

TRIBAL JUDICIAL ORDINANCE

**CLARKS POINT VILLAGE COUNCIL
TITLE I. TRIBAL JUDICIAL ORDINANCE
Clarks Point, Alaska
Code/Ordinance No. 2023-1
Adopted: 7/27/2023**

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CHAPTER 1: CLARKS POINT TRIBAL COURT STRUCTURE

01.10. Clarks Point Tribal Court

The Clarks Point Tribal Council is hereby authorized to act as the Clarks Point Tribal Court to hear matters under this code and the traditional law of the village.

01.20. Purpose

The purpose of the Clarks Point Tribal Court is to protect the welfare of the community members by passing elder traditional knowledge and cultural identity. This Tribal Judicial Code outlines the structure and procedures of the Clarks Point Tribal Court.

01.30. Jurisdiction

The Clarks Point Tribal Court shall have the authority to exercise the inherent judicial powers of a federally recognized tribe. These powers include, but are not limited to, matters relating to the governmental processes internal to the Tribe and over matters arising:

- (a) In the Native Village of Clarks Point's Indian country as defined by federal and tribal law and all territory described in the Native Village of Clarks Point Constitution; and/or
- (b) Over all tribal members, enrolled or eligible, regardless of where they live or do business; and/or
- (c) Over all persons and entities who enter into consensual relations with the Tribe or tribal members, or whose activities affect the political integrity, economic security, or the health or welfare of the Tribe or tribal members; and/or
- (d) Over any matters so delegated by the federal government.

01.40. Applicable Law

- (a) Whenever the Clarks Point Tribal Court hears a dispute under this code, the Tribal Court shall:
 - i. First apply the unwritten traditional and customary law of the Native Village of Clarks Point.
 - ii. If no traditional and customary law exists to cover the matter, the Tribal Court will apply its written laws, including codes, ordinances, and resolutions of the village.
 - iii. If no tribal unwritten or written law of the Native Village of Clarks Point exists to cover the matter, the Tribal Court may consider tribal law from other tribes, federal law, and/or state law.
- (b) The Tribal Court may request the advice of the elders to determine village customs and traditions.

01.50. Composition of the Tribal Court

The Tribal Court shall be composed of three selected members of the Tribal Council. When the Tribal Council is sitting as the Court, one individual will be designated as chief

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judge to handle all administrative aspects of a hearing. In the event of an appeal, the remaining two members of the Tribal Council will hear and decide on the case on appeal.

01.60. Court Clerk or Designee

The Council may, funding permitted, appoint a Tribal Court Clerk or designee. In the absence of a Court Clerk or designee, these duties will be handled by a tribal administrator. Training of the Court Clerk or designee shall be provided by the Tribe, funding permitted. Personnel issues relating to the Court Clerk or designee shall be handled by the Tribal Administrator. For all other issues relating to Court business, the Court Clerk or designee shall be supervised by the Tribal Court Judges.

Duties of the Court Clerk or designee may include:

- (a) Receiving petitions, citations, and referrals filed with the Tribal Court.
- (b) Answering phone calls and receiving mail for the Tribal Court.
- (c) Maintaining files for the Tribal Court and a Court calendar
- (d) Contacting the Tribal Judges when Complaints, Petitions, and referrals are received.
- (e) Notifying parties and Judges of hearings.
- (f) Recording hearings.
- (g) Setting up teleconference calls.
- (h) Drafting tribal court orders for Judges based on their decisions, for their review and signature.
- (i) Maintaining records of Tribal Court finances

01.70. Ethical Standards of Conduct for Judges and Tribal Court Staff

(a) Alcohol and Drugs

Tribal Court staff and Judges shall not attend any meetings, court sessions, workshops, or trainings, or otherwise carry out any official duties while under the influence of alcohol and drugs.

(b) Conflict of Interest

Tribal Judges shall remove themselves from hearing a case involving first degree relatives including parents, children, spouses or romantic partners, siblings, grandparents, grandchildren, and anyone living in their same home, except that in emergency situations where temporary decisions are made, Judges may be so related. Judges shall remove themselves from any cases in which they have any significant, direct, personal financial or other interest. Judges shall remove themselves from hearing a case in which they cannot be fair for any reason. If a Judge refuses to step off a case where they have a conflict of interest, the remaining tribal court judges may hold that Judge in contempt of court and temporarily or permanently remove him or her from her position as Judge.

(c) Confidentiality

Tribal Court Staff and Judges shall preserve the confidentiality of tribal court cases. The Clarks Point Tribal Court Judges, Clerk or designee, Tribal Council, and all others called upon by the Court or Council shall take the following oath of confidentiality:

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“I _____ do solemnly swear and affirm that I will not discuss any confidential matters outside the Tribal Court unless I am otherwise permitted by the Tribal Court.”

(d) Nepotism and Favoritism

Tribal Court Judges shall not hear cases that fall under the Conflict-of-Interest provisions of this code and shall not otherwise exert influence over other tribal court judges, witnesses, clerk or designees or Parties to a case to their or their family's benefit. Tribal Court Judges shall not allow family or other relationships to influence their conduct or judgment.

01.80. Inter-Tribal Courts

The Clarks Point Tribal Court may join with other tribal courts to form inter-tribal courts. In cases where two tribal courts are combined, the tribes shall agree upon an appellate mechanism, should the parties wish to appeal a decision made by the joint court prior to hearing a case jointly. The Clarks Point Tribal Court may also participate in a permanent inter-tribal court, provided that the Clarks Point Tribal Council determines it is in the best interest of the Clarks Point Tribe to do so, and that the relationship between the Clarks Point Tribal Court System and such intertribal court are clearly described in written documentation.

01.90. Specialty Courts

The Tribal Council may establish specialty tribal courts such as a tribal youth court, a circle sentencing court, an elders court, or any other traditional court the Tribal Council determines to be culturally relevant.

01.110. Temporary Judges

The Tribal Council may appoint temporary judges to serve on the Clarks Point Tribal Court if Tribal Council members are unable to hear a case for any reason. Temporary judges must be a year-round resident, a tribal member of any tribe within the Bristol Bay region and have good moral character in order to qualify as a temporary judge.

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CHAPTER 2: CLARKS POINT TRIBAL COURT PROCEDURES

02.10. Purpose

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

02.20. 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 or designee” means the person who is designated the Clerk or designee of the Tribal Court.

“Complaint” means the written complaint concerning a violation of Tribal Codes/Ordinances, filed with the Court Clerk or designee 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 CLARKS Point Tribal Court.

“Petition” means the written petition filed with the Court Clerk or designee 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.

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02.30. Beginning a Tribal Court Case.

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

- (a) **Complaints:** A Complaint for Violation of Tribal Ordinances is filed with the Tribal Court Clerk or designee. 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.
- (b) **Petitions to Use the Tribal Court:** A Petition to use the Clarks Point Tribal Court is filed with the Tribal Court Clerk or designee. 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.
- (c) **Referrals or transfer of jurisdiction from another court.**

Upon the receipt of the Complaint, Petition, or Referral, the Clerk or designee 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.

- (d) **Decision to take a case:** If the decision is made to take the case, the entire council will select which judges shall hear the case. The Clerk or designee shall schedule the hearing and give proper notification to parties.
- (e) **Decision not to take a case:** If the decision is made to not take the case by the Judges, the Clerk or designee shall write a letter of denial to the Petitioner, or referring entity, as soon as possible after the decision is made by the Judges.

02.40. Notice of Hearings

- (a) **Notice for Regular Hearings:** Parties shall be given reasonable notice for all regular Clarks Point Tribal Court Hearings. The Clerk or designee, 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. 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.
- (b) **Notice for Emergency Hearings:** Notice for emergency hearings shall be done as best as possible under specific circumstances.

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- (c) **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.
- (d) **Parties Responsibility:** Each party involved in a case shall be responsible for ensuring notice was served on any opposing party.

02.50. 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 if 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.

02.60. Truthfulness at Hearings

All persons testifying in the Clarks Point Tribal Court shall commit to telling the truth. If the Court has reasonable proof that a person lies during a court hearing, the court may hold the person in contempt of court under section 17 of this ordinance.

02.70. 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 Clarks Point 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.

02.80. Recesses

The Clarks Point Tribal Court may recess and reconvene during hearings.

02.90. Records of Hearings

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

- (a) A certified recording of each proceeding; and
- (b) A certified copy of all notices, orders and written documents entered in connection with the case.

02.110. 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 agree. Other than those instances, only the court judges and clerk or designee shall have access to the court records without further order of court. In case of an appeal to the Clarks Point Appellate Court, the appellate Tribal Judges shall have access to all records involving the cases.

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02.120. Testimony, Evidence, and Affidavits

- (a) **Testimony-** The Clarks Point Tribal Court may summon witnesses to testify at the hearings by issuing a Summons to testify. Witnesses may testify in person or by telephone.
- (b) **Evidence-** The Clarks Point 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.
- (c) **Affidavits-** The Clarks Point Tribal Court may accept sworn affidavits as evidence in cases if the witness is not available to testify.

02.130. Written Orders, Timeframe for complying, Default Orders

- (a) **Written Orders-** All orders made by the Tribal Court shall be written on Clarks Point Tribal Court Order forms unless otherwise specified by ordinance. All written orders shall be filed in the case records. The clerk or designee 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.
- (b) **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.
- (c) **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.

02.140. 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 change 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.

02.150. Search Warrants

(a) Application for Search Warrant:

In order to search people, houses, vehicles, or other property, the Tribal Police Officer (TPO), Village Public Safety Officer (VPSO), or other designated security officer 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.

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(b) Issuing a Search Warrant:

Search Warrants may be issued by any of the Clarks Point 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.

02.160. Sentencing and Orders

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

- (a) 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 dividend checks, or confiscate property in the case of unpaid fines.
- (b) 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 \$15.00 per hour towards fines ordered by the CLARKS Point Tribal Court. Persons have the option of work sentences instead of paying a fine only if the Court specifically permits it.
- (c) Community Exclusion:** An Order of temporary or permanent banishment shall be done in accordance with the Civil Law and Order code.
- (d) 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 into treatment in ordering such treatment.
- (e) Restitution:** The Tribal Court has the authority to order the defendant to pay restitution to his or her victims.
- (f) Confiscating Personal Property:** The Tribal Court may seize a person's personal property if that person is found in Contempt of Court by the CLARKS Point 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 Clarks Point Tribal Court. If the person does not comply with the Court Order

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within a reasonable length of time, the Clarks Point Tribal Court may sell the confiscated property after providing notice and a hearing regarding the proposed sale to the person.

- (g) **Counseling by Judges:** In a helpful spirit, the Judges of the Clarks Point Tribal Court may counsel persons brought before it.
- (h) **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.

02.170. 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 CLARKS Point 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 Appellate Court in accordance to Chapter 1 of this code.

02.180. Juveniles

- (a) **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.
- (b) **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.

02.190. Tribal Court Finances

Accounting System and Bank Account: The Tribal Court Clerk or designee shall establish an accounting system and a separate bank account from all other tribal branches for all funds pertaining to the Clarks Point Tribal Court.

- (a) **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 Clarks Point Tribal Court and a receipt will be given.
- (b) **Court Costs:** The Clarks Point Tribal Court may charge fees to use the Court. Such fees shall be equal for equal types of cases and shall be made known to petitioners before disputes and other matters are heard.
- (c) **Fines:** Fines collected from the Court shall be disbursed on an annual basis to the local school to support their work.

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CHAPTER 3: APPEALING A CASE

03.10. Purpose

The purpose of the Clarks Point Court of Appeals is to review cases that are appealed for possible inconsistent application of tribal law, a failure of due process, or a violation of fundamental fairness. The Court of Appeals has the discretion whether to take a case on appeal. The Court of Appeals shall take a case after reviewing records on the case from the Tribal Court, reviewing the Appeal, and making a preliminary determination that there is sufficient evidence that there may have been an inconsistent application of tribal law, a failure of due process, or a violation of fundamental fairness.

03.20. Structure of the Court of Appeals

Once an Appeal is filed with the Tribal Court Clerk, the Clarks Point Tribal Council shall appoint a panel of the two remaining Tribal Court Judges who did not sit on the case being appealed or otherwise have a conflict of interest. The Judges shall take the Oath of Confidentiality and follow the ethical standards found in Chapter 1, Section 8 of this code. The Tribal Council shall appoint temporary judges pursuant to Sec. 01.110 of this ordinance in the event no other Tribal Council members are qualified to hear the case on appeal.

03.30. Clerk of the CLARKS Point Court of Appeals

The Clerk of the Court of Appeals shall be the same person as the Clarks Point Tribal Court Clerk, unless there is a conflict of interest, and another person is specifically designated to be the Clerk by the Clarks Point Tribal Council.

03.40. Petition for Appeal

A person wishing to appeal a case may file a Petition for Appeal with the Clerk within 30 days of receiving an order from the Tribal Court. The Petition must state the appellant's name and address, the name of the case, the case number, and a statement of why the case should be heard by the Court of Appeals. A copy of the Tribal Court order being appealed must be attached.

03.50. Procedures and Decisions of the CLARKS Point Court of Appeals

- (a) Beginning a Case:** The Clerk will notify the Tribal Council when an appeal is filed. The Judges will meet to review the case record and Petition for Appeal to determine if there is sufficient evidence that tribal law may have been inconsistently applied, that there was a failure of due process or a violation of fundamental fairness. If the Court of Appeals decides that there is insufficient evidence, the decision of the Tribal Court stands, no hearing will be set, and the Court of Appeals will issue an order to the appellant stating that.
- (b) Setting a Hearing Date:** Once the Court of Appeals decides to hear a case, the Clerk will set a hearing date and give all parties to the case notice. The notice will be personally delivered at least 10 days or mail certified mail at least 14 days prior

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to the hearing, and proof of service will be filed or noted in the case files. At the hearing, all parties may discuss the issues in the Petition for Appeal. The parties may only present new evidence if the Court of Appeals permits.

(c) Decisions of the Court of Appeals: After hearing a case, the Appellate Judges will decide the appeal by consensus or if consensus is not possible, by majority vote. The Presiding Judge will prepare a written Decision of Appeal. The Clerk will deliver or mail by certified mail a copy of the decision to all parties.

(d) Options for Decisions of the Court of Appeals: After the hearing or hearings, the Court of Appeals will take one of the following actions: 1) uphold the decision of the Tribal Court; 2) order the Tribal Court to re-hear the case consistent with any specific instructions written in the Decision of Appeal; or 3) dismiss the appeal.

CERTIFICATE OF ADOPTION

This Judicial Code replaces any previously adopted judicial codes or ordinances adopted by the Native Village of Clarks Point. The Clarks Point Judicial Code was submitted to a vote of the Clarks Point Tribal Council on July 27, 2023 , and was duly adopted by a vote of 4 for and 0 against, during a regularly scheduled meeting of the Clarks Point Tribal Council for which notice was posted and tribal members had an opportunity to attend and voice their opinions and concerns about this Code.

PRESIDENT

Betty Gardner

VICE-PRESIDENT

Andy George

SECRETARY

John Brown

MEMBER

Joseph Wain

MEMBER

Andy Wain