

# KONGIGANAK TRIBAL COURT PROCEDURES

## CHAPTER 2

## **Section 1. Purpose**

The purpose of this code is to provide a fair and equitable process for the operation of the Kongiganak Tribal Court.

## **Section 2. Definitions**

The following words or phrases, whenever used in this code, shall have the following meanings:

**“Banishment”** means sending a person out of the territorial jurisdiction of the village for a period of time or permanently.

**“Clerk”** means the person who is designated the Clerk of the Tribal Court.

**“Complaint”** means the written complaint concerning a violation of Tribal Codes/Ordinances, filed with the Court Clerk by a TPO, VPO, VPSO, or a witness of the violation, or a designee of the Tribal Court.

**“Defendant”** means the person who a complaint was filed against.

**“Parties”** means the Plaintiff(s) and Defendant(s) listed in a complaint and the Petitioner(s) and Respondent(s) listed in a *Petition to Use the Tribal Court*.

**“Plaintiff”** means the person or party who files a complaint or who requests a settlement of a dispute in the Kongiganak Tribal Court.

**“Petition”** means the written petition filed with the Court Clerk to use the Tribal Court to resolve a dispute with another party (Respondent).

**“Plea”** means a statement of guilt, innocence, or no contest.

**“Respondent”** means the person involved in a dispute brought before the Court by a petitioner.

**“Restitution”** means compensating a person who has been in some way damaged or injured, by paying money or performing services to compensate for damage or injury. This includes, but not limited to payment of medical bills or other bills, repair of property, or replacement of property.

**“Violation”** means breaking an ordinance and involves conduct inappropriate to orderly society, but is not a criminal offense.

### **Section 3. Beginning a Tribal Court Case.**

Cases may come to the Tribal Court in one of the following ways:

- 1. Complaints:** A Complaint for Violation of Tribal Ordinances is filed with the Tribal Court Clerk. The Complaint form can be completed and filed by the Village Public Safety Officer, Village Police Officer; Tribal Police Officer, by a person designated by the Tribal Court, or by a person who witnesses the violation. The Complaint shall include: (a) the names (if known) of the person initiating the Complaint (the Plaintiff) and the person against whom the Complaint is filed (the Defendant); the ordinance or tribal law that was violated; and (c) a brief description of the conduct that resulted in the violation of the ordinance or tribal law tribal.
- 2. Petitions to Use the Tribal Court:** A Petition to use the Kongiganak Tribal Court is filed with the Tribal Court Clerk. The Petition shall include: (a) the names (if known) of the person initiating the Petition (the Petitioner) and the person against whom the Petition is filed (the Respondent); and (b) shall write sufficient information about the circumstances and reasons why the Court should take the case.
- 3. Referrals or transfer of jurisdiction** from another court.

Upon the receipt of the Complaint, Petition, or Referral, the Clerk shall schedule a meeting with the Tribal Court judges to decide whether to take the case or not. A minimum of two (2) judges at the meeting is necessary to make this decision.

**A. Decision to take a case:** If the decision is made to take the case, the Judges shall decide which three Judges shall hear the case. The Clerk shall schedule the hearing and give proper notification to parties.

**B. B. Decision not to take a case:** If the decision is made to not take the case by the Judges, the Clerk shall write a letter of denial to the Petitioner, or referring entity, as soon as possible after the decision is made by the Judges.

#### **Section 4. Notice of Hearings**

- 1. Notice for Regular Hearings:** Parties shall be given reasonable notice for all regular Kongiganak Tribal Court Hearings. The Clerk, or some other person authorized by the court, shall personally serve or mail notice to all parties before hearings. A proof of service shall be filed or noted in the court records. The notice shall be delivered at least ten (10) days or mailed at least fourteen (14) days before a hearing except as otherwise provided for in this code. If a hearing is rescheduled, notification may be made telephonically and noted in the case file. Each party shall be responsible for serving notice to their own witnesses.
- 2. Notice for Emergency Hearings:** Notice for emergency hearings shall be done as best as possible under specific circumstances.
- 3. Notice when Hearings Have Been Rescheduled:** If the Court changes the time of a hearing for any reason, the involved parties shall be given reasonable notice of the change.

## **Section 5. Emergency Hearings**

Emergency hearings shall involve matters where harm or damage to a person or property may likely occur if the court had to wait to take action. In cases of emergencies, the court may hold a hearing as soon as reasonable proof of imminent harm is provided to the court. Notice of an emergency hearing shall be given to parties who are reasonably available to receive notice, but the court may proceed without notice is necessary. Orders issued during emergency hearings shall be written, and shall be of limited duration of up to no more than thirty (30) days unless otherwise stated in the tribal code, or shall stand only until a regular hearing is held within that thirty days and reasonable notice has been given.

### **Section 7- Failure to Show for a Hearing**

If a party was served with notice but fails to show up at a hearing without a compelling reason that prevented them from appearing, the Kongiganak Tribal Court may proceed to hold the hearing and make a decision in the absence of the person, or the court may set another hearing date.

### **Section 8- Recesses**

The Kongiganak Tribal Court may recess and reconvene during hearings.

### **Section 9- Records of Hearings**

The Court shall keep a record of all hearings, including:

1. A certified recording of each proceeding; and
2. A certified copy of all notices, orders and written documents entered in connection with the case.

### **Section 10- Confidentiality**

All records and hearings shall be confidential and access limited to the parties involved in the case. Hearings involving adults may be open to the public if the parties and the court judges agree. Other than those instances, only the court judges and clerk shall have access to the court records without further order of court. In case of an appeal to the Kongiganak Appellate Court, the appellate Tribal Judges shall have access to all records involving the cases.

### **Section 11- Testimony, Evidence, and Affidavits**

1. **Testimony-** The Kongiganak Tribal Court may summons witnesses to testify at the hearings by issuing a Summons to testify. Witnesses may testify in person or by telephone.
2. **Evidence-** The Kongiganak Tribal Court shall hear all evidence that is found to be proper. The Tribal Court may order evidence to be brought before the court by issuing a court subpoena.
3. **Affidavits-** The Kongiganak Tribal Court may accept sworn affidavits as evidence in cases if the witness is not available to testify

### **Section 12- Written Orders, Timeframe for complying, Default Orders**

1. **Written Orders-** All orders made by the Tribal Court shall be written on Kongiganak Tribal Court Order forms unless otherwise specified by ordinance. All written orders shall be filed in the case records. The clerk or other authorized person of the Tribal Court shall personally give or mail a copy of the order to all parties to the case, and file a proof of service.
2. **Time Frame for Complying with Orders-** For cases involving a complaint, all sentences shall be accomplished within thirty (30) days after the respondent has been notified of the order unless the court provides otherwise. For cases involving a petition to use the Tribal Court, the order shall specify the time frame in which actions shall occur.
3. **Default Orders-** If a party fails to appear at a hearing after being properly notified, the court may decide the case and issue an order in his or her absence after reviewing the complaint or petition, hearing from any witnesses present, and examining any other evidence in the case.

### **Section 13- Request to Change Order**

After an order has been given, the person receiving the order or another person of party affected by the order may request a change by filing a request to change an order form with the court. The request shall state the reason the person believes a changes should be made. The requesting person shall present new evidence or information to the court to support the request. The court may deny the request or set a hearing date.

### **Section 14. Search Warrants**

#### **A. Application for Search Warrant:**

In order to search people, houses, vehicles, or other property, the Tribal Police Officer (TPO) or Village Public Safety Officer (VPSO) must fill out an *Application for Search Warrant*. The *Application* shall state in writing why he or she believes a search is needed, and must state the name of a person who saw an illegal activity or item, if it is the basis for reason to believe that a search is needed. The person applying for the search warrant shall swear that the statements in the application are true to the best of his or her knowledge.

#### **A. Issuing a Search Warrant:**

*Search Warrants* may be issued by any of the Kongiganak Tribal Court Judges. The Judge must be convinced that the person applying for the *Search Warrant* has “probable cause”, meaning the existence of circumstances, which would lead a reasonable person to believe that an offense was or is being, committed. Suspicion unsupported by any facts is not sufficient. *Search Warrants* shall specifically state where the search may be done, what items are to be looked for, when the warrant expires, and whether or not the search may take place at night.

## **Section 15. Sentencing and Orders**

The Tribal Court shall have the option of imposing the following sentences or orders:

**Fines:** The fines that the Court may order for violation of a Tribal ordinance shall not exceed \$5,000 or equivalent work sentence. The Court shall order equal fines for equal violations. Fines shall increase for successive violations of the same ordinance by the same person. The Court may garnish wages, permanent fund checks, or confiscate property in the case of unpaid fines.

**Community Work:** Work sentences can include, but not limited to, cutting wood, hauling water, hauling and pumping fuel, hauling honey buckets, picking and dumping trash, maintenance and repair work. The work sentences shall benefit the needy, the village residents as a whole, the elders, the victim of an offense, or the youth. Tribal Court Judges shall not pass work sentences that only benefit themselves personally or other tribal government officials. Work sentences shall be completed within thirty (30) days unless otherwise directed by the Court.

Community work shall contribute \$5.00 per hour towards fines ordered by the Kongiganak Tribal Court. Persons have the option of work sentences instead of paying a fine only if the Court specifically permits it.

**Banishment:** An Order of temporary or permanent banishment shall only be used to protect the Village or residents from harm. Before banishment can be ordered, the person shall be given a *Notice to Appear in Tribal Court*. A hearing must be held that provides the person an opportunity to speak.

**Drug and Alcohol Treatment and Other Counseling:** The Tribal Court has the authority to order drug and alcohol treatment, and other personal counseling as a sentence or as a part of a sentence. The Tribal Court shall consider the cost to the person and possible waiting periods for getting in to treatment in ordering such treatment.

**Restitution:** The Tribal Court has the authority to order the defendant to pay restitution to his or her victims.

**Confiscating Personal Property:** The Tribal Court may seize a person's personal property if that person is found in Contempt of Court by the Kongiganak Tribal Court, for not doing what the Court has ordered. The property shall remain confiscated until the person complies with the Court Order to the satisfaction of the Kongiganak Tribal Court. If the person does not comply with the Court Order within a reasonable length of time, the Kongiganak Tribal Court may sell the confiscated property after providing Notice of the proposed sale to the person.

**Counseling by Judges:** In a helpful spirit, the Judges of the Kongiganak Tribal Court may counsel persons brought before it.

**Other forms of Restorative Justice:** The Tribal Court may also consider other Restorative Justice alternatives including: circle and peacemaking sentencing, youth court, and any other remedy that the Tribal Court determines to be culturally relevant

## **Section 16. Contempt of Court**

In addition to facing confiscation of property, persons who fail to participate in a hearing without good cause or fail to comply with an *Order* of the Kongiganak Tribal Court, or fail to pay a fine or otherwise carry out or comply with a sentence imposed on them by the Tribal Court shall be guilty of Contempt of Court and subject to immediate sentencing by the Tribal Court Judge to a fine not to exceed Five Hundred Dollars (\$500.00). The sentence can be appealed to the Tribal Council in accordance to Chapter 3 of this code.

## **Section 17. Juveniles**

- 1. Application of Tribal Laws to Juveniles-** The civil laws of the tribe and tribal court procedures generally apply to juveniles the same as they do to adults, provided that specific ordinances may apply solely to juveniles.
- 2. Attending hearings by Parents or Guardians-** In cases involving civil violations by juveniles, written notification shall be given to the juvenile's guardian or guardians of the upcoming hearing. The guardian or guardians of the juvenile will be required to be present at the hearing for the juvenile.

## **Section 18. Tribal Court Finances**

- 1. Accounting System and Bank Account:** The Tribal Court Clerk shall establish an accounting system and a separate bank account from all other tribal branches for all funds pertaining to the Kongiganak Tribal Court.
  - 2. Payment of Fines:** Fines of fees shall be paid in cash, check, or money order. The checks and money orders shall be made out to the Kongiganak Tribal Court and a receipt will be given.
  - 3. Judges Stipends:** The Tribe shall set out a system for stipends for Judges, and include provisions to limit the total amount of stipend for a case to protect against incentivizing a case taking longer than it should.
- Court Costs:** The Kongiganak Tribal Court may charge fees to use the Court. Such fees shall be equal for equal type of cases, and shall be made known to petitioners before disputes and other matters are heard