



Nez Perce

TRIBAL EXECUTIVE COMMITTEE

P.O. BOX 305 • LAPWAI, IDAHO 83540 • (208) 843-2253

NOTICE

AMENDMENTS TO THE NEZ PERCE TRIBAL CODE

This notice is being posted March 9, 2016, according to the Nez Perce Tribal Code § 1-4-2 to request written comments for the following proposed amendments (see attached):

The addition of Chapter 1-8 Peacemaker Court

STATEMENT OF PURPOSE: The purpose of this Nez Perce Tribal Code amendment is to create a "Peacemaker Court" within the Nez Perce Tribal Court and to set out requirements for its operation, establishing in tribal law a traditional process for resolving disputes and addressing alleged misconduct.

WRITTEN COMMENT PERIOD:

The Law and Order & Intergovernmental Affairs Subcommittee will be accepting written comments on the proposed amendment being applied to the Code. Please submit written comments to: Leotis McCormack, Chair, Law and Order Subcommittee, P.O. Box 305, Lapwai, ID, 83540; email to leotism@nezperce.org, fax to (208) 843-7354 or hand deliver to the NPTEC offices in Lapwai. The deadline for receipt and consideration of such comments is, April 8, 2016 at 4:30 p.m.

**ESTABLISHMENT OF PEACEMAKER COURT; JUDGES PEACEMAKERS AND
OTHER COURT PERSONNEL**

**CHAPTER 1-8
PEACEMAKER COURT**

§1-8-1 Establishment of Peacemaker Court; Peacemakers as Officers of the Court

There is hereby established a Nez Perce Tribal Peacemaker Court which shall be a division of the Nez Perce Tribal Court and which shall operate in accordance with the Peacemaker Court Provisions of this Chapter. Peacemakers shall be sworn officers of the Tribal Court and, subject to the applicable provisions of the Nez Perce Tribal Code, be immune from suit for good faith actions and omissions made within the scope of their authority and in compliance with applicable laws.

§1-8-2 Jurisdiction of the Peacemaker Court

(a) A judge of the Nez Perce Tribal Court may transfer a case within the jurisdiction of the Tribal Court to Peacemaker Court pursuant to the provisions of this Chapter and the Peacemaker Court may assume jurisdiction.

(b) A judge of the Nez Perce Tribal Healing to Wellness Court or other specialty court of the Nez Perce Tribal Court or an authorized official of an "Attendance Court" or similar program administered by any school district on the Nez Perce Reservation may transfer a case pursuant to the provisions herein and the Peacemaker Court may assume jurisdiction.

§1-8-3 Qualifications of Peacemakers

The Peacemakers of the Nez Perce Tribal Peacemaker Court shall meet the following qualifications:

- (1) Satisfactory passage of a Criminal Background Check. To be eligible to be appointed as a Peacemaker, an applicant for Peacemaker, within ten (10) years of making application, must not have been convicted of a crime of:
 - (A) child or elder abuse or neglect,
 - (B) domestic violence or dating violence,
 - (C) stalking,
 - (D) harassment,
 - (E) intimidation
 - (F) any crime resulting in serious bodily harm to another person,
 - (G) rape,
 - (H) sexual assault,
 - (I) sexual abuse of a child or elder.
- (2) Conviction of other crimes may also prohibit selection as a Peacemaker, to be determined on a case by case basis by the Peacemaker Selection Committee as appointed by the processes described herein; Have the respect of the Tribal community and a reputation for honesty, integrity, humanity and a demonstrated ability to resolve local problems by means that honor Nez Perce Tribal values of healing, reconciliation, and accountability;

- (3) Sign an Oath of Office and abide by its ethical rules. A proven violation of this Oath of Office may be deemed good cause for removal as a Peacemaker;
- (4) Sign a Confidentiality Agreement and abide by its terms. A proven violation of this Agreement may be deemed good cause for removal as a Peacemaker;
- (5) Be knowledgeable and respectful of Nez Perce history, culture, and traditions. Application preference will be given to Nez Perce Tribal members and to those applicants who have knowledge of the Nez Perce language;
- (6) Be at least twenty-one years of age or older.

§1-8-4 Selection and Appointment of Peacemakers

(a) Peacemakers will be selected by consensus of a Selection and Appointment Committee, which will consist of at least three (3) persons who are:

- (1) The Chief Judge or Interim Chief Judge of the Nez Perce Tribal Court;
- (2) An Appellate Judge of the Nez Perce Tribal Court;
- (3) The Healing to Wellness Court Coordinator;
- (4) The Nez Perce Tribal Police Chief;
- (5) The Nez Perce Tribal Public Defender;
- (6) The Nez Perce Tribal Prosecutor;
- (7) A Nez Perce Tribal Probation Officer;
- (8) The Executive Assistant to the Law and Order Executive Officer;

(9) At least two (2) Tribal Elders (who must excuse themselves from consideration of their applications if they apply for Peacemaker membership) selected by consensus from the “Peacemaker Code Revision Workgroup” established to develop the initial Peacemaker Code in the Nez Perce Tribal Code.

(b) Appointment of Peacemakers

At least sixteen (16) Peacemakers, eight (8) from the Lapwai, Idaho area, two (2) from the Orofino, Idaho area, and six (6) from the Kamiah, Idaho area, will be appointed to Peacemaker Court. Terms will continue until the Peacemaker resigns or is removed pursuant to this Code.

(c) Removal of a Peacemaker

One holding a position of Peacemaker must maintain a position of trust and responsibility in order for Peacemaker decisions to be accepted and honored by others. Therefore, any Peacemaker who is convicted of any serious crime in any jurisdiction will be immediately removed from his or her position. “Serious Crime” includes but is not limited to those enumerated in the Nez Perce Tribal Code, §4-1-35 through §4-1-92, and §4-1-114 through §4-1-158, or a similar crime in another jurisdiction if the Peacemaker is convicted in another jurisdiction of a similar crime/crimes. If a Peacemaker engages in other misconduct which, by consensus of the other Peacemakers, significantly undermines his or her ability to serve as a Peacemaker, the remaining Peacemakers will convene a Peacemaking session which comports with the requirements of due process (notice and opportunity to be heard), providing him or her to address and resolve the

matter, and may recommend by written and signed consensus that he or she can no longer serve as a Peacemaker and requiring his or her removal. This decision by the Peacemakers is final and not subject to appeal.

(d) The Peacemaker Court will be staffed by the Law and Order Executive Assistant, who will function as the Court Administrator for the Peacemakers.

(e) Oath of Office

Each Peacemaker selected will sign an Oath of Office and be sworn in by the Chief Judge of the Nez Perce Tribal Court.

§1-8-5 Peacemaker Handbook

Before Peacemakers may begin to address disputes pursuant to the provisions in this Chapter, the Peacemakers must develop and adopt by consensus a written “Peacemaker Handbook” describing in detail the processes of the Peacemaker Court. The Handbook processes will comply with the herein and all applicable federal and Tribal law. The Peacemaker Court must follow the guidelines established in the Handbook.

§1-8-6 Jurisdiction of Peacemaker Court

The Peacemaker Court, upon order of a judge of the Nez Perce Tribal Court or other specialty court or at the request of the authorized official of a school district “attendance court,” may assume jurisdiction over the following cases upon a judge’s order or “Attendance Court” official’s request to transfer the case to the Peacemaker Court:

(a) Any criminal conviction in which the defendant has pleaded guilty or been found guilty and the Tribal Court Judge finds that participation in Peacemaker Court would be an appropriate condition of probation and help assure that the defendant is held accountable and the

victim is provided with appropriate restitution and opportunity for reconciliation with the defendant. Non-parties may not request or object to the transfer of such a matter to the Peacemaker Court.

(b) Any criminal matter or infraction charged against an adult defendant which does not involve an allegation of serious bodily harm or threat of serious bodily harm, sexual assault or sexual abuse, domestic violence or dating violence, stalking, harassment or intimidation, or theft or damage to property valued at more than three thousand dollars, (\$3,000.00). However, the Tribal prosecutor, Tribal public defender or defendant's private counsel, defendant and the victim(s) must agree to the transfer of the case to Peacemaker Court. If at any time during these Peacemaker proceedings, the victim, prosecutor, public defender or defendant determines that Peacemaker Court is unable to effectively address the matter in such a way as to hold the defendant appropriately accountable, provide for the public safety, and provide restitution and reconciliation to the victim, any of these persons may request in writing to the Nez Perce Tribal Court that the case be transferred back to the Nez Perce Tribal Court and an order transferring the case will be issued by the Nez Perce Tribal Court. Non-parties may not request or object to the transfer of a case to the Peacemaker Court.

(c) Any juvenile criminal matter when the Tribal prosecutor, and victim (if any) agree to the transfer of the case to the Peacemaker Court. The juvenile defendant, his/her attorney, the victim (if any) or a non-party may not object to the transfer of the case to the Peacemaker Court. If at any time during these Peacemaker proceedings, the victim, prosecutor, public defender defendant's private counsel determines that the Peacemaker Court is unable to effectively address the matter in such a way as to hold the defendant appropriately accountable,

provide for the public safety, and provide restitution and reconciliation to the victim, any of these persons may request in writing to the Nez Perce Tribal Court that the case be transferred back to the Nez Perce Tribal Court and an order transferring the case will be issued by the Nez Perce Tribal Court. Non-parties may not request or object to the transfer of a case to the Peacemaker Court.

(d) Any civil matter or dispute, excluding contract disputes, when a Judge of a Nez Perce Tribal Court determines it would be in the best interest of justice, public safety, and reconciliation to make such a transfer, and all parties agree to the transfer. If at any time during these Peacemaker proceedings, any party determines that Peacemaker Court is unable to effectively address the matter in such a way as to reach satisfactory resolution, the party may request in writing to the Nez Perce Tribal Court that the case be transferred back to the Nez Perce Tribal Court and an order transferring the case will be issued by the Nez Perce Tribal Court. Non-parties may not request or object to the transfer of a case to the Peacemaker Court.

(e) Any matter from any Nez Perce Tribal Healing to Wellness Court (HTWC) or other specialty court referred to the Peacemaker Court upon order of the HTWC or specialty court judge. If at any time during these Peacemaker proceedings, the specialty court Judge determines that Peacemaker Court is unable to effectively address the matter in such a way as to hold the defendant appropriately accountable, provide for the public safety, and provide restitution and reconciliation to the victim, the specialty court Judge may order that the case be transferred back to the specialty court. Non-parties may not request or object to the transfer of a case to the Peacemaker Court.

(f) Any matter related to a child's attendance referred to the Peacemakers by an authorized official of an "attendance court" of any school on the Nez Perce Reservation.

(g) Notwithstanding the consent requirements above, a Nez Perce Tribal Court Judge presiding over a civil matter in the Tribal Court may determine that the parties could benefit from participating in a Peacemaker proceeding, and may order that the parties attend at least one (1) Peacemaking session to determine if the matter might be resolved by Peacemaking.

Following this session, the consent provision of (iv) would apply to the transfer of the matter to Peacemaker Court. Non-parties may not request or object to a judge's order pursuant to the subparagraph.

§1-8-7 Limitations and Powers of the Peacemaker Court; Enforcement of Peacemaker Court Orders

(a) The Peacemaker Court does not have the power to compel third parties to appear and participate in its proceedings, nor to compel the attendance of the parties. This includes Parent(s), and legal Guardian(s) in Juvenile matters.

(b) The Peacemaker Court does not have the authority to violate any applicable Tribal or federal law or to jeopardize the health, safety or welfare of any person in the Peacemaking Court or the Nez Perce Reservation community.

(c) The Peacemaker Court may request the advice of the Prosecutor or Public Defender or the Nez Perce Tribal Office of Legal Counsel, but no attorneys are permitted to participate as legal counsel for a participant in Peacemaker Court proceedings without the prior express consent of the Peacemakers.

(d) Peacemakers shall have the power to:

(1) Mediate disputes among person involved in the Peacemaking Process.

- (2) Use Nez Perce Tribal cultural and traditional methods of achieving healing, reconciliation and appropriate accountability so long as the civil rights of defendants are not violated.
- (3) Instructor counsel individuals on traditional Nez Perce teachings and values relevant to the dispute or misconduct of the defendant/parties in Peacemaker Court.
- (4) Use any reasonable means to obtain the peaceful, cooperative and voluntary resolution of the dispute/misconduct subject to the Peacemaker process. No force, violence, or harassment may be used by any Peacemaker in this process.
- (5) When circumstances require it, to submit in a writing to a Tribal Court Judge, or school district “attendance court” authorized official, signed by the Peacemakers involved in the matter, stating that after a reasonable effort by the Peacemakers to resolve the matter, it remains unresolved and likely cannot be resolved by the Peacemaker Court, and requesting that the matter be transferred back to the Tribal Court. The Tribal Court Judge will issue an order transferring the matter back to Tribal Court.
- (6) Request in a writing signed by the Peacemakers involved in the matter that the Tribal Court issue an order or authorized official of an “attendance court” to enforce a Peacemaker decision. The Tribal Court judge/authorized “attendance court” official at his/her discretion may issue the order. A violation of the order would be handled by the Tribal Court

in the same manner as violations of other Tribal Court orders are addressed. A violation of an “attendance court” order or determination would be handled in the same manner as violations of other “attendance court” order or determination pursuant to that entity’s policies and procedures.

§1-8-8 Duties of Peacemakers

Peacemakers shall perform the following duties:

- (a) Schedule Peacemaking proceedings at times and in places that are reasonable convenient to all persons involved in the proceedings, providing reasonable written notice of the time and place of the proceedings to all persons who should attend.
- (b) Follow the guidelines for Peacemaker Court established by the Peacemaker Court Handbook.
- (c) Maintain an atmosphere in all proceedings which honors Nez Perce Tribal traditions and values and promotes healing, respect, accountability, and reconciliation.
- (d) Use reasonable means to obtain the peaceful, cooperative and voluntary resolution of a dispute subject to the jurisdiction of the Peacemaker Court. No force, violence, threats or violation of the lawful rights of any participant will be permitted.
- (e) An individual Peacemaker shall disqualify him/herself from participating in any case in which he/she: feels he/she is unable to be an impartial fact finder in the cases; has a direct interest; or when a case involves a Peacemaker or their immediate family, as “immediate family” is described in the Nez Perce Tribe’s Human Resources Manual 4.3.1, or a Peacemaker’s “traditional family,” as that term is understood by the Peacemakers. In addition, any party

subject to Peacemakers Court may request disqualification of a Peacemaker by showing such Peacemaker has an actual conflict or bias preventing them from being impartial. Upon such request, the other Peacemakers in the Panel selected to hear the matter will make the determination as to whether to disqualify. If a Peacemaker is disqualified in either instance, a replacement Peacemaker will be promptly appointed.

(f) Provide immediate written notification to the Judge transferring the case from Tribal Court or HTWC, as well as all other Peacekeepers, of any disqualification.

(g) Follow the guidelines established in the Peacemaker Handbook.

(h) If, in the course of a Peacemaker Court procedure, any participant discloses that he/she is the victim of neglect, physical or sexual abuse, the Peacemaker Court must report this disclosure to the Tribal Police for appropriate action.

(i) If, in the course of a Peacemaker Court procedure, a participant makes a credible threat to do harm to him/herself or another, the Peacemaker Court must report this threat to the Tribal Police for appropriate action.

(j) If, in the course of a Peacemaker Court procedure, a participant confesses to causing serious physical injury to another person, or causing the death of another person, and this conduct previously has not be charged by a Prosecutor in a court of competent jurisdiction, , the Peacemaker Court must refer this matter to the Tribal Police for appropriate action.

(k) Provide a semi-annual report to the Nez Perce Tribal Court Chief Judge indicating the number of matters heard by the Peacemaker Court in the past six months, describing the types of matters heard, the resolutions reached as a result of the Peacemaker services, and the number of transferred cases which were returned to the Tribal Court without resolution.

§1-8-9 Peacemaker Court Services Requested by the Parties

The Peacemaker Court may be used to provide services for a matter which is not before the Tribal Court as criminal or civil case, at the written request of all parties involved in the matter, and with the consensus acceptance of all Peacemakers who will hear the matter. This provision applies only to minor disputes such as nuisance, animal trespass or annoyance, non-violent disorderly conduct, non-violent breaches of the peace, or alcohol overuse by adults. Agreements resulting from this procedure are not enforceable by Tribal Court. More serious matters may not be heard by the Peacemaker Court unless transferred from Tribal Court pursuant to the provisions herein.

§1-8-10 Enforcement of Peacemaker Court Agreements

The Peacemaker Court may request a Judgment and Order through the Peacemaker “Recommendation for Resolution” form from the Tribal Court, when the parties in the Peacemaker Court have reached an agreement they wish to have confirmed and recorded by an order of the Court. The Tribal Court may issue the Judgment/Order if:

- (a) The Tribal Court has jurisdiction over the parties and subject matter of the agreement;
- (b) The Peacemaker Court provides reasonable evidence that all necessary persons and parties have agreed to be bound by the terms of the Agreement;
- (c) The proposed judgment contains the complete agreement of the parties such that a dispute regarding the agreement is unlikely to arise in the future;
- (d) The proposed judgment/order would otherwise be proper and enforceable by the Tribal Court;

(e) The Judgment/Order may be enforced by the Tribal Court as any other judgment of the Tribal Court may be enforced.

