a copy of the documents gathered at the review to determine allowable costs.

**PROGRAM RECOMMENDATIONS:** The P.L. 93-638 funding could not adequately support the Crow Court staff without the assistance of the Tribe's general fund. Tribal Court finances need to be closely monitored by the TCA and the Tribe's Finance Department. Federal funding must be used as described in the 638 contract. Any modifications to the use of funds must be submitted in writing to Superintendent and incorporated into the 638 contract.

Any changes in salaries or specific contracts in which the 638 funds are being used, require a contract modification to show the difference and that the Tribe has authorized

the change. The TCA submitted proposed salary increases for tribal court staff in 2017 which needed to be documented and approved through the tribal contracting (93-638) process. Reviewers were informed that increases were not approved; nevertheless, they are reflected in the information provided reviewers. Costs for a vehicle purchase and construction are questioned. Documentation that these budget items were charged to the general fund needs to be provided.

Required financial and narrative reports must be submitted timely. The TCA still needs to attend training at the Judicial College for tribal court administrators. She also needs a better understanding of P.L. 93-638 contracting and would benefit from training on this.

The Chief Judge addressed the use of "signature stamps" on financial packages, personnel action forms, and payroll by a standing order. The legality of this process is questionable.

The function of the AOTR reviews is to address contract performance issues, review modifications, provide technical assistance, and prepare reports to the awarding official. This contractual responsibilities still seem to be a point of contention with the TCA and Chief Judge as reflected by a standing order the Chief Judge issued Dec. 4, 2017 indicating the Chief Judge has the sole authority to interact with the public, including intergovernmental and intragovernmental entities on behalf of the Crow Tribal Courts in accordance with the Crow Law and Order Code 3-3-303(2). He further defines this to include federal agencies. This appears to interfere with federal employees from carrying out their federal responsibilities.

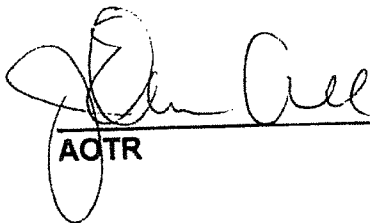
In this same order he has sole authority to approve access and use of the Judicial and Administrative Building and access to individual case files. This seems to limit the ability of the Tribal Court to function as a court without continuous approval of individual actions by the Chief Judge. A recent election had changed one of the judges and this order initially seemed to be a way to limit the new judge's actions.

The Tribe needs to clarify to the Judicial Branch contract limitations and compliance with approved tribal systems to ensure fiscal and management accountability. The Separation of Powers was the explanation for the TCA and Chief Judge not to adhere to the Crow Tribal Management System. This may have implications for the Tribes Indirect Cost rate.

A recommendation will be made to the awarding official to not combine the FY 2018 P.L. 93-638 Court contract, e.g. don't group adult vocational training and housing improvement program with the Court contract.

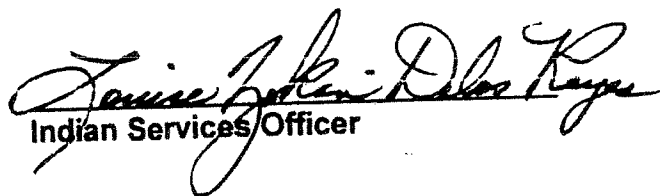


**FOLLOW-UP:** The actions on the attached Corrective Action Plan need to be addressed within the timeframes identified for the Tribe to meet the P.L. 93-639 contract requirements.

  
\_\_\_\_\_  
AOTR

1-8-2018  
Date

**Reviewed and concurred by:**

  
\_\_\_\_\_  
Indian Services Officer

1/8/2018  
Date

February 2, 2018

Your Honor,

On Consideration of my Case against  
the defendants:

Chief Judge - heray Not Afraid, Ass Judge -  
Sheila Not Afraid, Att: Natasha Morton,  
(Janice Gets Down often

So much Corruption going on in the Tribal  
System. The Judges favor Lawyer's that  
they choose, i was not given due process  
of the law, they all conspired in the  
illegal removal of my home that  
sit's on my trust land.

2-2-18

Michael LaFarge