

CRIMINAL PROCEDURE

CHAPTER THREE

TRIAL

Section 301. Trial By Jury or By the Court

(a) All trials of offenses shall be by the Court without a jury unless the defendant files a request for jury trial and a \$100.00 jury fee within 10 business days following the date of arraignment. A judge may exercise discretion to waive the jury fee if the defendant shows that he or she is without sufficient funds to pay the jury fee.

(b) Juries shall be composed of six (6) members with one alternate if an alternate jurors is deemed advisable by the Court.

(c) In a case tried without a jury, the judge shall make a general finding of guilt or innocence and shall, upon request of any party, make specific findings which may be embodied in a written decision.

[History: PUBLIC LAW #SF-85-60, June 21, 1985. As amended: PUBLIC LAW #SF-96-38, February 8, 1996.]

Section 302. Trial Jurors

(a) Jurors shall be drawn from the list of eligible jurors, prepared as provided in the Civil Procedure Act.

(b) The Court shall permit the defendant or his counsel and the Attorney General to examine the jurors and the Court itself may make such an examination.

(c) Challenges regarding jury members may be taken as follows:

(1) Each side shall be entitled to three (3) peremptory challenges.

(2) Either side may challenge any juror for cause;

(3) An alternate juror shall be treated as a regular juror for purpose of challenges.

(d) The alternate juror shall be dismissed prior to the jury's retiring to deliberation if he has not first been called to replace on original juror who has become, for any reason, unable or disqualified to serve.

(e) Jurors shall otherwise be subject to all rules applicable to juries in civil cases.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 303. Order of Trial

The trial of all criminal offenses shall be conducted in the following manner:

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- (a) The Court shall call the case name and number and ask the parties if they are ready to proceed. If the parties are not ready, the Court may continue the case or direct the case to proceed in its discretion.
- (b) If the parties are ready to proceed, and if the case is to be tried by jury, the Judge should require all prospective jurors to swear to decide the case in a fair and impartial manner if selected for jury duty.
- (c) If the case is to a jury, the Court should select a potential jury panel as selected under the Civil Procedure Act by random and question them to determine if they have any interest in the case.
- (d) When the Court is satisfied that no juror should be dismissed for statutory cause, the prosecution and then the defendant shall be allowed to question the prospective jurors. The Court may delay any examination it wishes to make until after the parties have examined the jury panel.
- (e) If it appears that a prospective juror is related to a party in the case or is biased for or against a party, or if the outcome would significantly affect the property, family, or other important interest of the prospective juror, the Court shall dismiss him for cause and select another person from the jury panel.
- (f) Both the Attorney General and the defendant may alternatively request the Court to dismiss any juror by peremptory challenge. Each party shall have three (3) peremptory challenges and the Court may not refuse to grant them. No reasons need be given for the challenges and alternate jurors shall be examined and selected as the original panel was selected. The final jury panel should then be sworn.
- (g) The Court should request the Attorney General to read the criminal complaint and to make his opening statement. Prior to reading the complaint, the Court should explain to the jury that the complaint is not evidence, but is being read for the sole purpose of informing the defendant and the jury of the offense charged against the defendant. The Court should also inform the jury that the statements of counsel are not evidence but are presented so that the jury will have an opportunity to hear what counsel for each party expects the evidence to show.
- (h) The Attorney General should then read the complaint and briefly present the facts which he intends to prove to show the offense. No argument of the facts or law shall be allowed. In reading the complaint, no reference to any recommendation for banishment may be made prior to the verdict of guilty or not guilty.
- (i) The defense may then made an opening statement or may reserve their opening statement until the beginning of the presentation of the defense evidence.
- (j) The Attorney General shall then present his evidence followed by the defendant's presentation of his defense evidence. After the defendant has presented his evidence, the Attorney General may present evidence in rebuttal.
- (k) The Attorney General shall then present his closing argument, the defendant his closing argument, and the Attorney General shall be allowed to present a rebuttal.
- (l) If trial is to a jury, the Judge should give them his instructions and they shall retire to decide their verdict. If trial is to the Judge, he shall then make his decision or announce the time at which he will present his decision.

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(m) If the verdict is "not guilty", the defendant should be discharged and bail exonerated.

(n) If the verdict is "guilty", the judge may impose sentence immediately or may hold a hearing at a later time or date to decide on an appropriate sentence. In a case tried before a jury, the Court, after receiving a verdict of "guilty", shall inform the jury if banishment has been recommended as a punishment of the offense. The prosecution and the defense shall then be given an opportunity to present any additional evidence they may wish to present on the issue of whether banishment should be imposed, and the prosecution shall be given the final opportunity to rebut any defense evidence. The jury should then be requested to retire and consider whether banishment should be imposed and the maximum term thereof. No banishment shall be imposed in excess of the term recommended by a unanimous vote of the jury, although a recommendation that banishment be imposed is not binding on the Judge.

(o) After sentencing the Judge may hold a hearing to determine appeal bond if an appeal is filed.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 304. Trial By Judicial Panel

(a) In every trial for an offense or offenses punishable by imprisonment for more than three months in which a jury trial is not requested, the Judge may, in his discretion, upon request of the defense or prosecution, order the matter to be heard by a three (3) Judge panel.

(b) In every trial for an offense or offenses punishable by banishment in which a jury trial is not requested, and in which the Attorney General shall recommend in the complaint that banishment be imposed upon conviction, the Court shall order the case to be heard before a three (3) Judge panel. If no recommendation for banishment is made in the complaint, or an amendment thereof, banishment may not be imposed.

(c) The Chief Judge shall assign three (3) Judges to sit on the judicial panel for trial, one of whom shall be designated as the presiding Judge for that trial. Those Judges shall be subject to disqualification only for good cause shown.

(d) The presiding Judge in such cases shall rule on all motions, objections, and procedural questions, however, the judgment of conviction or acquittal shall be by majority vote. In cases in which banishment has been recommended, banishment may not be imposed unless there is a unanimous finding of guilt by the judicial panel and a unanimous agreement by the panel that banishment is a proper sentence and the term of banishment must be agreed upon by the judicial panel. The actual vote of each Judge shall be held in strict confidence and only the actual decision shall be announced.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 305. Judge Disability

(a) If by reason of death, sickness or other disability, the Judge before whom a jury trial has commenced is unable to proceed with the trial, any other Tribal Judge may, upon certifying that he has familiarized himself with the record of the trial, proceed with the trial.

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(b) If by reason of death, sickness or other disability, the Judge before whom the defendant has been tried is unable to perform the required duties of a Judge after the verdict or finding of guilt, any other Tribal Judge may perform those duties unless such Judge feels he cannot fairly perform those duties in which case a new trial may be granted. A new trial shall not be granted if all that remains to be done is the sentencing of a defendant.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 306. Evidence

The admissibility of evidence and the competence and privileges of witnesses shall be governed by the Evidence Code of the Tribe, except as herein otherwise provided.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 307. Expert Witnesses and Interpreters

(a) Either party may call expert witnesses of their own selection and each bear the cost of such.

(b) The Court may appoint an interpreter of its own selection and each party may provide their own interpreters. An interpreter through whom testimony is received from a defendant or witness or communicated to a defendant or other witness shall be put under oath to faithfully and accurately translate and communicate as required by the Court.

(c) The trial Judge or Clerk may act as interpreter only with the consent of all parties.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 308. Motion for Judgment of Acquittal

(a) The Court on motion from defendant or on its own motion, shall order the entry of a judgment of acquittal of one or more offenses charged in the complaint after the evidence of either side is closed if the evidence is insufficient as a matter of law to sustain a conviction of such offenses. A motion for acquittal by the defendant does not affect his right to present evidence.

(b) If a motion for judgment of acquittal is made at the close of all the evidence, the Court may reserve decision on the motion, submit the case to the jury and decide the motion any time either before or after the jury returns its verdict or is discharged.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 309. Instructions

At the close of evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury on the law as set forth in the request. At the same time, copies of such requests shall be furnished to adverse parties. The Court shall inform counsel of its proposed action upon the requests prior to the arguments of

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counsel to the jury, but the Court shall instruct the jury after the arguments are completed. No party may assign as error any portion of the charge or omission therefrom unless he objects thereto before the jury retires to consider its verdict, stating distinctly the matter to which he objects and the grounds of the objection. Opportunity shall be given out of the hearing and out of the presence of the jury.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]

Section 310. Verdict

(a) Except as hereinbefore provided in cases where banishment is recommended, the verdict of a trial to a judicial panel shall be by majority vote and shall be returned in open court.

(b) The verdict of a jury shall be unanimous. It shall be returned by the jury to the judge in open court. If the jury is unable to agree, the jury may be discharged and the defendant tried against before a new jury.

(c) If there are multiple defendants or charges, the jury may at any time return its verdict as to any defendants or charges to which it has agreed and continue to deliberate on the others.

(d) If the evidence is found to support such verdict, the defendant may be found guilty of a lesser included offense or attempt to commit the crime charged or a lesser included offense without having been formally charged with the lesser included offense or attempt.

(e) Upon return of the verdict, the jury may be polled at the request of either party. If upon the poll there is not unanimous concurrence, the jury may be directed to retire for further deliberation or may be discharged.

(f) After return of the verdict, the jury may, in the Judge's discretion, be requested to recommend the punishment to be imposed after a hearing at which both parties have the opportunity to present evidence in mitigation or aggravation of the sentence. The jury's recommendation in such cases shall not be binding on the judge at sentencing except as otherwise provided in the case of sentences of banishment.

[History: PUBLIC LAW #SF-85-60, June 21, 1985.]