



Mesa Grande Band of Mission Indians Judicial Ordinance

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CHAPTER 1. DEFINITIONS

For the purposes of this Ordinance, the following capitalized terms have the definitions attached to them in this Ordinance, unless a definition is otherwise apparent from the context of this Ordinance:

“Articles of Association” means the Mesa Grande Band of Mission Indians Articles of Association, as adopted by the Band on April 12, 1970, as amended from time to time.

“Band” means the Mesa Grande Band of Mission Indians.

“Chairman” means the Chairman of the Tribal Council, as referred to in Article III of the Articles of Association.

“Chief Judge” means a Judge appointed to the Tribal Court as provided in this Ordinance who assists with oversight of the Tribal Court and administration and assignment of cases.

“Court Clerk” means the clerk of the Tribal Court established under this Ordinance pursuant to Section 3.02.

“Immediate Family Member” means a father, mother, son, daughter, sister, brother, uncle, aunt, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, step-brother, step-sister, half-brother, half-sister, grandmother or grandfather.

“Judge” means judges appointed to the Tribal Court as provided in this Ordinance, including the Chief Judge.

“Judicial Committee” means a committee established by the Tribal Council to recommend amendments to this Ordinance or the Tribal Court Rules.

“Party” means any person or entity who is a participant in an action, including one made a party by the action.

“General Council” means the governing body of the Band as referred to in Article III of the Articles of Association.

“Tribal Court Rules” or **“Rules”** is defined in Section 2.09.

“Tribal Law” means the Articles of Association, and laws, acts, regulations, ordinances, rules, resolutions, policies, judgments, rules of law, orders, decrees, permits, agreements, licenses, approvals, requirements, and customs and traditions of the Band.

“Tribal Court” or **“Court”** means the Mesa Grande Tribal Court established under this Ordinance.

“Tribal Council” means the body elected from the General Council as referred to in Article III of the Articles of Association. The Tribal Council may delegate its authority recognized herein to a committee or other entity of the Band in the best interests of the Band.

“Tribal Member” means a duly enrolled member of the Band pursuant to the Articles of Association.

“Tribal Territory” means lands within the boundaries of the reservation set aside for the Band, including, without limitation, lands commonly referred to as Tracts 1 and 2, and over any lands which may hereafter be added thereto.

CHAPTER 2. GENERAL PROVISIONS

Section 2.01 Title

This Ordinance is entitled the Mesa Grande Band of Mission Indians Judicial Ordinance. Specific provisions may be cited to by chapter or section number as appropriate (e.g., Judicial Ordinance, Chapter 1, Section 2; Judicial Ordinance § 1.02).

Section 2.02 Establishment of Tribal Court

Pursuant to the inherent sovereign authority of the Band and Article VII of the Mesa Grande Articles of Association, the General Council hereby establishes a judicial department to be known as the Mesa Grande Tribal Court.

Section 2.03 Purpose

This Ordinance is enacted to authorize the Tribal Court to exercise the Band’s inherent power to preserve and protect Tribal and individual resources, Tribal culture, custom, and traditions, and the health and safety of Tribal Members, their families, and other individuals by hearing civil actions as provided in this Ordinance.

In resolving matters before the Tribal Court, the objective of the Court shall be to determine the truth, and to seek a resolution that restores balance to the community in accordance with the customs and traditions of the Band, repairs relationships, and results in fairness.

Section 2.04 Effective Date and Enforceability

This Ordinance becomes effective and enforceable immediately following its approval by the General Council.

Section 2.05 Jurisdiction

The Tribal Court may exercise the Band’s territorial, personal, and subject matter jurisdiction to the fullest extent possible on any basis consistent with this Ordinance, other Tribal Law, and federal law. The jurisdiction of the Court includes:

- (A) Territory. The Court shall have jurisdiction over Tribal Territory. The Court shall also exercise such territorial or extraterritorial jurisdiction as may be authorized under federal law.

(B) Persons. The Court's personal jurisdiction shall extend to the furthest extent permitted under Tribal Law or federal law and attaches to the following:

- (1) All persons or entities present or domiciled within the Tribal Territory when served;
- (2) All persons or entities with an interest in property situated within the Tribal Territory that is the subject of the suit;
- (3) All persons or entities that consent to the jurisdiction of the Band or Court; and
- (4) All persons or entities that engage in substantial activities within the Tribal Territory;
- (5) All persons or entities that transact business with the Band, a Tribal Member, or any other person or entity located within the Tribal Territory;
- (6) All persons or entities who agree to or who do provide goods or services to the Band, a Tribal Member, or any other person or entity located within the Tribal Territory;
- (7) All persons or entities who commit, or cause to commit, an act or omission within the Tribal Territory that injures a Party;
- (8) All persons or entities who enter into, or interfere with the Band or the Tribal Members' use of, Tribal Territory; and
- (9) All persons or entities who have engaged, or may engage, in any conduct that may affect the ability of the Band to govern itself or may threaten the health, safety, or welfare of the Band or the Tribal Members residing in the Tribal Territory.

If personal jurisdiction does not arise from the provisions above, the Court has personal jurisdiction over any person or entity if exercise of personal jurisdiction would be permissible under federal law or Tribal Law.

(C) Subject Matter.

The Court shall have subject matter jurisdiction over all civil actions that are: (1) allowed under federal law or Tribal Law; and (2) specifically authorized to be heard by the Tribal Court by General Council resolution.

Section 2.06 Non-Waiver of Sovereign Immunity; General Principles

- (1) Sovereign immunity is an inherent attribute of the Band.
- (2) Sovereign immunity generally protects the Band and entities that are arms of the Band, including, but not limited to, the Band's departments, agencies, subdivisions, programs, boards, commissions, councils, committees, authorities, gaming enterprises, and other entities ("Tribal Entities").

- (3) Sovereign immunity generally protects Tribal employees and elected and appointed Tribal officers and officials (including, without limitation, Tribal Council members) (“Tribal Individuals”) who are acting within the course and scope of their office or employment and within their authority, regardless of the capacity in which they are sued.
- (4) Sovereign immunity protects the Band, Tribal Entities, and Tribal Individuals from unconsented suit in or before any court, tribunal, panel, committee or other judicial or administrative forum, including, but not limited to, the Tribal Court.
- (5) No elected or appointed Tribal officer or official (including, without limitation, Tribal Council members) may be subpoenaed or otherwise compelled to appear or testify any court or judicial, administrative, or other forum, including, but not limited to, the Tribal Court, for any matter concerning the officer’s or official’s actions taken according to their official duties, unless expressly authorized in writing to do so by the Tribal Council.
- (6) Any waiver of sovereign immunity of the Band, any Tribal Entity, or any Tribal Individual must be clear, express, and unequivocal and must comply with Tribal Law. Nothing in this Ordinance shall be construed to be a waiver of the sovereign immunity of the Band or of any Tribal Entity or Tribal Individual.
- (7) Any waivers of sovereign immunity of the Band, Tribal Entities, or Tribal Individuals shall be construed strictly and narrowly and in favor of non-waiver.

Section 2.07 Judicial Power of the Court

- (A) The Tribal Court may hear any matter arising under any Tribal Law, ordinance, resolution, policy, rule, or similar legislative or quasi-legislative enactment consistent with this Ordinance.
- (B) The Tribal Court is granted all other powers necessary to exercise jurisdiction consistent with this Ordinance.

Section 2.08 Applicable Law and Interpretation of Law

In every civil case, the Tribal Court shall apply Tribal Law. Tribal Law shall be liberally construed to promote the interests of justice and to protect the interests of the Band, Tribal Members, and the family members of Tribal Members. In the absence of valid or applicable Tribal Law, and if necessary for the proper adjudication of an action before the Tribal Court, the Tribal Court may apply the following, in order of preference, so long as there is no conflict with valid or applicable Tribal Law: the statutory and common laws of the United States or the statutory and common laws of other states.

Section 2.09 Tribal Court Rules

The General Council may adopt rules for the Tribal Court (“Tribal Court Rules”). The Chief Judge or Judicial Committee, in coordination with each other, may recommend amendments to the Tribal Court Rules for adoption by the General Council.

CHAPTER 3. ORGANIZATION OF TRIBAL COURT

Section 3.01 Composition of the Tribal Court

The Tribal Court shall consist of Judges, including at least a Chief Judge, appointed on a contractual, as-needed basis, by the Tribal Council pursuant to Section 4.01.

Section 3.02 Court Clerk

- (A) The Tribal Council may appoint on a contractual, as-needed basis, a Court Clerk to manage the day-to-day operations of the Court and any actions as they arise.
- (B) The Court Clerk shall have the following authority and responsibilities, as appropriate:
 - (1) Maintain a calendar of hearing dates and deadlines and assist with scheduling of Court proceedings;
 - (2) Prepare documents and distribute materials related to Court hearings;
 - (3) Notify the Judge and parties, as necessary, of actions taken, hearings scheduled, and other developments requiring their attention;
 - (4) Prepare and maintain records of all matters brought before the Court, including the taking of or providing for records of hearings;
 - (5) Receive and record money for fines and costs charged to parties in matters before the Court;
 - (6) Keep records of property seized, held for use as evidence, disposed of, and returned in the course of Court proceedings; and
 - (7) Perform other duties as assigned by the Chief Judge.

Section 3.03 Court Records

Court records are subject to the following rules:

- (A) Court records shall be kept in a secure location as determined by the Tribal Council and may only be removed for the purpose of hearings.
- (B) All testimony and arguments given in open Court will be electronically recorded by the Court Clerk and will be a part of the record for the case and be kept with the other records of the case. A transcript of the recording(s) will be made under the direction of the Court

Clerk upon the request of a Judge or of a Party. Unless excused by the Court, a Party requesting a transcript will bear the expense of its preparation.

- (C) All court records are confidential, except as otherwise provided in this Ordinance, or as directed by the Chief Judge.

CHAPTER 4. JUDGES

Section 4.01 Appointment of Judges

The Tribal Council shall select and appoint Judges on a contractual, as-needed basis, as cases arise. Before appointment, all judicial candidates shall be screened by the Tribal Council based solely on the qualifications appearing in Section 4.02(A) below.

Section 4.02 Qualifications of Judges

- (A) All individuals recommended for appointment and confirmation as a Judge must:
- (1) Have a law degree (juris doctorate);
 - (2) Have a minimum of seven years' experience practicing law (which may include service on a tribal, federal, or state court bench);
 - (3) Be knowledgeable of Indian and federal;
 - (4) Be knowledgeable of Tribal Law;
 - (5) Be a person of honor, integrity, and good moral character. This may be supported by letters or statements of recommendation to the Tribal Council, or by other reliable means;
 - (6) Agree to be subject of a background investigation conducted by the Band; and
 - (7) Not have been convicted of an act involving moral turpitude, dishonesty, corruption, or a violent felony.
- (B) Following appointment, a Judge also must:
- (1) Not serve in any capacity or hold any office which may affect the individual's actual or perceived judicial impartiality;
 - (2) Not concurrently serve as a member of the Tribal Council or any administrative board or panel empowered by the Band to issue decisions on the basis of Tribal Law; and
 - (3) Adhere to judicial ethics as established by the Band or as commonly recognized in federal and state courts.

Section 4.03 Judicial Terms of Office

- (A) Judges may be appointed on a contractual, as-needed basis, as actions arise. The term of office for a Judge may be up to five (5) years.
- (B) The contract for a sitting Judge may be extended as needed.
- (C) If a Judge leaves office or is removed for reasonable cause pursuant to Section 4.07 prior to the end of their term, a new Judge may be appointed for a new term in accordance with the procedure and qualifications provided in this Ordinance.

Section 4.04 Oath of Office

Prior to taking office, and in the presence of the Chairman in person or by video, all Judges must take the following oath of office:

I, _____, do solemnly promise that I will respect and uphold the laws of the Mesa Grand Band of Mission Indians; that I will discharge the duties of the office of a Mesa Grande Tribal Court Judge faithfully, honestly, and impartially to the best of my ability; and, that I will maintain a professional and respectful manner and demeanor at all times.

Section 4.05 Judicial Compensation

Compensation for judicial employees, including the Court Clerk and Judge(s), will be established by the Tribal Council or their designee.

Section 4.06 Judicial Code of Conduct

- (A) Judges must recuse themselves from taking part in any matter:
 - (1) Involving the Judge's Immediate Family Members;
 - (2) Where the Judge has a direct financial interest in the matter;
 - (3) Where there is any other reason the Judge cannot be impartial;
 - (4) Where the Judge is prejudiced against a Party or attorney, or the interest of a Party or attorney, appearing in the action or proceeding; or
 - (5) Where the Judge finds that a reasonable person would believe that the Judge could not be impartial or could be prejudiced.
- (B) Judges must make good faith efforts to review Court calendars prior to scheduled hearing dates for the purpose of considering whether they should recuse themselves from any matters.
- (C) A Party to, or an attorney appearing in, an action or proceeding may move to show that a Judge is prejudiced by an oral or written motion supported by affidavit or declaration under

penalty of perjury, or an oral statement under oath, that the Judge before whom the action is pending, or to whom it is assigned, is prejudiced against a Party or attorney, or the interest of the Party or attorney, so that the Party or attorney cannot have a fair and impartial trial or hearing before the Judge.

- (D) Judges should maintain the dignity of the office at all times and avoid both impropriety and the appearance of impropriety in their professional and personal lives.

Section 4.07 Removal or Discipline of Judges

- (A) A unanimous vote of the Tribal Council is required to remove a Judge.
- (B) A Judge shall only be removed if there is reasonable cause. Reasonable cause means:
 - (1) Conviction of an act involving moral turpitude, dishonesty, corruption, or a violent felony;
 - (2) Use of official position for personal or Immediate Family Member gain;
 - (3) Discrimination or harassment (including sexual harassment);
 - (4) Violation of any ethics code to which the Judge is subject; or
 - (5) As otherwise provided by any written contract or agreement between the Judge and the Band for services.

CHAPTER 5. LEGAL REPRESENTATION

Section 5.01 Self-Representation and Attorney Representation

Any natural person appearing in any proceedings before the Court must be either: (A) self-represented; or (B) represented by an attorney who is licensed to appear before the Court. Any entity that is not a natural person and that is appearing in any proceedings before the Court must be represented by an attorney who is licensed to appear before the Court. Any person eighteen (18) years of age or older who has not been adjudged incompetent who wishes to commence an action in Tribal Court, or, who has been named as a party to a proceeding, may represent himself or herself before the Tribal Court. The Court Clerk, other Court staff, or a Judge may not act as a representative for any Party. All costs of representation by a private attorney shall be paid by the party who chooses to be represented by the attorney. A notice of appearance or representation shall be filed before the attorney may be given access to the case file.

Section 5.02 Licensing of Attorneys

A license to practice before the Tribal Court will be issued upon compliance with all of the following:

- (A) Filing with the Court Clerk an affidavit that states the following:
 - (1) That the applicant is a member in good standing of any federal or state bar; and

- (2) That the applicant has studied and is familiar with this Ordinance, Tribal Law, and the Tribal Court Rules.
- (B) Paying an application for admission fee of Two Hundred Dollars (\$200). To maintain licensure with the Court, a membership fee of Two Hundred Dollars (\$200) shall be due on each anniversary of admission. Attorney(s) hired by the Band to provide legal services in actions before the Court involving the Band's interests shall not pay an application fee or annual membership fee.
- (C) Taking the following oath for admission either before the Court Clerk in person or through submission of an affidavit to the Court Clerk:
- I, _____, do solemnly promise that I will uphold the laws of the Mesa Grande Band of Mission Indians, and I will maintain the respect due to the Mesa Grande Tribal Court and its judicial officers. I will employ in the conduct of my duties the highest degree of ethics and moral standards with which my profession is charged, and I will be guided at all times by the quest for truth and justice.

Section 5.03 Revocation of License

Any license issued pursuant to the above may be revoked or suspended only by the Tribal Court. Such action may be taken on the Court's own motion or upon a sworn complaint by any Party to an action. Revocation or suspension will be ordered only after written notice to the licensee with sufficient opportunity to respond and be heard and after a hearing before the Tribal Court. Following a hearing, the Tribal Court may revoke or suspend the license upon a finding that the licensee has been disbarred or suspended from the practice of law by any court of the United States, any state or tribal court, or has knowingly filed a false affidavit with the Court Clerk to obtain their license, or has engaged in gross misconduct in the performance of their duties as an attorney.

CHAPTER 6. MISCELLANEOUS

Section 6.01 Amendments

Amendments to this Ordinance become effective and enforceable immediately following their approval by the General Council at a duly called General Council meeting, unless some other date is specified by the General Council for a particular amendment.

Section 6.02 Severability

If any part or provision hereof is held void by the Tribal Court, federal court, or federal agency, the decisions of such court or agency so holding shall not affect or impair any remaining provision of this Ordinance.

Section 6.03 Repeal

Any Tribal Law that conflicts with this Ordinance is hereby repealed to the extent that it is contrary to or inconsistent with this Ordinance.