

KICKAPOO TRIBE OF OKLAHOMA

JUDICIAL SYSTEM ORDINANCE

INDEX

CHAPTER 1 JUDICIAL SYSTEM

- Section 1. Enactment Clause
- Section 2. Establishment of the Kickapoo Tribe of Oklahoma Trial Court with Two Divisions
- Section 3. Definitions
- Section 4. Judges of the Trial Court
- Section 5. Establishment of the Kickapoo Tribe of Oklahoma Supreme Court
- Section 6. Qualification of the Trial Judges and Supreme Court Justices
- Section 7. Oath
- Section 8. Selection and Appointment
- Section 9. Territorial Jurisdiction of the Kickapoo Tribe of Oklahoma Judicial System
- Section 10. Civil Jurisdiction
- Section 11. Criminal Jurisdiction
- Section 12. Probate Jurisdiction
- Section 13. Family Court Jurisdiction
- Section 14. Application of Laws
- Section 15. Amendments

CHAPTER 2 OPERATING POWERS OF THE JUDICIAL SYSTEM

- Section 1. Term of Office for Judges and Justices
- Section 2. Removal of Judge or Justice
- Section 3. Special Judges
- Section 4. Special Judges who have Special Knowledge
- Section 5. Responsibilities of the Trial Judges
- Section 6. Responsibilities of the Supreme Court Justices
- Section 7. Judicial Independence
- Section 8. Compensation of the Judges and Justices
- Section 9. Disqualifications
- Section 10. Court(s) or Record(s)
- Section 11. Records and Files
- Section 12. Decisions of the Supreme Court
- Section 13. Supreme Court's Action on Appeals
- Section 14. Court Fund
- Section 15. Court Clerk
- Section 16. Court Clerk Procedures
- Section 17. Waiver of Filing Fees

- Section 18. Adoption of a Law and Order Code and Other Codes as Necessary
Section 19. Language Provision
Section 20. Public Defender
Section 21. Right to a Jury Trial for Criminal Defendant
Section 22. Right to a Jury Trial for Civil Causes of Action
Section 23. Contempt of Court

KICKAPOO TRIBE OF OKLAHOMA
TRIBAL JUDICIAL SYSTEM ORDINANCE

Approved by the Kickapoo Council June 8, 1991
Resolution: K-91-41
Amendment Approved by the Kickapoo Council March 20, 2010
Resolution: KTO-SGC-2010-02

SECTION 1. ENACTMENT CLAUSE

Be it enacted by the Council of the Kickapoo Tribe of Oklahoma the following Judicial System Ordinance. Any actions or decisions enacted by the Judicial Courts prior to this Amendment shall remain in full force and effect.

[**HISTORY:** Approved by General Council Meeting: Sept. 24, 1994]

SECTION 2. ESTABLISHMENT OF THE KICKAPOO TRIBE OF OKLAHOMA TRIAL COURT WITH TWO DIVISIONS

There is established a Trial Court that shall be divided into two separate divisions. At the Trial level, one division of the Court shall be the Civil and Criminal Trial Court, the other division shall be the Family Court. All initial Judicial proceedings shall be first heard at the Trial Court with the subject matter of Civil and Criminal matters assigned to the Civil and Criminal Trial Court and proceedings involving children under the age of eighteen (18) years shall be assigned to the Family Court.

SECTION 3. DEFINITIONS

The following words when mentioned in this Ordinance, shall have the following meaning, unless otherwise specified:

(a) “Constitution” shall mean the Supreme governing document of the Tribe and all acts of the Courts and legislation of the Tribe must be consistent with the Constitution.

(b) “Ordinance” shall be that legislation passed by the General Council of the Kickapoo Tribe and unless contrary to the Constitution or existing Federal Law shall be the Supreme legislation of the Tribe.

(c) “Trial Court” shall mean that Court that will be composed of two different judicial subject matters, one shall consist of Criminal and Civil matters and the other shall consist of Family matters.

(d) “Supreme Court” shall mean that Court of last resort from which appeals are taken from the Trial Court and that Court which may have limited original jurisdiction in certain matters. All decisions and orders of the Supreme Court shall be final and are not to be subject to further appeal.

SECTION 4. JUDGES OF THE TRIAL COURT

The Trial Court shall consist of the Chief Judge, and such District Judges, Special Judges, and Magistrates as may be appointed according to law.

~~The Civil and Criminal Court shall consist of one Trial Judge and the Family Court division shall consist of one Trial Judge.~~

HISTORY: [Change approved by KTO-2014-48, Nov. 14, 2014]

SECTION 5. ESTABLISHMENT OF THE KICKAPOO TRIBE OF OKLAHOMA SUPREME COURT

There is created a Supreme Court that shall consist of three (3) justices that shall hear all cases appealed from the Trial Courts and other cases in which the Supreme Court has original jurisdiction.

SECTION 6. QUALIFICATION OF THE TRIAL JUDGES AND SUPREME COURT JUSTICES

- A. A Trial Judge and Supreme court Justice shall possess the following:
1. An enrolled member of the Tribe, or;
 2. An attorney currently licensed to practice law by the appropriate licensing agency of any U.S. State or jurisdiction that enforces or verifies attorney standards, or;
 3. An individual who physically resides within the reservation of the Kickapoo Tribe of Oklahoma, or;
 4. An advocate who has practiced before the Trial Court on a regular basis for more than two (2) years as member of the Court Bar, or;

5. A graduate of an American Bar Association accredited law school approved by the Kickapoo Tribe of Oklahoma Supreme Court, and;
6. Must show the following:
 - a. Has exhibited moral integrity and fairness; and
 - b. Has never been convicted of a felony, including the pleading of nolo contendere, and ;
 - c. Has consistently abstained from alcohol and has abstained from any illegal drug or substance for the seven (7) years proceeding their nomination and during the term of their office, and;
 - d. Is more than twenty-five (25) years of age, and;
 - e. Is not a member of the Business Committee or any other Ordinance created Committee, Board, or Commission, however, that individual may resign that post to assume the role of Judge or Justice, and;
 - f. Has experience in the legal profession or has a legal education/training.
- B. Any Judge hearing or presiding over a criminal matter involving a non-Indian shall be an attorney currently licensed to practice law by the Bar Association of any State.

HISTORY: [(amend#2, #4, and add B) changes approved by KTO-2014-48, Nov. 14, 2014]

SECTION 7. OATH

Before assuming office, every Judge and Justice must take an oath affirming loyalty to the Constitution and By-Laws of the Tribe, all Tribal Laws, to serve the Court in a manner of fairness and integrity, and to administer justice to all parties before the Court in an effective and efficient manner.

SECTION 8. SELECTION AND APPOINTMENT

Judges and Justices shall be nominated by either Tribal members or members of the Business Committee. Advertising for vacancies shall be under the direction of the Business Committee. The Business Committee shall select all Judges upon reviewing their qualifications. The following factors shall be given primary consideration by the Business Committee in making a determination:

1. Formal education and legal experience in the legal field;
2. Knowledge of the Tribal Constitution and By-Laws;
3. Tribal customs and traditional ways of thinking;
4. Ability to make decisions involving legal principals.

5. That all times at least one of the Kickapoo Trial Judges shall be an attorney currently licensed to practice law by the Oklahoma Bar Association.

HISTORY: [(add #5) approved by Resolution KTO-2014-48, Nov. 14, 2014]

SECTION 9. TERRITORIAL JURISDICTION OF THE KICKAPOO TRIBE OF OKLAHOMA JUDICIAL SYSTEM

The jurisdiction of the Judicial System of the Kickapoo Tribe of Oklahoma shall extend to Indian Country as defined by Section 1151 of Title 8 of the United States Code, Tribal lands held in trust for the Tribe, allotted lands of individual members that is held in trust, and all other lands of the Kickapoo Tribe of Oklahoma whether held in trust, non-trust, restricted or otherwise, and property owned or controlled by the Kickapoo Tribe of Oklahoma, all to the greatest extent allowable under Federal Law. Within the territory areas for the Tribe the following will be under the jurisdiction of the Court: air, water, minerals, resources, and wildlife. This ordinance shall apply to all further lands as may be acquired by the Tribe or any agency of or any political subdivision of the Tribe in the future.

~~The territory of the Judicial System of the Kickapoo Tribe of Oklahoma shall extend to Indian Country as defined by Section 1151 of Title 18 of the Unites States Code, Tribal lands held in trust for the Tribe, allotted lands of individual members that is held in trust, and all other lands whether held in trust, non-trust, restricted or otherwise, to the greatest extent allowable under Federal Law. Within the territory areas for the Tribe the following will be under the jurisdiction of the Court: air, water, minerals, resources, and wildlife. This ordinance shall apply to all further lands as may be acquired by the Tribe or any agency of or any political subdivision of the Tribe in the future.~~

HISTORY: [amended by KTO-2014-48, Nov. 14, 2014]

~~No judgment against the Tribe, Tribal agency, enterprise, or political subdivision shall be exigible, payable, or paid except from funds appropriated therefore by the Kickapoo Council or by the agency, entity or political subdivision against which judgment is rendered.~~

HISTORY: [KTO-SGC-2010-02, approved second paragraph on March 20, 2010]

HISTORY: [KTO-2012-56, repealed second paragraph on October 6, 2012]

SECTION 10. CIVIL JURISDICTION

The Courts of the Kickapoo Tribe of Oklahoma Judicial System shall have general jurisdiction involving all civil actions that involve the laws of the Kickapoo Tribe of Oklahoma. Jurisdiction is to be had over all Tribal members who may be found within the jurisdiction of the Courts, all other persons or organizations that consent to the jurisdiction of the Courts, and all other persons to the extent allowed under Federal Law. All corporations, sellers, business individuals, and merchants who organize under Tribal Law or enter into the territorial jurisdiction of the Tribe for whatever purpose shall have given consent to the jurisdiction of the Courts.

SECTION 11. CRIMINAL JURISDICTION

To the greatest extent allowable under Federal Law, the Kickapoo Tribe of Oklahoma Courts shall have jurisdiction over all those individuals, persons, or organizations that have violated any law of the Kickapoo Tribe of Oklahoma. The Courts shall reserve the right to impose the maximum penalty for any violation of the law.

SECTION 12. PROBATE JURISDICTION

To the greatest extent allowable under Federal Law, the Courts shall have probate jurisdiction over all real and personal property found within the jurisdiction of the Court at the time of death of an individual, who is a member of the Tribe and any personal property of a member, or non-member as to their property found within the jurisdiction of the Tribe, who, at the time of death lived within Tribal jurisdiction and who had intention of remaining within Tribal jurisdiction.

~~To the greatest extent allowable under Federal Law, the Courts shall have probate jurisdiction over all real and personal property found within the jurisdiction of the Court at the time of death of an individual, who is a member of the Tribe and any personal property of a member who, at the time of death lived within Tribal jurisdiction and who had intention of remaining within Tribal jurisdiction.~~

HISTORY: [amended by KTO-2014-48, Nov. 14, 2014]

SECTION 13. FAMILY COURT JURISDICTION

The Courts of the Kickapoo Judicial System shall have exclusive original jurisdiction involving abused or neglected children who are under the age of eighteen (18) years, and who are members of the Tribe or who has parent(s) who are members of the Tribe or when jurisdiction has been transferred to the Courts by another Court of competent jurisdiction.

- a. When any child is found to be within the territorial jurisdiction of the Kickapoo Tribe of Oklahoma, the Court can assume jurisdiction, to protect and promote the best interests of the child.

~~When any child is found to be within the territorial jurisdiction of the Kickapoo Tribe of Oklahoma, and the Family Court Judge, is willing, the Court can assume jurisdiction, to protect and promote the best interests of the child.~~

HISTORY: [amend (a) by KTO-2014-48, Nov. 14, 2014]

- b. When in the best interest of any child the Family Court may assume jurisdiction over a child found within or residing or whose actions or abused, neglected, or delinquent status arose within the Kickapoo Territory regardless of tribal membership, until such time as another Court of competent jurisdiction will exercise jurisdiction over the child.

~~When, in the best interests of any child the Family Court Judge may assume jurisdiction, because no other Court will assume jurisdiction or until such time another Court of competent jurisdiction will exercise jurisdiction over the child.~~

HISTORY: [Resolution: K-1991-57-A, for section b.]

HISTORY: [Amended by KTO-2014-48, Nov. 14, 2014]

SECTION 14. APPLICATION OF LAWS

The Courts of the Kickapoo Tribe of Oklahoma Judicial System shall apply with full force and effect the laws of the Constitution and By-Laws and Ordinances of the General Council. Other legislation as may be adopted or enacted by the General Council shall be applied with the same full force and effect. In the event no law governs, the Trial Court and/or the Supreme Court may consider Traditional values and beliefs. In the event no law can be found, the Courts may apply existing Federal Law or apply the best law of any particular Tribe or State. The Courts shall apply existing Federal Law as applicable.

SECTION 15. AMENDMENTS

The Business Committee shall have the authority to amend, alter, and/or introduce new amendments to the Judicial Ordinance and by duly adopted Resolution of the Business Committee and approved by General Council such action shall serve as an amendment to this Ordinance, provided that such resolution is appropriate with Article XV of the Constitution and By-Laws.

CHAPTER II

OPERATING POWERS OF THE JUDICIAL SYSTEM

SECTION 1. TERM OF OFFICE FOR JUDGES AND JUSTICES

All Judges of the Trial Court shall be appointed to serve a term of three (3) years. All Justices of the Supreme Court shall be appointed for a term of five (5) years. The term begins the date the Judge or Justices formally takes the oath of office.

SECTION 2. REMOVAL OF JUDGE OR JUSTICE

A Judge or Justice within the Kickapoo Judicial System can only be removed for cause. The Supreme Court by a majority vote can remove a Judge upon review of sufficient evidence and after a hearing with the Trial Judge. The Supreme Court, applying this standard, can remove one Supreme Court Justice. Otherwise, removal of a Judge or Justice shall be done in the following manner:

(A) The Business Committee, upon review of sufficient evidence, can recommend to the General Council that a Judge or Justice be removed for cause. If the General Council by majority vote finds sufficient cause that Judge or Justice shall be removed.

SECTION 3. SPECIAL JUDGES

Whenever, due to vacancies in office, disqualification of Judges, or other cause, a Trial Judge is not available, or an additional Judicial Officer is needed to efficiently dispense with the business of the Trial Court, due to vacancies in office, disqualification of Judges, or other cause, the Chief Justice or Presiding Justice of the Supreme Court may designate by Court Order one or more duly qualified magistrates or Justices to sit on the Trial Court, or may make one or more special appointments from among the members of the Bar of the Court to act as a Special Judge to hear specific named cases, or cases filed prior to the date a Trial Judge can be regularly appointed, the vacancy filled, or the special Judge is no longer needed. The Special Judge(s) compensation shall be that of the regular Judge's compensation. The Special Judge(s) appointment shall terminate upon the condition ceasing that caused the need for said appointment.

~~The Chief Justice or Presiding Justice of the Supreme Court shall appoint a Special Judge whenever there is a vacancy, inability, resignation, or disqualification of a Trial Judge to serve. The appointment will remain in effect until the return of the Trial Judge or until an appointment of a Trial Judge by the Business Committee.~~

HISTORY: [amended by KTO-2014-48, Nov. 14, 2014]

SECTION 4. SPECIAL JUDGES WHO HAVE SPECIAL KNOWLEDGE

If proper jurisdiction is had, the Trial Judge shall have the duty to apply the law with the intent of administering justice to the parties that are before the Court. The Trial Judge shall have the authority to issue such legal orders and other papers necessary to administer justice. In addition, the Trial Judge shall perform additional duties:

- (a) To hold Court at designated time and place.
- (b) To conduct hearings and investigations wherever and whenever necessary.

- (c) Administer oaths when necessary.
- (d) To hear and decide all cases properly before the Court.
- (e) Enter judgments and orders.
- (f) Issue warrants and subpoenas.
- (g) Keep necessary records as may be required by the Court.
- (h) To serve as a coroner, unless a coroner, is appointed by the Business Committee with proper authorization.

SECTION 6. RESPONSIBILITIES OF THE SUPREME COURT JUSTICES

- (a) The Justices of the Supreme Court will adopt the rules and procedures necessary to administer the Judicial System and maintain such rules and procedures.
- (b) To issue, as a Judicial panel, necessary legal orders, judgments, and papers.
- (c) To hold and conduct judicial proceedings during an established term.
- (d) Keep all appropriate legal documents and records.
- (e) To hear all appeals from the Trial Court.
- (f) Supervise the Court staff.
- (g) Promulgate standards for admittance to the Court Bar and to insure ethical standards are maintained by the Court Bar.
- (h) Perform the duties of the Trial Judge, as necessary.
- (i) Administer justice in an orderly, timely, efficient, and effective manner.
- (j) Administer a filing system for necessary legal documents.

SECTION 7. JUDICIAL INDEPENDENCE

At all times the Court system of the Kickapoo Tribe of Oklahoma shall be independent of other governing or political entities of the Kickapoo Tribe of Oklahoma.

SECTION 8. COMPENSATION OF JUDGES AND JUSTICES

The Business Committee shall fix the salaries of the Judges and Justices and other Court Officers before their appointment and shall not decrease that amount while they are serving in that position unless the funds are not available and then the salaries shall be reduced proportionally.

SECTION 9. DISQUALIFICATIONS

A Judge or Justice shall remove himself/herself upon determination that there exists or could exist an appearance of a conflict of interest. Such interest shall include but is not limited to the following:

- (a) A financial interest in the outcome of a decision;
- (b) Related to the parties, directly by marriage or blood, unless the other party is made aware of the relationship and upon the record does not object, the Judge or Justice shall continue to hear the case.
- (c) Is a legal guardian to a party before the Court. Either party at any time during the proceeding may ask that the Judge or Justice disqualify themselves from the hearing. The party requesting removal shall clearly indicate the reason(s) for and have the matter reflected in the record. If the Judge refuses, the party can request the matter for appeal. Once requested the matter is to be appealed. No litigation or other matters can be heard pending the appeal. Upon disqualification a Special Judge shall be appointed by the Chief Justice or the Presiding Justice of the Supreme Court.

SECTION 10. COURT(S) OF RECORD

HISTORY: [amended by KTO-2014-48, Nov. 14,2014]

The Trial Court and the Supreme Court shall both be Court(s) of Record(s). All records shall be maintained by the Office of the Court Clerk. The Supreme court after consulting with the trial Judges shall issue the necessary forms and rules to insure the collection and protection of records.

SECTION 11. RECORDS AND FILES

- (a) Juvenile records and files shall not be open to public inspection nor shall Juvenile proceedings be open to public hearings.
- (b) The Supreme Court shall establish procedures for reviewing files and establish fees, if any.
- (c) All records of the Court shall be open to public inspection unless the Supreme Court determines otherwise.

SECTION 12. DECISIONS OF THE SUPREME COURT

(a) All decisions and opinions of the Supreme Court shall be rendered in writing and given to the parties that were before the Court. A copy of the decision and the opinion shall be filed with the Tribal Court Clerk and the Secretary of the Tribe.

(b) The format of the decision and opinion of the Court shall be chosen at the discretion of the Supreme Court as part of the Court rules.

(c) All other decisions, orders, and papers of the Supreme Court shall be filed in the Office of the Court Clerk.

(d) Each Justice of the Supreme Court is entitled to write his own opinion and such writing shall be recorded with the decision of the Court.

(e) If a Justice does not participate or disqualifies himself from the decision of the Court, that action also shall be reflected in the permanent record.

SECTION 13. SUPREME COURT'S ACTION ON APPEALS

In any appeal properly before it, the Supreme Court shall have full authority to affirm, reverse, modify, or vacate any action of the Trial Court or other entity from whom the appeal is taken as authorized by law, and may enter such order as is just or remand the case for entry of a specified judgment, for a new trial, or for such further action as appropriate in accordance with the Supreme Court's opinion or instructions.

SECTION 14. COURT FUND

All expenses or fees levied as the result of a Court proceeding or any form of Court action shall be set aside in a special fund that will provide funds for necessary Court supplies, materials, and research items. The fund shall not be used to pay salaries of the Court Judges, Justices, Court Clerk, or Staff.

SECTION 15. COURT CLERK

There is hereby established the Office of Court Clerk with the purpose to administer the Judicial System and assist the Judicial System in recording and filing. Other duties of the Court Clerk shall include the following: issue appropriate documents, collect fines and fees, issue receipts, supervise under the direction of the Supreme Court other Court staff, to administer oaths, serve as Court Librarian, and to serve as Court Administrator with the Supreme Court defining employment duties.

SECTION 16. COURT CLERK PROCEDURES

The Supreme Court shall have the authority to promulgate such forms as necessary to assist the Court Clerk in the performance of the Court Clerk's duties. The Supreme Court shall authorize a Seal which will be used by the Court Clerk as an "Official Seal" of the "Tribal Court Clerk" which has the official Tribal emblem. All legal documents of the Judicial System, and those designated by the Supreme Court shall have the Court Clerk's signature and the Seal on such paper documents.

SECTION 17. WAIVER OF FILING FEES

The Supreme Court of the Kickapoo Tribe of Oklahoma may provide exemptions or waivers for those who can not afford the fees of filing. The Supreme Court shall adopt the necessary criteria to receive the waiver exception.

SECTION 18. ADOPTION OF A LAW AND ORDER CODE AND OTHER CODES AS NECESSARY

The Kickapoo Tribe of Oklahoma shall continue to abide by the Sac and Fox Laws, as needed for the administration and enforcement of the Judicial System, until the Council of the Kickapoo Tribe of Oklahoma adopts its own Law and Order Code and other Codes as necessary.

SECTION 19. LANGUAGE PROVISION

Upon request a party before the Court can request an interpreter. Interpreter will be provided at no cost to the party. The Court shall appoint an Interpreter when in the interest of justice and due process, the Court deems it necessary. The Supreme Court shall adopt rules as needed so that Court, if necessary, can conduct Court in the Kickapoo language.

SECTION 20. PUBLIC DEFENDER

In every criminal action the accused shall have a right to Counsel and if the accused can not afford counsel the Court shall appoint Counsel for the accused.

SECTION 21. RIGHT TO A JURY TRIAL FOR CRIMINAL DEFENDANT

Any person charged with a criminal offense shall have the right to a Trial by jury. The person charged with the criminal offense shall be informed of this right by the Trial Judge. There shall be no fee for a jury Trial, in which one is accused of a criminal offense. The Jury, shall consist of six (6) persons, and one (1) alternate, who is a member of any Federally Recognized Indian Tribe, that reside within the service area jurisdiction of the Kickapoo Tribe of Oklahoma.

SECTION 22. RIGHT TO A JURY TRIAL JURY FOR CIVIL CAUSES OF ACTION

Any person who files a civil cause of action shall have the right to a Jury Trial, provided that person, or entity, pays a Jury cost fee of Two Hundred Dollars (\$200.00), to the Office of the

Court Clerk. The Jury shall consist of six (6) persons, and one (1) alternate, who is a member of any Federally Recognized Indian Tribe, and who resides within the service area jurisdiction of the Kickapoo Tribe of Oklahoma.

SECTION 23. CONTEMPT OF COURT

The Judicial Courts of the Kickapoo Tribe of Oklahoma shall have the power to punish all persons for direct or indirect contempt of the Court.

A. Direct contempt shall consist:

- (a) Disorderly or insolent behavior committed during the session of the Court;
- (b) The unlawful and willful refusal of any person to be sworn as a witness;
- (c) The refusal to any legal or proper question;
- (d) And/or any breach of the peace, noise, or disturbance, so near as to interrupt its proceedings.

Indirect contempt of Court shall consist:

- (a) Willful disobedience of any process or order lawfully issued or made by the Court;
- (b) Resistance willfully offered by any person to the execution of a lawful order or process of the Judicial Courts of the Kickapoo Tribe of Oklahoma.

For any contempt of Court, the Court may impose of fine up to \$1,000.00 dollars, or may order the person to be placed in the Tribal jail for a period of six (6) months, or may impose both such fine and imprisonment. The Court may release the person from sanctions if that person purges himself/herself of a continuing contempt. Before imposing any contempt sanctions, the Court shall warn the offending party that continued contemptible action may result in a finding of contempt by the Court. Before making any finding of indirect contempt the Court shall conduct a hearing to determine if an indirect contempt has occurred with proper notice to be served on the defendant.

