

COQUILLE INDIAN TRIBAL CODE

Chapter 610

Tribal Court Ordinance

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610.010 General

This Ordinance shall be known as the Coquille Indian Tribe Tribal Court Ordinance.

1. Purpose

The purpose of this Ordinance is to provide for the administration of law and justice and juridical procedures and practices by the Coquille Indian Tribe as a sovereign nation by exercising the inherent power to make, execute, apply and enforce its own law and the laws of other sovereigns through a Tribal Court system.

2. Background and Intent

The Tribal Council is the governing body of the Coquille Indian Tribe. The responsibility to organize all efforts of Tribal government rests in the Tribal Council. To carry out the goals of the Tribe, the Tribal Council is vested with the authority to establish the Tribal Court and hire others to assist the Tribal Council in carrying out all legislative and judicial functions of Tribal government. The Tribal Council considers these authorities to be necessary to achieve Tribal goals and visions.

It is the intent of the Tribal Council to clearly set forth the organizational components for, and provide clear direction and authorities to the Tribal Court system, judges, and administrators.

3. Definitions

(a) "Appealable decisions" shall mean decisions by a board, authority, commission, court or committee that are the final decision of that board, authority, commission, court or committee on a particular matter, provided, that such decision may not be the final outcome of the case or controversy, and provided further, that such final decisions must be subject to being appealed under Tribal law.

(b) "Counsel" shall mean any person admitted to practice law before the State of Oregon.

(c) "Peacemaker" shall mean a mediator who is a tribal member appointed to the peacemaker Panel, pursuant to the terms of this Ordinance.

(d) "Spokesperson" shall mean any person not admitted to a bar of any state who is a tribal member or a relative of a party and speaks for a party to a case in the Tribal Court.

(e) "Subject to the approval of the Tribal Council" shall mean that the relevant document, rule or other provision is not in effect until approved by a majority vote of the Tribal Council at a meeting in which a quorum is present. However, a document, rule or other provision shall be considered approved by the Tribal Council if 90 days after it has been submitted to the Council, the Council has taken no action, provided that this period of time may be extended by the

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Council, provided that submitted means that each member has seen or is aware of the document, rule, or other provision.

- (f) "Tribal Council" shall mean the Tribal Council of the Coquille Indian Tribe.
- (g) "Tribal Court" shall mean the Coquille Indian Tribal Court.
- (h) "Tribe" shall mean the Coquille Indian Tribe.
- (i) "Specialized Divisions of the Court" shall mean any specialized division of the Tribal Court developed pursuant to this Ordinance or by another Ordinance of the Tribal Council.

610.100 Establishment of Court

There is hereby established for the Coquille Indian Tribe a court to be known as the Coquille Indian Tribal Court. The Court shall be a Court of Record and open for the transaction of business during regular judicial days. Pursuant to Article VII, Section 4 of the Coquille Indian Tribe Constitution, the Tribal Court shall be empowered to exercise all judicial authority of the Tribe as delegated herein and shall consist of two divisions, the Trial Court and the Court of Appeals.

(a) The Trial Court shall consist of one (1) chief judge and such associate judges as the Tribal Council may appoint. The Trial Court is empowered to create such specialized divisions as necessary to hear matters as defined in the Tribe's Ordinances, subject to the approval by the Tribal Council.

(b) The Court of Appeals shall consist of judges not to include the judge who handled the matter at the trial level.

In addition to the Coquille Tribal Court there may be established a traditional Peacemaking process to arbitrate disputes between parties as an optional forum for alternative dispute resolution. Planning and development of a tribal-based peacemaking system shall be authorized by this Ordinance. The Peacemaking system shall operate according to rules, structure, process and enforcement to be established by the Tribal Council.

600.200 Jurisdiction and Powers

1. Civil Jurisdiction.

(a) Subject Matter Jurisdiction. The Tribal Court shall have civil jurisdiction over cases and matters in law and equity arising under the following:

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- (1) Coquille Indian Tribe Constitution;
- (2) Laws and Ordinances of the Tribe which contain express grants of jurisdiction to the Tribal Court;
- (3) Customs of the Tribe;
- (4) Indian Child Welfare Act, 25 U.S.C. _1 901 et seq.,
- (5) Any other federal statutes that grant jurisdiction to Tribal Courts and;
- (6) Appealable decisions of any committee, commission, board or authority of the Tribe;

Provided, that the Court shall not have subject matter jurisdiction over any case, matter, administrative appeal, or other legal action filed after the expiration of the applicable statute of limitations or other filing deadline established by a law or ordinance of the Coquille Indian Tribe.

(b) Territorial Jurisdiction.

The Tribal Court shall exercise civil jurisdiction as stated in subsection (a) over all territory which federal law permits, including but not limited to:

- (1) The Tribe's Service Area designated by the Coquille Indian Tribe Restoration Act, 25 U.S.C. _§71 5: Coos, Curry, Douglas, Jackson and Lane, and other counties that may be added by subsequent amendment;
- (2) All land held in trust by the federal government for the Coquille Indian Tribe or for members of the Coquille Indian Tribe.
- (3) All territory in which the Coquille Indian Tribe has a beneficial interest.
- (4) All lands or other property in which the Coquille Indian Tribe has a governmental interest by virtue of its legal relationship with the United States, all usual and accustomed hunting and fishing grounds and stations, and all other lands or areas that may be acquired from time to time for or by the Coquille Indian Tribe or its enterprises.

(c) Personal Jurisdiction:

The Tribal Court shall have personal jurisdiction over all cases involving persons who:

- (1) are Tribal members or are eligible for Tribal enrollment;
- (2) are members of a federally recognized Indian Tribe;

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- (3) are domiciled or present on the reservation or trust land;
 - (4) are involved in a case or controversy which occurred on reservation or trust land of the Coquille Indian Tribe; or,
 - (5) have consented to Tribal Court jurisdiction.
- (d) Declination:

The Tribal Court may decline to exercise its jurisdiction if it finds any of the following exists:

- (1) another court has jurisdiction to hear the case;
 - (2) one or more parties is not a person over which the Tribal Court can exercise its jurisdiction, or,
 - (3) the case is of such a nature that the Tribal Court should not hear it.
- (e) Statute of Limitations for Suits Against Tribe or Tribal Entities

The Court shall not have subject matter jurisdiction to hear any case, matter, administrative appeal, or other legal action filed against the Tribe, any Tribal officer, employee, or agent acting in his or her official capacity, or any Tribal committee, department, entity, or corporation or any officer, employee, or agent of such committee, department, entity, or corporation acting in his or her official capacity, if such action is filed more than one year after the incident or harm that gave rise to the cause of action alleged. This statute of limitations shall apply to any and all cases, matters, administrative appeals, or other legal actions brought against any of the aforementioned unless the Coquille Indian Tribe by law or ordinance enacts or has enacted a different statute of limitations (whether longer or shorter) for any specific case, matter, administrative appeal, or other legal action.

2. Criminal Jurisdiction

The Tribal Court shall have criminal jurisdiction over all Indians, defined as a member of a federally recognized Indian tribe, and consenting non-Indians committing offenses under tribal law which occur on the reservation or trust land of the Coquille Indian Tribe, to the extent possible under the current applicable law.

3. Powers

The Tribal Court is granted all the powers necessary to exercise its jurisdiction in accordance with the procedures set forth in this Ordinance. Additionally, the Tribal Court may

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exercise its jurisdiction in accordance with any suitable procedures where specific procedures are not set forth in this Ordinance, so long as such procedures are in accordance with the Tribal Constitution and Laws.

4. Full Faith and Credit or Comity

The Tribal Court shall give full faith and credit to the orders and judgments of the courts of other tribes, states, and local governments unless:

- (a) The court in question does not recognize the orders and judgments of the Tribal Court;
- (b) The court in question did not have jurisdiction over the case or a party or parties to it;
- (c) The order or judgment was based on fraud;
- (d) To do so would violate the public policy of the Tribe or would be likely to harm the culture, traditions or sovereignty of the Tribe; or,
- (e) The order or judgment is on appeal or is being contested in another jurisdiction.

610.300 Judges

The Tribal Court shall consist of one (1) Chief Judge, one (1) court clerk, and may have one (1) or more associate judges appointed by the Tribal Council as necessary.

1. Appointment and Term of Service.

The Chief Judge shall be appointed by the Tribal Council for a term of three years. After advertisement and interviewing by the Tribal Council, the Tribal Council will select the most qualified applicant based on the qualifications listed in Section 610.300 (2)(a) below. Preference may be given to Coquille Indian Tribal members and members of other tribes second.

Associate Judges shall be appointed by the Tribal Council for a term of one year, which shall include a six month probationary period. The Tribal Council may appoint associate judges in such a way as to stagger their terms.

2. Qualifications

(a) Chief Judge: The Chief Judge shall be at least 25 years of age; shall have received a law degree from an accredited law school; shall have membership in at least one state bar, the equivalent of one year of Tribal Court training, a minimum of two years experience practicing in a

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Tribal Court, and demonstrable knowledge of Indian law, federal law, and Oregon law. The Chief Judge must at all times have a current and valid Oregon driver's license in good standing, or ability to obtain one, and no insurability issues with the Tribe's insurance carrier.

(b) Associate Judge: An Associate Judge shall be at least 25 years of age; shall have received a law degree from an accredited law school; shall have membership in at least one state bar, the equivalent of one year of Tribal Court training, a minimum of two years experience practicing in Tribal Court, and demonstrable knowledge of Indian law, federal law, and Oregon law. An Associate Judge must at all times have a current and valid Oregon driver's license in good standing, or ability to obtain one, with no insurability issues with the Tribe's insurance carrier.

No person shall serve as Judge of the Tribal Court who has been convicted of a felony or of a crime involving dishonesty. No person shall serve as a Judge of the Tribal Court who holds any elective office of the Coquille Indian Tribe.

3. Duties

(a) Chief Judge

(1) The Chief Judge will be responsible for:
hearing all matters delegated to the Court by this Ordinance;

(2) administration of the Tribal Court, the assignment of cases, and the management of the Court's calendar and business;

(3) promulgating rules of pleading, practice and procedure applicable to Tribal Court proceedings, subject to approval by the Tribal Council;

(4) supervising and coordinating training of Court personnel and peacemakers;

(5) preparation of the Court's annual plan and budget;

(6) maintaining current copies of tribal, federal, and state laws applicable to proceedings coming before the Court; and

(7) developing and maintaining a list of Acting Judges, subject to the approval of the Tribal Council, to be called upon to hear cases in the event of disqualification of a judge or as deemed necessary. The list shall always contain three qualified acting judges.

(b) Associate Judge

The Associate Judge will be responsible for hearing all cases as are assigned by the Chief Judge and other duties as assigned by the Chief Judge.

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4. Removal

Pursuant to Article VII, Section 2 of the Coquille Indian Tribe Constitution, the Chief Judge, Associate or Acting Judge may only be removed for conviction of a felony or misdemeanor involving moral turpitude in a court of competent jurisdiction during the tenure of his or her appointment.

(a) Chief Judge

The Chief Judge may be removed from office upon a two thirds (2/3) majority vote for removal by the Tribal Council. A two-thirds majority requires that four (4) voting Council members vote for removal. Since the Council Chairperson may only vote to break a tie, if the Council Chairperson is present, four (4) Council members, not including the Chairperson must vote for removal. If the Council Chairperson is not present, the Vice-Chairperson shall act as Chairperson and four (4) other Council members, not including the Chairperson or the Vice-Chairperson must vote for removal.

Before any vote for removal of a Chief Judge is taken, the Tribal Chairperson or his/her designate shall send, by certified mail, return receipt requested, a copy of a written statement setting out the charges and reasons for the removal to the Judge subject to the removal action at least seven (7) calendar days before the meeting of the Tribal Council called to consider the removal action. The Tribal Chairman or his/her designee shall make available copies of a written statement setting out the charges and reasons for removal to the other Judges, and to members of the Tribal Council at least 7 (seven) calendar days before the meeting of the Tribal Council called to consider the removal action, by providing copies to the court clerk. The Judge in question shall be given the opportunity to answer any and all charges at the designated Tribal Council meeting. The decision of the Tribal Council is final.

(b) Associate or Acting Judge

Any Associate or Acting Judge may be suspended, dismissed, or removed for cause from office upon a two thirds (2/3) majority vote for suspension, dismissal or removal by the Tribal Council. A two-thirds majority requires that four (4) voting Council members vote for suspension, dismissal or removal. Since the Council Chairperson may only vote to break a tie, if the Council Chairperson is present, four (4) Council members, not including the Chairperson must vote for suspension, dismissal or removal. If the Council Chairperson is not present, the Vice-Chairperson shall act as Chairperson and four (4) other Council members, not including the Chairperson or the Vice-Chairperson must vote for suspension, dismissal or removal.

Cause deemed sufficient for such action shall include but not be limited to: excessive use of intoxicants, conviction of any offense other than minor traffic violations and other infractions, use of official position for personal gain, or failure to perform judicial duties adequately.

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Before any vote for suspension, dismissal or removal of an Associate or Acting Judge is taken, the Tribal Chairman or his/her designee shall send, by certified mail, return receipt requested, a copy of a written statement setting out the charges and reasons for the suspension, dismissal or removal to the Judge subject to the action at least seven (7) calendar days before the meeting of the Tribal Council called to consider the action. The Tribal Chairman or his/her designee shall make available copies of a written statement setting out the charges and reasons for suspension, dismissal or removal to the other Judges, and to members of the Tribal Council at least 7 (seven) calendar days before the meeting of the Tribal Council called to consider the action, by providing copies to the court clerk. The Judge in question shall be given the opportunity to answer any and all charges at the designated Tribal Council meeting. The decision of the Tribal Council is final.

5. Disqualification

(a) Conflict of Interest

No judge shall be qualified to act as such in any case where she/he has any direct interest, or where any party involved in the case includes a relative by marriage or blood in the first or second degree. A judge may be disqualified upon his/her own motion or by application by any party in the proceeding upon filing a verified motion in writing.

(b) Bias or Prejudice

Upon the filing of an affidavit by a party setting forth facts establishing that by reason of bias or prejudice of the judge to whom the case is assigned the party cannot have a fair trial, the judge shall disqualify herself/himself. Such affidavit must be filed at least five days prior to trial or hearing.

6. Temporary Judges

In the event that there is no qualified judge or there are an insufficient number of judges available to hear a particular case, the Chief Judge shall appoint the judge or judges selected by random drawing from the Temporary Judge List, with the full powers of a regularly-appointed Tribal judge to hear and dispose of the case. These temporary judges shall be known as Acting Judges. The qualifications for Temporary Judges must meet the minimum qualifications of Associate Judges. Such appointment shall be only for the period of time necessary to dispose of the case in question, and shall not be used to avoid giving full tenure to a regularly appointed Tribal Judges.

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610.400 Court Clerk

1. Appointment

The Court Clerk shall be appointed by the Tribal Council.

2. Qualifications

The Court Clerk shall meet the following qualifications:

have a high school diploma or the equivalent thereof; have a minimum of two years experience as a paid secretary or paid clerk; be eligible to become a registered notary; shall not have been convicted of a felony or any other crime involving dishonesty. There shall be preference in hiring Coquille Tribal members first, members of other tribes second, and non-Indian spouses of Tribal members third. There will be a three month probationary period after hiring.

3. Duties

The Court Clerk shall:

- (a) maintain the system for record keeping and a docket system;
- (b) give assistance to the Tribal Court, the Tribal Police, and to residents of the Coquille Indian Community and tribal members in drafting complaints, summons, warrants and other documents as required;
- (c) attend all sessions of the Tribal Court;
- (d) keep a record of all proceedings of the Tribal Court;
- (e) administer oaths to witnesses;
- (f) collect all fines and pay out all fees ordered by the Tribal Court;
- (g) issue receipts for any monies collected or paid out by the Tribal Court; and,
- (h) deposit all receipts into the Tribal accounting system earmarked for inclusion in the Tribal court's annual plan and budget.

4. Seal

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The Court Clerk shall have an official seal which shall be impressed upon the original of each complaint or other paper filed with the Court, along with a notation of the day and time of filing.

610.500 Court Procedures

1. Development

Tribal Court rules of pleading, practice and procedure shall be developed by the Chief Judge, in consultation with legal counsel as designated by the Tribal Council, subject to the approval of the Tribal Council.

2. Application of Law

The Court shall apply the law of the Coquille Indian Tribe first, the law of other tribes second, federal law third, and Oregon law fourth, except to the extent that federal law governs.

3. Appeals

The Tribal Council will establish a Court of Appeals by a separate Ordinance, until such time all decisions of the trial court are final, or can be reviewed by Tribal Council at its discretion. When the Court of Appeals is established, it will be subject to the following provisions.

4. Jurisdiction.

The Court of Appeals shall have jurisdiction to review final orders, commitments, and judgments of the trial court. On appeal, the record and decision of the trial court shall be reviewed for error. The Court of Appeals may affirm, modify, or reverse any judgment, decree, or order of the trial court; may remand the case and order of new trial; may direct the entry of an appropriate judgment, decree or order; or require such other action of further proceedings as may be just in the circumstance. A decision must be by a majority of the judges hearing the appeal.

610.600 Appeals

1. Right to Appeal

Any party who is aggrieved by any final order, commitment, or judgment of the Tribal Court may appeal.

2. Notice of Appeal

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The aggrieved party must file a written notice of appeal with the Court of Appeals within ten (10) days from the entry of the judgment or order appealed from. No extension of the ten day period shall be granted. Upon request, the Clerk of the Court shall prepare the notice of appeal. Bond or assurance must be posted in accordance with Section and any filing fee required by Court Rules must be paid in order for the filing of the notice to be effective.

3. Bond

Upon filing notice of appeal, the appellant must post bond, deposit cash, or give other assurance as will in the judgment of the trial court judges give adequate assurance of performance of judgments, or payment of fine or judgment in the event the case appealed is affirmed. The trial court judge has discretion to waive bond if it would be a hardship to the appellant.

4. Stay of Enforcement

In any case where a party has perfected his/her right to appeal in accordance with the rules set forth in this Ordinance, the final order, commitment, or judgment of the tribal court shall be stayed pending the appeal, provided that, if the trial court determines that it would not be in the interest of justice to stay the final order, commitment or judgment, it shall not be stayed.

5. Appellate Procedure

Within thirty (30) days of the date that written notice of appeal is filed, the Court of Appeals shall convene to hear the case on appeal at a place designated for that purpose. Court procedure shall be the same as in cases held before the trial court.

6. Finality

The decision of the Court of Appeals shall be final. Until a Court to Appeals is authorized by ordinance, the Tribal Council may provide for a Court of Appeals in individual cases. The provisions for disqualification of judges set out in Section 610.300 (5) shall apply for purposes of this subsection.

610.700 Appearances

1. Counsel or Spokesperson

(a) Counsel

Any party to a proceeding before the Tribal Court has a right to representation of counsel at the party's own expense. Such representation shall be arranged by the party. At the discretion of the Court, Counsel may be required to post a bond one week prior to appearance. Said bond shall be subject to forfeiture for contempt of court. The bond requirement shall not apply to counsel representing the Tribe.

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(b) Spokesperson

Any party has a right to assistance of a spokesperson at the party's expense.

The Chief Judge shall establish procedures to license and regulate spokespersons.

The Court shall not appoint counsel or a spokesperson for any party at the Tribe's expense.

2. Self-representation

Any individual party may appear and represent himself or herself in any proceeding before the Tribal Court. Judges of the Tribal Court shall insure that all parties have equal opportunity to present their case and cross-examine opposing witnesses. Parties representing themselves shall not be held to the same strict standards of procedural conduct as are required of legal counsel.

3. Witnesses

(a) Summons to Appear

On motion by any party to the case, or on the Tribal Court's own motion, the Tribal Court shall issue a summons to compel the attendance of witnesses, or the production of books, records, documents, paper and things necessary to the determination of the cause. Failure to comply with a summons shall constitute contempt of court.

(b) Fees for Witnesses

Each party shall be responsible for his/her own witnesses. The Tribe shall pay witnesses summoned on its behalf at a rate established by the Court and subject to the approval of the Tribal Court.

610.800 Records

1. Docket

The Court Clerk shall keep a docket which shall contain the names of each plaintiff and defendant in any civil proceeding, the type of proceeding, the date of issuance and the return date of any legal order or process issued in the proceeding, the appearance or default of parties summoned, the date and the amount of any judgment, any appeal, and all other proceedings and documents as directed by the Chief Judge. The Court docket shall be posted in an area of the Tribal Court that is visible to the public.

2. Copies of proceedings

Any party may obtain a certified copy of proceedings in the Tribal Court at their own expense; the seal of the Court Clerk shall be applied to all copies so certified. The preceding shall

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not apply to matters or records sealed or expunged by the Tribal Court as permitted by this Ordinance or Federal law.

3. Copies of Laws

The Tribal Court shall obtain copies of this Ordinance and copies of tribal ordinances, federal and state laws and regulations as are deemed by the Tribal Court to be necessary, helpful, and proper to secure the rights and privileges of persons subject to the jurisdiction of the Tribal Court and its judicial powers and responsibilities. Copies of same shall be available for review by tribal members.

610.900 SEVERABILITY

If any provision of this Ordinance is held to be invalid, the remainder of this Ordinance shall not be affected.

610.999 SOVEREIGN IMMUNITY

Nothing in this Ordinance shall be construed to have waived the sovereign immunity of the Coquille Indian Tribe.

Notwithstanding any other provision of this Ordinance, the Tribal Court shall not have jurisdiction over the Tribal Council or the officers of the Tribal Council, no matter what form of relief is sought, unless the Tribal Council, by resolution or ordinance, has expressly and explicitly waived its sovereign immunity for a particular action.

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History of Amendments to Chapter 610 Tribal Court Ordinance:

Adoption Date: December 14, 1996
Amended January 6, 2011, Resolution CY1104
Adopted March 10, 2011, Resolution CY1125
Amended December 5, 2012, Resolution CY12119
Adopted March 7, 2013, Resolution CY1332