

TITLE 10
KARUK TRIBAL COURT ORDINANCE



ADOPTED BY THE TRIBAL COUNCIL
ON SEPTEMBER 30, 2010
(Adopted 02/26/04, Revised 02/16/05)

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10.0

Establishment of the Karuk Tribal Court

The Tribal Council of the Karuk Tribe (the "Tribe") does hereby ordain as follows:

- (a) Public Law 83-280, (18 U.S.C. §1162; 28 U.S.C. §1360), did not divest the Tribe of its inherent sovereign authority to establish and operate its own judicial system.
- (b) The Courts of the State of California lack jurisdiction over most civil disputes and many criminal acts that occur within the Tribal Lands.
- (c) The establishment of a Tribal Court that can exercise jurisdiction over civil disputes and criminal acts occurring on the Tribe's lands wherever situated, particularly those disputes and acts over which the Courts of the State of California lack jurisdiction, is necessary to maintain peace and order on Tribal lands.
- (d) The adoption of this Ordinance is in the best interests of the members of the Tribe and furthers the administration of justice on lands and over persons within the Tribe's jurisdiction.
- (e) The Karuk Tribe hereby establishes the Karuk Tribal Court. The Tribal Court shall consist of a Peacemaker Mediation Forum and the following Divisions: 1) Administrative; 2) Civil; 3) Family; and 4) Criminal. The Tribal Court also includes a Court of Appeal. The Tribal Court is empowered to create such further specialized divisions as necessary to hear matters as defined in the Tribe's laws.

10.1

Appropriations

- (a) The Tribal Council shall appropriate and authorize the expenditure of Tribal funds for the operation of the Tribal Court. The amounts to be appropriated shall be consistent with the needs of the Tribal Court for proper administration of justice within Tribal Lands and for the Tribe as determined by the Tribal Council.
- (b) To assist the Tribal Council in making such appropriations, the Tribal Court Administrator shall submit proposed budgets and reports of expenses and expenditures to the Tribal Council, at such intervals and in such form as may be prescribed by the Tribal Council. Such budgets and reports shall include the operation of the office of the Clerk of Court and the Peacemaker Mediation Forum.
- (c) The Tribal Council may prescribe a system of accounting for funds received from any source by the Courts of the Tribe and the Clerk of Court.

10.2

Jurisdiction And Powers

10.2.01.

Civil Jurisdiction

- (a) Personal Jurisdiction. The Tribal Court shall have civil jurisdiction over: all persons who are members of the Tribe or eligible to be members; persons who have consented to the jurisdiction of the Tribal Court or waived any objections to the exercise of personal jurisdiction in the matter by voluntarily appearing before the Tribal Court or filing a motion, response, answer or pleading in Tribal Court (other than a jurisdictional challenge); and respondents who have “minimum contacts” with the Tribe (e.g. commit offenses on Tribal Lands, conduct business on Tribal Lands, etc.);
- (b) Subject Matter Jurisdiction. The Tribal Court shall have civil jurisdiction over all matters in law or in equity arising within Tribal Lands as defined in Articles I and II of the Tribe’s Constitution and as may be more fully described in specific Tribal Codes and Ordinances covering the different Divisions of the Tribal Court. In all cases before the Tribal Court, the respondent must be: 1) a member of or eligible for membership with the Tribe **OR** 2) a member of another Tribe or is a non-Indian **AND** a) has entered into a consensual relationship with the Tribe or its members through commercial dealing, contracts, leases or “other arrangements” (e.g. is married to a Tribal member, has a child in common with a Tribal member, is employed by the Tribe, etc.) **OR** b) the conduct of the violation threatens or has some direct effect on the political integrity, the economic security, or the health and welfare of the Tribe.
- (c) The Tribal Court may decline to exercise its jurisdiction if it finds any of the following exist:
 - (i) Another court has the jurisdiction to hear the case and it would be more convenient for the parties than the Tribal Court;
 - (ii) One or more of the parties is not a person over which the Tribal Court can exercise its jurisdiction; or,
 - (iii) The case is of such a nature that the Tribal Court should not hear it.
- (c) Concurrent Jurisdiction. The jurisdiction invoked by this Ordinance over any person, cause of action, or subject may be concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; provided, however, this Ordinance does not recognize or cede jurisdiction to any other political or governmental entity in which jurisdiction does not otherwise exist in law. In the event of concurrent jurisdiction controversies, the Tribal Court shall compel and hear sufficient evidence and legal

arguments to make a prompt jurisdictional determination for each such controversy.

10.2.02. Criminal Jurisdiction.

The Tribal Court shall have concurrent jurisdiction over all criminal offenses committed by a Tribal member or other Indians consistent with Tribal law within Tribal Lands.

10.2.03. Powers of the Tribal Court

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 exercise its jurisdiction in accordance with any suitable procedures where specific procedures are not set forth in this Ordinance, so long as such procedures do not conflict with the Tribe's Constitution. The Tribal Court administration and judges, in consultation with the Tribal Council shall promulgate such Rules of Court that are necessary for the efficient prosecution or processing of cases through the Peacemaker Mediation process, Trial Court, and Appellate Court.

10.2.04. Full Faith and Credit

- (a) The Tribal Court shall give full faith and credit to the orders and judgments of the courts of other tribes, states, federal courts, and local, state, and federal governments unless:
 - (i) The court in question does not recognize the orders and judgments of the Tribal Court;
 - (ii) The court in question did not have jurisdiction over the case or a party or parties to it;
 - (iii) The order or judgment was based on fraud;
 - (iv) 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
 - (v) The order or judgment is on appeal or being contested in another jurisdiction.
- (b) The Tribal Council may enter into intergovernmental agreements with other Indian Tribes, states and other governmental entities, and may enact laws that expand upon or modify the Tribal Court's jurisdiction, and affording comity or full faith and credit to other court orders.

10.2.05. Inclusion of language from other laws, application of other laws

- (a) Inclusion of language, definitions, procedure, or other statutory or administrative provisions of the State of California or other state or federal entities in the Karuk Tribal Court Ordinance, or Tribal Court judges using other jurisdictions' laws, procedures and precedents as guidance shall not be deemed an adoption of that law by the Karuk Tribe and shall not be deemed an action deferring to state or federal jurisdiction within the Karuk Tribe where such state or federal jurisdiction may be concurrent or does not otherwise exist.

10.2.06. No Acceptance of State Jurisdiction

Nothing in this Ordinance shall be deemed to constitute acceptance of or deference to the jurisdiction of the State of California over any civil matter, where such jurisdiction does not otherwise exist.

10.3 **Judges**

10.3.01. Qualifications

- (a) The Tribal Court shall consist of such Associate and Pro Tem Judges as the Tribal Council may appoint.
- (b) All Karuk Tribal Court Judges shall be at least 30 years of age, have earned a bachelor's degree, and possess a demonstrable knowledge and experience with Tribal Courts, Indian law, Federal law, and California law.
- (c) In the event that there is no qualified Judge or there are an insufficient number of Judges available to hear a particular case, Acting Judges shall be appointed 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. The qualification for Temporary Judge must meet the minimum qualification of Associate Judges. Such appointment shall be only for the period of time necessary to dispose of the case in question.

10.3.02. Duties

- (a) Assigned Judges will be responsible for:
 - (i) Enforcing the Tribal ordinances and law, subject to approval by the Tribal Council;
 - (ii) Hearing all matters delegated to the Court by ordinance; and

- (iii) Assisting Court Staff and Administration with improvements of the Court system, coordinating with the Court Appointed Special Advocate ("CASA") program regarding appointments of CASAs for children, and representing the Tribal Court to other courts, agencies and persons as appropriate.

10.3.03. Removal by Judicial Oversight Committee

- (a) Judges shall be removed from their appointment by the process set forth in Section 10.10, by the Judicial Oversight Committee.

10.3.04. Disqualification of Judges

- (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 any 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 himself/herself. Such affidavit shall be filed within five days of a Judge being assigned to the case, within five days after any material decision is made in the case by the Judge and in any other situation at least five days prior to trial. Only one such affidavit may be filed by a party in each case.
- (c) Complaints filed against a Judge or Mediator shall be made in writing and shall be signed by the complainant. Each complaint shall be filed with the Court Clerk, who shall assign a docket number, and acknowledge receipt of the complaint. Upon receipt of such a complaint, the Clerk shall immediately notify the Judicial Oversight Committee, who shall investigate the complaint and take all necessary action.

10.3.05. Immunity

Judges and Mediators acting within the scope of their authority share the Tribe's sovereign immunity from suit and may not be made to defend a lawsuit without the express written consent of the Tribal Council.

10.3.06. Compensation

Judges shall be compensated at a rate and under such terms and conditions as the Tribal Council shall, from time to time, establish.

10.4 Court Administration

10.4.1. Duties

The Tribal Court Administrator and his or her Clerks shall be responsible for such administrative and ministerial duties as may be prescribed by this Ordinance or assigned to her/him by the Tribal Council. The duties of the Court Administration shall include but shall not be limited to the following:

- (a) Developing and maintaining a list of qualified judges 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 judges;
- (b) Maintaining a case management system consistent with best court practices;
- (c) Assisting with preparing of the Court's annual plan and budget;
- (d) Issuing receipts for any monies collected or paid out by the Tribal Court;
- (e) Depositing all receipts into the Tribal accounting system designated for inclusion in the Tribal Court's annual plan and budget;
- (f) Giving assistance to the Tribal Court, the Tribal Police, the general public, residents of the Reservation and any Tribal members as required, provided that the Clerk may not provide legal advice;
- (g) Attending all sessions of the Tribal Court;
- (h) Preparing and mailing Court-issued notices, summons, subpoenas, warrants, rulings, findings, opinions, and orders as prescribed by this Ordinance and as may be designated by the Judges of the Tribal Court;
- (i) Administering oaths and witnessing execution of documents;
- (j) Maintaining a supply of blank forms and self-help packets and information to be prescribed by the Tribal Court for use by all persons having business before the Tribal Court;
- (k) Providing copies of documents in Tribal Court files to other persons upon request, and upon receipt of a charge therefore to be prescribed by the Clerk to cover the costs of such services; provided, however, there shall be no charge for such service to the Judges of the Tribal Court, and provided further, no copies of documents or material shall be provided from files which are to be kept confidential or unavailable for public inspection pursuant to any provisions of this

Ordinance or other ordinance of the Tribal Council, or if prohibited by any court order;

- (l) Maintaining strict confidentiality and providing security for all files, documents and materials filed with or in the custody of the Tribal Court, and insuring that they are not removed from the offices of the Clerk and the Tribal Courts except upon the specific instructions of a Judge of the Tribal Court;
- (m) Maintaining a library of laws, regulations, orders, opinions, and decisions of the United States and its administrative agencies and courts, the Tribal Council and Tribal Court, and of the various states and other Indian Tribes, insofar as they may be pertinent to the administration of justice for the Tribe. The acquisition of such materials shall be subject to appropriations of funds therefore by the Tribal Council. Materials in the library shall be available for use in the office of the Clerk during normal working hours by any person subject to the jurisdiction of the Tribal Court, and her/his authorized representative; and
- (n) Performing such other duties related to the operation of the Court as the Tribal Council shall designate.

10.4.01 Hiring

The Court Clerk shall be hired in accordance with the Karuk Tribe Personnel Policies and Procedures Manual adopted and approved by the Tribal Council.

10.4.02 Seal

The Court Clerk shall have an official seal which shall be impressed upon the original of each petition or other paper filed with the Tribal Court, along with a notation of the month, day and year of filing. The Court Clerk shall sign the original document filed with the Tribal Court.

10.5 Court Procedures

10.5.01 Civil, Criminal and Appellate Rules of Court

- (a) The Tribal Court staff, with the assistance of legal counsel, will develop Rules of Court to determine and specifically set forth the procedures for hearing cases in each of the Tribal Court divisions.
- (b) The Tribal Court staff will continue to conduct advisory sessions, which will include, but not be limited to tribal community members, the local legal community and where necessary governmental representatives, in order to educate the community and improve the Court's procedures to best meet the needs of the Karuk Tribal community.

10.6.0 Appeals

10.6.01 Court of Appeals

A Court of Appeals is hereby established.

10.6.02 Composition and Jurisdiction

- (a) The Court of Appeals shall follow the appellate procedures and rules of the Northern California Tribal Court Coalition and shall consist of at least one (1) judge, who did not adjudicate the matter at the trial court level.
- (b) The Court of Appeal shall have jurisdiction to review final orders, commitments, and judgments of the Tribal Court. On appeal, the record and decision of the Tribal Court shall be reviewed for error. The Court of Appeals may affirm, modify, or reverse any judgment, decree, or order of the Tribal Court; may remand the case and order a 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.

10.6.03. Finality

A decision of A Court of Appeal shall be final. The provision for disqualification of Judges set forth in this Ordinance, or Rules of Court, shall apply to any appellate judges.

10.7 Appearances

10.7.01. Counsel or Spokesperson

- (a) Counsel Any party has a right to assistance of counsel at the party's expense. Such assistance shall be arranged by the party.
- (b) Spokesperson
 - (i) Any party has a right to assistance of a spokesperson at the party's expense. The spokesperson shall be required to comply with this Ordinance and Rules adopted by the Tribal Court for the processing of cases.
 - (ii) The Court **shall not appoint** counsel or a spokesperson for any party at the Tribe's expense.
 - (iii) The Court shall order appointment of a Court Appointed Special Advocate ("CASA") for children to advocate for the best interest of the child in

those cases deemed appropriate (see Children and Family Code, Section 10).

10.7.02. 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 be held to the same strict standards of procedural conduct as are required of legal counsel and spokespersons.

10.7.03. Witnesses

- (a) Summons to Appear. A summons is a notice that a person or business has been sued, issued by the Tribal Court. It is a mandate calling a person or business before the court to answer the claims or allegations made in a petition or complaint attached to the summons.
- (b) Subpoenas. A subpoena is a document or writ issued under authority of the court for service upon a witness to compel their appearance in court. On motion by any party to the case, or on the Tribal Court's own motion, the Tribal Court shall issue a subpoena to compel the attendance of witnesses, or the production of books, records, documents, papers and things necessary to the determination of the cause. Failure to comply with a subpoena shall constitute contempt of court.
- (c) Fees for Witnesses
 - (i) Each party shall be responsible for his/her own witnesses and any witness fees.
 - (ii) The Karuk Tribe or any of its Departments, Agencies, Corporations and/or entities shall pay witnesses summoned on its behalf at the rate established by the Court.

10.8 Records

10.8.01. 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. This section shall not apply to matters or records sealed or expunged by the Tribal Court

10.8.03. Fee Schedule

The Tribal Court shall develop a fee schedule for document filing, copying and processing fees.

10.9 **Peacemaker Mediation Forum**

10.9.01. Establishment and Purpose

- (a) In addition to the Tribal Court and a Court of Appeal, a Peacemaker Mediation Forum is established to hear disputes between parties before trying the case in Tribal Court. The Peacemaker Mediation process is a forum for peacefully resolving disputes. When a Petition is filed with the Clerk of the Court, the Peacemaker Mediation Forum shall be used prior to proceeding to a formal Court Hearing.
- (b) The purpose of the Peacemaker Mediation Forum is to provide a non-adversarial method of resolving disputes between Tribal members and all other persons within the Tribe's jurisdiction. The Tribal Court shall create Peacemaker Mediation Forum Guidelines. The Guidelines shall outline the process and procedures of the forum and shall reflect the Tribe's historical traditions and modern methods of dispute resolution to resolve conflicts.
- (c) Parties utilizing the Peacemaker Mediation forum will not be prohibited from continuing their case in Court should the dispute resolution (mediation) prove unsuccessful.

10.10 **Judicial Oversight Committee**

10.10.01 Purpose of the Committee

- (i) Should a complaint regarding alleged impropriety within the Karuk Judiciary System be filed with the Court Clerk or the Tribal Council, The Tribal Council shall convene a Judicial Oversight Committee.

10.10.02. Structure, and Terms of Members of the Judicial Oversight Committee

The Oversight Committee shall consist of at least three (3) members; all shall be enrolled Karuk Tribal citizens. One member each shall represent the Orleans, Happy Camp and Yreka areas, if possible.

10.10.03. Filling Vacancies on the Committee and Qualifications of Members

- (a) Vacant positions on the Oversight Committee shall be filled within 30 days after the creation of the vacancy. The Tribal Council shall give notice that nominations are being accepted for the Committee. The notice will designate the community or communities from which the position is to be filled. In order to qualify for appointment to the Committee, a person must submit:

- (i) Proof of legal physical residency within a hundred-road mile radius of the exterior boundaries of the Karuk Lands. Proof shall consist of three items of evidence equivalent to what candidates for the Tribal Council must submit pursuant to the Tribe's Election Ordinance.
 - (ii) A Statement of intent containing the reasons for wanting to serve on the Committee, Judicial philosophy, other background as applicable to the position.
 - (iii) At least one letter of recommendation stating that because of the esteem in which they hold the candidate, that the candidate should be appointed to one of the positions on the Judicial Oversight Committee.
- (b) If only one person from an area submits the proof of residency, Statement of Intent and letter of recommendation, the Tribal Council shall then review the required documents for correctness, and shall then approve the candidate. If more than one person submits the documents as required, the Tribal Council then must decide between or among the candidates based on that person's ethical standing within the Tribal community.
- (c) Because the Oversight Committee shall be responsible for ensuring the ethical operation of the Tribal Court, in order to uphold the honesty, honor and integrity of the Tribal Court, no person shall serve on the Oversight Committee who would not qualify to serve on the Tribal Council.

10.10.05. Authority and Decision-Making Process of the Committee, Removal

- (a) Decisions of the Committee shall be made by consensus, as opposed to majority vote. The definition of "consensus" is that all Committee members shall participate in the process leading up to any decision-making, and at least a quorum shall come to agreement about a particular decision or course of action. A quorum shall be at least three members of the Committee.
- (b) When information has been received indicating a violation of any of the Tribe's laws or Judicial Codes of Ethics, the Judicial Oversight Committee shall render a decision after a full hearing in closed session has been held. A vote by the committee must consist of two (2) eligible voting committee members out of three (3) eligible voting committee members whether or not any Judge, Mediator or Judicial Oversight Committee member may be suspended, dismissed, or removed for cause. Should the Committee vote for suspension, dismissal, or removal, the recommendation shall then be made to the Tribal Council for a vote.
- (c) The Tribal Council may only vote on the issue of removal after receipt of a recommendation for suspension, dismissal, or removal for cause by the Judicial Oversight Committee.

- (d) Any Judge, Mediator or Judicial Oversight Committee Member may then be suspended, dismissed, or removed for cause by the Tribal Council by a two-thirds vote of the eligible voters of the Council.
- (e) The Tribal Chairperson or his/her designate shall make available copies of a written statement setting out the facts and reasons for the proposed action to the Judge or other Court personnel in question, the other Judges, and to members of the Tribal Council at least thirty (30) calendar days before the next regularly scheduled meeting of the Tribal Council.
- (f) That meeting shall be a closed session hearing where the accused Judge or other Court personnel shall be given an adequate opportunity to answer any and all charges.
- (g) Causes deemed sufficient for bringing such action shall include all those listed in the Karuk Tribe Personnel Policies and Procedures as well as but not be limited to: sexual misconduct, sexual harassment, 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 and in accordance with the terms of this Ordinance.
- (h) The decision of the Tribal Council shall be final.

10.11. Limitation of Actions and Sovereign Immunity

- (a) Sovereign Immunity. Except as required by federal law or the Tribe's Constitution or specifically waived by a resolution, ordinance or written contract specifically referencing such waiver and duly approved by the Tribal Council, the Karuk Tribe, its officers and employees, and tribal governmental entities and their respective officers and employees, including but not limited to Tribal Court Judges and Mediators, shall be immune from suit in any civil action for liability arising from the performance of their official duties.
- (b) Actions by or Against the Tribe or its Officers or Employees. In any action otherwise authorized by or against the Tribe or its officers or employees arising from the performance of their official duties, the following procedures shall apply:
 - (i) The periods of time specified for civil cases or for appeals of either a civil or criminal nature for which an answer, reply, or other pleading or response of any kind shall be required shall be double the normal period;
 - (ii) Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties, either as Plaintiff or Defendant, shall be liable for the payment of costs or expenses of the opposing parties;
 - (iii) Neither the Tribe nor its officials or employees when involved in a civil

action arising from the performance of their duties, either as Plaintiff or Defendant, shall be required to post security bond or otherwise for any purpose; and

- (iv) Any liability shall be limited to injunctive and equitable relief and no monetary damages shall be awarded.
- (c) Adoption by Reference Does Not Constitute a Waiver of Sovereignty. The adoption of any law, code, or other document by reference into the Tribal Code shall in no way constitute a waiver or secession of any sovereign power or immunity of the Karuk Tribe to the jurisdiction whose law or code is adopted or in any way diminish such sovereign power and immunity, but shall result in the law or code thus adopted becoming the law of the Karuk Tribe.
- (d) Statute of Limitations. Unless otherwise specifically provided in this Code, the following limitations on the bringing of a civil action shall apply:
 - (i) Any action against the Tribe or its officers or employees or a tribal governmental entity or its officers or employees arising from their performance of their official duties must be commenced within one year of the date that the cause of action occurred;
 - (ii) Any other action against the Tribe or its officers or employees or a tribal governmental entity or its officers or employees must be commenced within two years the cause of action occurred, provided, however that any cause of action based upon fraud or intentional misrepresentation shall not be deemed to have occurred until the aggrieved party has discovered the facts constituting the fraud or intentional misrepresentation.

10.11 Effective Date

This Ordinance shall become immediately effective upon approval of the Tribal Council in accordance with its Constitution, and can only be amended by approval of the Tribal Council.

10.12 Certification

The amendments to the foregoing Ordinance, which was originally passed on February 26, 2004, with amendments adopted February 16, 2005, were passed and adopted this 30th day of September, 2010, by the following vote: AYES: _____ NOS: _____
ABSTAIN: _____ ABSENT: _____

The Tribal Council Approved Resolution 10-R-111, Amending Resolution 05-R-12.

ATTESTED:

Arch Super, Chairperson