

QUECHAN LAW AND ORDER CODE

TITLE 2 THE QUECHAN TRIBAL COURT SYSTEM

Chapter 2.1 General Provisions

§ 2.1.1. **Creation.** The Tribe hereby establishes and activates a court system pursuant to the Quechan Constitution. This court system shall be called the Tribal Court and shall consist of the Trial Division, Juvenile Court and the Quechan Supreme Court, which shall be the court of final appellate review. The Tribal Council may establish a court of intermediate appellate review if the need should arise.

§ 2.1.2. **Authorization to Share or Contract for Tribal Court Resources.** Notwithstanding any other provision of this Title, the Tribal Council is hereby authorized to negotiate agreements for shared use of Tribal Court personnel, facilities and financial resources or to otherwise contract for personnel and services to the Tribal Court when such agreements or contracts are in the best interests of the Tribe and will further the purposes of this Code.

§ 2.1.3. **Civil Jurisdiction.** The Tribal Court shall have general civil jurisdiction over all civil actions arising under the Quechan Constitution, the tribal Law and Order Code, and the tribal common law, over all general civil claims which arise within the tribal jurisdiction, and over all transitory claims in which the defendants may be served within the tribal jurisdiction. Personal jurisdiction shall exist over all defendants served within the territorial jurisdiction of the Tribe, or served anywhere in cases arising within the territorial jurisdiction of the Tribe, and over all persons consenting to such jurisdiction.

§ 2.1.4. **Criminal Jurisdiction.** The Tribal Court shall have original jurisdiction over all criminal offenses enumerated and defined in any ordinance adopted by the Quechan Indian Tribe insofar as not prohibited by tribal or federal law.

§ 2.1.5. **Juvenile Court Jurisdiction; Original.** To the extent allowed by tribal and federal law the Juvenile Court shall have exclusive, original jurisdiction over proceedings in which a person under eighteen (18) years of age is alleged to have committed an act that would be an offense under this Code if the person were an adult, unless the Juvenile Court transfers jurisdiction to the Trial Division; provided, however, the Juvenile Court shall not have jurisdiction over any fishing or hunting proceedings in which it is alleged that the person under 18 has violated any ordinance or regulation relating to on- or off-Reservation fishing or hunting. The Quechan Supreme Court may hear appeals in juvenile cases as in other civil actions.

§ 2.1.6. **Juvenile Court Jurisdiction; Continuing.** Except as otherwise provided in this Title or terminated by court order, the jurisdiction of the Juvenile Court shall continue until the person under eighteen (18) becomes emancipated or turns 18.

§ 2.1.7. Consent to Jurisdiction. The act of entering the exterior boundaries of the Reservation and performance of any act specified in subsection 1.1.1.D of this Title shall be considered consent to the jurisdiction of the Tribe and the Tribal Court.

§ 2.1.8. Jurisdictional Limitations.

A. The Tribal Court shall have no jurisdiction to adjudicate issues of Reservation status, boundaries, diminishment or disestablishment, status of lands within the Reservation, or cancellation of leases made pursuant to federal law.

B. The Tribal Court shall have no jurisdiction to adjudicate an election dispute or take jurisdiction over a suit against the Tribe or adjudicate any internal tribal government dispute.

C. The Tribal Court shall have no jurisdiction to adjudicate who is a tribal official, and the decision of the BIA on who is a tribal official is binding in the Tribal Court.

D. The Tribal Court shall have no jurisdiction to adjudicate a suit against the Tribe, its officers, officials, employees, agents, subdivisions, enterprises or corporate entities of any nature or type or to award damages, costs, or attorneys fees against the Tribe absent a clear, unequivocal and express written waiver of sovereign immunity made by valid Tribal Council resolution or other enactment.

E. The Tribal Court shall have jurisdiction to conduct judicial review, on the record, of any final order or decision of the Quechan Tribally Designated Housing Entity or its successor ordering termination of tenancy or eviction from a housing unit owned, operated, or controlled by the Quechan Tribally Designated Housing Entity. Such review shall be limited to review of the underlying administrative record only, including whether or not the Quechan Tribally Designated Housing Entity complied with its own duly adopted policies or procedures, and whether the final order or decision and the policy or procedures followed comply with the requirements of the Indian Civil Rights Act, the Constitution and Bylaws of the Quechan Indian Tribe, and all other applicable federal and tribal laws. For purposes of this section, the Tribal Court may look to relevant provisions of the federal Administrative Procedures Act, 5 U.S.C. § 500, *et seq.* for guidance in implementing and applying this section.

§ 2.1.9. Mandatory Application of Certain Positive Law. In the decision of any matter before it, the Tribal Court shall apply the law as follows:

- A. The Quechan Constitution and this Code, as may be amended hereafter;
- B. Any resolutions or ordinances of the Tribe;
- C. Any applicable laws of the United States; and
- D. Any authorized regulations of the Interior Department.

Except as required by federal law, no federal or state law or law of another tribe shall be applied by the Tribal Court unless specifically incorporated into tribal law by this Code or by a decision of the Court adopting such law as tribal common law.

§ 2.1.10. Mandatory Application of Tribal Common Law, in the Form of Traditional Customs and Usages. In matters not addressed by the positive law listed in section 2.1.9, the Tribal Court shall apply traditional tribal customs and usages, which shall be called the tribal common law. When in doubt as to the tribal common law, the Tribal Court may request the advice of counselors and tribal elders familiar with it.

§ 2.1.11. Other Law May be Looked to for Guidance. As to any matters that are not covered by tribal Constitution, code, ordinances and resolutions of the Tribe or by tribal common law or by applicable federal laws and regulations, the Tribal Court may be guided by common law as developed by other tribal, state and federal courts.

§ 2.1.12. Precedential Value of Decisions of Other Tribal Courts. The decisions of other tribal courts shall not be binding precedent upon the Tribal Court but shall be used for guidance pursuant to section 2.1.11.

§ 2.1.13. Records. The Tribal Court shall be a court of record, as defined by federal law. To preserve such records:

A. All Tribal Court proceedings shall be recorded by electronic or stenographic means. The recording shall be identified by case number and kept for five (5) years for use in appeals or collateral proceedings in which the events of the hearing are in issue. At the expense of the requesting party, the recording may be transcribed and made a permanent part of the case record, upon the certification by the transcriber that the transcript is a true and accurate transcription of the recording.

B. The Tribal Court Clerk shall keep in a file bearing the case name and number every written document filed in the case.

C. All Tribal Court records shall be public records except as otherwise provided by law.

§ 2.1.14. Procedure When No Rules Provided. Whenever no specific procedure is established in this Code, the Tribal Court may look for guidance to the Federal Rules of Civil or Criminal Procedure currently in effect.

§ 2.1.15. Rules of the Tribal Court. The Chief Judge may establish rules concerning the administration of the Tribal Court and conduct in the Quechan Supreme Court and Trial Division not inconsistent with tribal law or the Quechan Constitution. Such rules may govern the conduct, demeanor, and decorum of those in the Tribal Court as well as the form and filing of appeals, briefs, pleadings, and other matters which will make the Tribal Court function more efficiently. Such rules shall be filed in the Tribal Court Clerk's office and available for public inspection.

§ 2.1.16. Action on Appeals. In any appeal before it, the Quechan Supreme Court shall have full authority to affirm, reverse, modify, or vacate any action of the Trial Division and may

enter such order as is just or remand the case for the entry of a specified judgment, for a new trial, or for such further action in accordance with the Supreme Court's opinion or instructions.

§ 2.1.17. Court Fund. There is hereby authorized to be maintained by the Tribal Court Clerk under the supervision of the Chief Judge, a fund to be known as the Court Fund into which shall be deposited all fines, fees, penalties, costs, and other monies authorized or required by law to be paid to the Tribal Court. These funds shall be maintained by the Tribal Court and used exclusively for the purchase of supplies, materials, and personal property for the use of the Tribal Court, the maintenance of the Tribal Court law library, and such other applications as shall be specifically authorized by law. The Tribal Court Fund shall not be used for the payment of salaries of any Tribal Court personnel.

*This Chapter approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996.
This Chapter is newly added to the Jaws of the Quechan Indian Tribe. Section 2.1.8.E of this Chapter revised by Tribal Council Resolution R-123-12, dated July 26, 2012.*

Chapter 2.2 Tribal Court Judges

§ 2.2.1. Composition of the Tribal Court. The Tribal Court shall consist of one Chief Judge whose duties shall be regular and permanent, and such other judges who may be appointed or called into service as the need arises.

§ 2.2.2. Minimum Qualifications. To be eligible for selection as a Tribal Court judge a person shall:

- A. Be either
 - 1. An enrolled member of any tribe, or
 - 2. The parent, child, or spouse of an enrolled member of the Quechan Tribe, or
 - 3. Domiciled within the Fort Yuma Indian Reservation, or
 - 4. An attorney
- B. Have demonstrated moral integrity and fairness in his business, public and private life, and
- C. Have never been convicted of any criminal offense under any law, except traffic offenses, for a period of three (3) years from the date of conviction; and
- D. Have regularly abstained from the excessive use of alcohol or illegal drugs; and
- E. Be at least twenty-five (25) years of age; and
- F. Not hold or be a member of an appointed or elected position of the Tribe.

§ 2.2.3. **Manner of Selection.** Each Tribal Court judge shall be appointed by the Tribal Council by formal resolution. Listing of a person's name on the list of potential judges approved by the Council by formal resolution and maintained by the Tribal Court Clerk pursuant to section 2.3.4, shall be deemed to be appointment under this section; provided, however, that no judicial power or authority shall vest in such person until specifically designated as a Tribal Court Judge pursuant to subsection 2.2.8; and provided further that all such judicial power and authority shall be extinguished in such person upon resolution of the designated case or matter.

§ 2.2.4. **Term of Office.** The Chief Judge shall serve a three (3) year term of office beginning from the date of his confirmation and until his successor takes office, unless removed for cause, or by death, or resignation. Other judges shall serve terms as designated.

§ 2.2.5. **Oath of Office.** Before assuming judicial duties each judge shall take an oath to support and protect the Quechan Constitution and to administer justice in all causes coming before the Tribal Court.

§ 2.2.6. **General Duties and Powers of Judges.** All judges shall have the duty and power to conduct all court proceedings and issue all orders and papers in order to administer justice in all matters unless disqualified for conflict of interest or cause. In doing so judges shall:

- A. Hold court sessions regularly at a designated time and place.
- B. Undertake all duties and exercise all authority of a judicial officer under the law.
- C. Hear and decide all cases properly brought before the Tribal Court.
- D. Enter all appropriate orders and judgments.
- E. Issue all appropriate warrants and subpoenas.
- F. Keep all records as may be required.

§ 2.2.7. **Additional Duties and Powers of the Chief Judge.** The Chief Judge shall also be responsible for:

- A. The administration of the Tribal Court.
- B. Hear appeals from the Trial Division.
- C. Perform any and all other duties as may be required for the operation of the Tribal Court.
- D. Supervise the actions of the Trial Division and all personnel and officers of the Tribal Court.

§ 2.2.8. Designations of Special Judges. Until the tribal court system is fully operational and whenever an additional judge is needed to efficiently dispense with the business of the Tribal Court due to vacancies in office, disqualification of judges, or any other cause, a Tribal Court judge may designate a special judge to hear a specific named case or matter. Such special judge shall meet the qualifications set forth in subsection 2.2.2. No special procedure need be followed in making such appointments. Special judges shall be compensated in the same manner as the Chief Judge.

§ 2.2.9. Compensation. The compensation of all Tribal Court judges, including the Chief Judge, shall be made by the Tribal Council from available funds. No judge shall have his compensation reduced during his term of office; provided, however, if funds are unavailable, the compensation of all judges may be reduced proportionately to the availability of funds.

§ 2.2.10. Removal.

A. A judge may be removed only for cause by the Tribal Council; provided, however, that a special judge appointed pursuant to section 2.2.8 may be removed by the Tribal Council only upon completion of the specific named case he was appointed to hear.

B. The only cause sufficient as a basis for removing the Chief Judge shall be final conviction of a felony or an offense involving moral turpitude, neglect of duty, or gross misuse of office.

§ 2.2.11. Disqualification; Conflict of Interest.

A. No judge shall hear any case in which he has a conflict of interest, which shall mean a direct financial, personal or other interest in the outcome of the case or is immediately related by blood or marriage to one of the parties. A judge should always strive to maintain the appearance of fairness, even if no formal conflict of interest exists.

B. Upon motion to the Chief Judge, the parties to a case or the judge may raise the question of conflict of interest, but persons not parties to the case cannot. If the Chief Judge decides that disqualification is appropriate, he shall appoint another judge to hear the matter.

Chapter 2.3
Tribal Court Clerk

§ 2.3.1. Establishment. There is hereby established a Tribal Court Clerk's office to be administered by one Tribal Court Clerk and such deputy court clerks as may be necessary. The Tribal Court Clerk shall be selected and appointed by the Chief Judge subject to the approval of the Tribal Council.

§ 2.3.2. Service to All Courts. Until such time as the Tribal Council determines that separate clerks are necessary to efficiently administer the business of the Tribal Court and

funding is available, the Tribal Court Clerk shall serve as the Clerk of the Quechan Supreme Court, the Clerk of the Trial Division, and the Clerk of the Juvenile Court.

§ 2.3.3. Powers and Duties. The Tribal Court Clerk shall have the following powers and duties:

1. To undertake all duties and functions otherwise authorized by law, or necessary and proper to the exercise of a duty.
2. To supervise and direct work of all employees in his office.
3. To collect all fines, fees, and costs authorized by law and to deposit such funds to the Tribal Court fund.
4. To be audited at least once each year.
5. To administer oaths, certify a true copy of Tribal Court records, and to accurately keep each and every record of the Tribal Court.
6. To provide a record in the absence of a court reporter to accurately and completely record all proceedings and hearings of the Tribal Court.
7. To provide clerical services to the Tribal Court.
8. To act as librarian, and to keep and maintain the Tribal Court's law library.
9. To undertake all other duties assigned or delegated to the Tribal Court Clerk's office by tribal law or court rule.

§ 2.3.4. Maintenance of List of Approved Tribal Court Judges. The Tribal Court Clerk shall maintain a list of persons meeting the qualifications in section 2.2.2 and approved by the Tribal Council to act as special judges of the Tribal Court.

§ 2.3.5. Certification of True Copies. The Tribal Court Clerk is authorized to certify that a copy of any record in his office is a true and accurate copy of the record on file by signed stamp or writing placed on such copy, sealed with the seal of the Tribal Court Clerk's office.

Chapter 2.4 Tribal Court Bar

§ 2.4.1. Admission. To be admitted to the Tribal Court Bar, a person must: (1) be of good moral character, (2) sign and take the spokesperson's oath, (3) pay the Tribal Court bar admission fee, (4) be at least twenty-one (21) years of age, and (5) have a demonstrated knowledge of this Code, relevant tribal ordinances, the Indian Civil Rights Act, the Quechan

Treaty, and other relevant federal statutes. The Tribal Council or the Chief Judge may require that an applicant demonstrate such knowledge by completing a written test. A spokesperson need not be an attorney.

§ 2.4.2. Tribal Court Bar Admission Fee. There shall be a nonrefundable \$25.00 admission fee, payable to the Tribal Court Clerk, for admittance to the Tribal Court Bar. A judge may waive the admission fee for good cause shown.

§ 2.4.3. Spokesperson's Oath. All persons seeking to be admitted to the Tribal Court bar shall take the following oath:

I, _____, do solemnly swear:

1. I have read the Constitution of the Quechan Indian Tribe, the Quechan Law & Order Code, and the Indian Civil Rights Act and am familiar with the contents of those documents;
2. I will respect, honor, and obey the Constitution of the Tribe in all respects;
3. I will abide by the rules of court established by the Quechan Law & Order Code, the Tribal Court and the Quechan Tribal Council;
4. I will at all times maintain the respect due the Tribal Court and its officers and employees;
5. I will not advocate any lawsuit or request to the Tribal Court that appears to me to be unjust nor will I advocate any defense that is not honestly supported by tribal law, tradition and custom, unless it is in defense of a person charged with a crime;
6. I will advocate with truth and honor and will never to seek, by word or by deed, to mislead a Tribal Court judge or jury;
7. I will not, in or outside the courtroom, behave in such a way as to offend or dishonor the Tribal Court.
- 8.

Applicant

§ 2.4.4. Tribal Court Bar Roster. The Tribal Court Clerk shall assign a number to each spokesperson admitted to practice before the Tribal Court and shall maintain a roster of all

spokespersons admitted to practice before the Tribal Court. The Tribal Court Clerk shall also keep on file the signed oaths of all spokespersons.

§ 2.4.5. Effect of Nonadmission of Representative. All contacts made with the Tribal Court, including the filing of legal documents, shall have no legal effect, unless they are made by a person admitted to the Tribal Court Bar or by a person representing himself in a matter before the Tribal Court.

§ 2.4.6. Disbarment. Any spokesperson violating the spokesperson's oath shall be subject to disbarment; provided, however, that no spokesperson may be disbarred during an appearance in Tribal Court. After investigation, a judge shall prepare in writing a complaint against such spokesperson, including reasons for disbarment. Within ten (10) days of receipt of such complaint, the Trial Division shall hold a hearing at which time the spokesperson involved may present witnesses and a defense of his actions. The judge who prepared the complaint shall not sit as the judge at the Trial Division hearing. There shall be no right to a jury at such hearing.

§ 2.4.7. Appeal. Any person denied admission to the Tribal Court bar or any person who is disbarred may appeal to the Quechan Supreme Court in accordance with the procedures established in this Code. Such person or spokesperson shall have the right to a hearing within ten (10) days of his denial or disbarment and shall have the right to present witnesses and present a defense. The judge who prepared the complaint shall not sit as the judge of the Supreme Court appeal. The Quechan Supreme Court decision shall be final.

*This Chapter approved by the Quechan Indian Tribe, Resolution R-83-96, dated June 7, 1996.
This Chapter is newly added to the laws of the Quechan Indian Tribe.*

