

**SOUTHERN UTE INDIAN TRIBAL CODE**

**TITLE 1**

**GENERAL PROVISIONS CODE**

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**TITLE 1**  
**SOUTHERN UTE INDIAN TRIBAL CODE**  
**GENERAL PROVISIONS**

**Article 1. TRIBAL CODE AND JURISDICTION**

- 1-1-101. Constitutional Authority.** This Code is adopted pursuant to Article VII(e) of the Southern Ute Indian Constitution.
- 1-1-102. Name of Code.** The provisions hereinafter shall be known as the Tribal Code of the Southern Ute Indian Tribe of Ignacio, Colorado, and may be referred to as Code or Tribal Code or the Law and Order Code. Sub codes and rules included herein may be cited by the name given in the short title section.
- 1-1-103. Prior Inconsistent Ordinances Repealed.** Any and all ordinances of the Southern Ute Indian Tribe which conflict in any way with the provisions of the Southern Ute Indian Tribal Code, are hereby repealed.
- 1-1-104. Amendment.** The Southern Ute Indian Tribal Code may be amended, additions made hereto or deletions made herefrom in the manner provided for the adoption of Tribal ordinances. Amendments and additions to this Code shall become a part thereof for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering and organization hereof.
- 1-1-105. Code of Federal Regulations as Provided in Title 25, §11.1 of the Code of Federal Regulations.** The regulations of Part II, §11.1, Title 25 of the Code of Federal Regulations no longer apply to the Southern Ute Indian Tribe or its governmental processes.
- 1-1-106. Jurisdiction - Tribal Policy.** It is the policy of the Southern Ute Indian Tribe that:
- (1) Persons residing, doing business, or otherwise present or in contact within the exterior boundaries of the Southern Ute Indian Reservation be afforded redress in the Southern Ute Indian Tribal Court and that such redress be extended to Southern Ute Indian Tribal members and nonmembers alike and further that enforcement of civil ordinances be extended to Southern Ute Indian Tribal members and nonmembers in order to promote the peace, welfare, health and safety of the Southern Ute Indian Tribe;
  - (2) There be civil redress against all persons who through their residence, presence, business dealings, or other actions or failures to act (or other significant minimum contacts) incur civil obligations to persons or entities entitled to tribal protection;
  - (3) That criminal jurisdiction be extended to all Indian persons; and

- (4) That jurisdictional provisions insure maximum protection for the Tribe and its members.

**1-1-107. Territorial Jurisdiction.** The Southern Ute Indian Tribe has jurisdiction over all territory within the exterior boundaries of the reservation as established in the Brunot Agreement which was ratified by the United States Congress on April 29, 1874, and as added thereto by Presidential Proclamation and Executive Order. A map outlining said boundaries is attached hereto as Appendix "A" and incorporated herein.\*

**1-1-108. Personal Jurisdiction.**

- (1) As used in this code, the word person shall include any individual, firm, company, association, or corporation.
- (2) Subject to any contrary provisions, exceptions, or limitations contained in federal law, the Tribal Constitution, or especially stated elsewhere in this code, the courts of the Southern Ute Indian Tribe shall have civil jurisdiction over the following persons:
  - (a) Any person residing, located, or present within the reservation;
  - (b) Any person who transacts, conducts, or performs any business or activity within the reservation either in person or by agent or representative;
  - (c) Any person who owns, uses, or possesses property within the reservation;
  - (d) Any person who commits any tortious act or engages in any tortious conduct within the reservation either in person or by agent or representative for any civil cause of action arising from such act or conduct.

**1-1-109. Criminal Jurisdiction.** The Southern Ute Indian Tribe shall have criminal jurisdiction over any Indian who commits a criminal offense prohibited by this code or other ordinance of the Tribe by his own conduct or the conduct of another for which he is legally accountable, if:

- (1) The conduct occurs either wholly or in part within the exterior boundaries of the Southern Ute Indian Reservation; or
- (2) The conduct occurs outside the reservation and constitutes an attempt, solicitation, or conspiracy to commit an offense within the reservation and an act in furtherance of the attempt or conspiracy occurs within the reservation.

**1-1-110. Original Jurisdiction.** The Southern Ute Indian Tribe shall have original jurisdiction over:

- (1) All crimes defined in this code and committed within the territorial jurisdiction of the Southern Ute Indian Tribal Court.

- (2) All civil actions arising under this code or at common law in which the defendant is found within the Southern Ute Indian Reservation and is served with process within or who is subject to jurisdiction under §1-1-108(2)(a)(b)(d) and §1-1-109(2).
- (3) The Southern Ute Indian Tribal Court shall have civil jurisdiction over all persons who enter the exterior boundaries of the Southern Ute Indian Reservation for whatever purpose, and criminal jurisdiction over all Indians who enter the exterior boundaries of the Southern Ute Indian Reservation for whatever purpose, said act of entry being construed as consent to such jurisdiction.
- (4) The jurisdiction of the Southern Ute Indian Tribal Court shall be concurrent and not exclusive with respect to an offense over which federal court may also have jurisdiction.
- (5) The Southern Ute Indian Tribal Court shall have power to issue any order or writ necessary and proper to the complete exercise of its jurisdiction.

**1-1-111. Exclusive Original Jurisdiction.**

- (1) Except as otherwise required by federal law, the courts of the Southern Ute Indian Tribe shall have exclusive original jurisdiction over all matters which involve the Southern Ute Indian Tribe or its officers, agents, or employees, or parties in their official capacities or as a result of performing their duties for the Tribe.
- (2) Nothing contained in this Tribal Code shall be construed as a waiver of the sovereign immunity of the Southern Ute Indian Tribe or its enterprises or of its officers, agents, or employees, unless specifically denominated as such.

**1-1-112. Copy of Law and Order Code.** There should be available for public inspection during regular business hours with the clerk of the Tribal Court current copies of this Code, copies of all laws or rules which are incorporated by reference from other jurisdictions, this Law and Order Code, and a copy of the Codes of Professional Responsibility and Judicial Conduct of the American Bar Association.

**1-1-113. Records of Court Open to Public Inspection - Exceptions.** The files and records of the Southern Ute Indian Tribal Court shall be open for public inspection, except for the files and records of adoption, incompetency, juvenile court, and as otherwise delineated in this Code.

**1-1-114. Adoption by Reference- Not a Waiver of Sovereignty.** The adoption of any code or law or other document by reference into this Code shall in no way constitute a waiver of any power of the Southern Ute Indian Tribe to the jurisdiction whose law or code is adopted nor will it in any way diminish such sovereign power but shall result in the law or code thus adopted becoming a law of the Southern Ute Indian Tribe.

**1-1-115. Sovereign and Official Immunity.** Except as required by federal law, the Constitution of the Southern Ute Indian Tribe, or as specifically waived by resolution

or ordinance of the Tribal Council, including a resolution or ordinance approving by reference a bylaw, contract, or other instrument containing a term or provision expressly waiving the same:

- (1) The Southern Ute Indian Tribe and the Tribal Council shall be immune from suit; and
- (2) Members of the Tribal Council, and officials of the Tribe, acting within the scope of their authority, shall be immune from civil actions and from liability arising from the performance of their official duties.
- (3) Employees of the Tribe, acting within the scope of their employment, shall be immune from civil actions and from liability arising from the performance of their employment duties.
- (4) Consultants, advisors, agents and representatives of the Tribe, acting within the scope of their contracts or authority on behalf of the Tribe, shall be immune from civil actions and from liability arising from performance of their contractual, advisory, or representative duties.
- (5) Nothing herein contained is intended to or shall be construed as limiting the right of the Tribe to commence legal proceedings against its officers, employees, consultants, advisors, agents, or representatives, to obtain performance of or remedies for breach of their official, employment, contractual, advisory, or representative duties.
- (6) Nothing herein shall preclude the Tribe, as a condition for extending employment, obtaining consultation, obtaining advice, or entering into an agency or representative relationship, from imposing limitations upon the scope of immunities herein addressed.
- (7) Upon receipt of approval from the Secretary of the Interior, this amended Section 1-1-115 shall become effective as of the date of adoption of this Ordinance by the Tribal Council.
- (8) If any part or application of this ordinance is held invalid, the remainder of the ordinance or its application shall not be affected.

#### **1-1-116. Interpretation of Statutes.**

- (1) **Gender.** Whenever the masculine gender is used in a statute, it may also be read to include the feminine.
- (2) **Liberal Construction.** All general provisions, terms, phrases, and expressions used in any statute shall be liberally construed in order that the true intent and meaning of the Tribal Code may be fully carried out.

- (3) **Intentions in the Enactment of Statutes.** In enacting a statute, it is presumed that:
  - (a) Compliance with the Constitution of the Southern Ute Indian Tribe and the United States is intended;
  - (b) The entire statute is to be effective;
  - (c) A just and reasonable result is intended;
  - (d) A result feasible of execution is intended; and
  - (e) Public interest is favored over any private interest.

**1-1-117. Definition of Indian.** Indian as used in this Code shall mean:

- (1) Any person or his dependents who is an enrolled member or is qualified to be an enrolled member of any federally recognized Indian Tribe; or
- (2) Any person who is receiving federal or other aid under any program as an Indian.

## **Article 2. CIVIL ACTIONS**

**1-2-101. Jurisdiction.**

- (1) **Jurisdiction.** Jurisdiction over civil actions shall be as outlined by this Code. Civil actions shall proceed according to the Tribal Court Rules of Civil Procedure as set forth in this Code.
- (2) **Law Applicable.** The Southern Ute Indian Tribal Court shall apply laws enumerated under this Code, the laws of the United States, authorized regulations of the Interior Department, and any ordinances or customs of the Tribe not prohibited by such federal law.
- (3) **Determination of Custom.** Where any doubt arises as to custom and usage of the Tribe, the court may appoint a private advisor or advisors familiar with the Southern Ute Indian Tribal customs and usages.
- (4) **Common Law.** Where there is no law contrary, the common law of the United States as adopted from England, insofar as the same is applicable and of a general nature, shall be the rule of decision, and shall be considered as of full force until repealed or altered by tribal members.

**1-2-102. Judgments in Civil Actions.** In all civil actions, judgments may consist of an order of the court awarding money damages, directing surrender of certain property, the performance of some acts for the benefit of the injured party, the enjoining of certain acts (including temporary injunctions), or any of the above.

- 1-2-103. Costs in Civil Actions.** The court may assess costs of the case against the party or parties against whom the judgment is given.
- 1-2-104. Payment of Judgment from Individual Indian Monies.** Whenever the Southern Ute Indian Tribal Court shall order the payment of money damages to an injured party and the losing party refuses to make such payments within the time set for payment by the court and when the losing party has sufficient funds to his credit in the Agency Office to pay all or part of such judgment, the superintendent may be requested to certify to other authorized federal departments the record in the case and the amount of the available funds. If the authorized federal representative shall so direct, the disbursing officer shall pay over to the injured party the amount of the judgment (including the legal rate of interest) or such lesser amounts as may be specified, from the account of the delinquent party.
- 1-2-105. Judgment Lawful Debt.** A judgment shall be considered a lawful debt in all proceedings to distribute decedent's estate and may be enforced as a legal debt against the estate.
- 1-2-106. Legal Rate of Interest.** The legal rate of interest charged on a delinquent judgment shall be at the rate of 8% per annum.
- 1-2-107. Restriction of Judgments.** The Southern Ute Indian Tribal Court shall refuse to enter any judgment or decree in a civil action based upon either contract, express or implied, or debt arising out of any obligation in which (a) the contract or obligation was procured by fraud, misrepresentation, coercion, or undue influence; (b) the court determines there is evidence to indicate that the claimant failed to make reasonable effort to collect the claim prior to the docketing of the action.
- 1-2-108. Voluntary Assignment.** Whenever a judgment debtor is unable to satisfy a judgment in a manner provided by the court if said judgment debtor has wages due or to become due from tribal employment or other funds to his credit, the judgment debtor may make an assignment of all or part of such monies on the forms provided and approved by the Southern Ute Indian Tribal Court and the Southern Ute Indian Tribal Council.
- 1-2-109. Emergency Care or Assistance – Good Samaritan.**
- (1) Any licensed doctor of medicine, osteopathy, dentistry, or any licensed nurse, who in good faith volunteers his services in time of individual or general emergencies along the highway or at public places shall not be liable for civil damages for good faith acts or omissions in the performance of such emergency care or assistance; except that this immunity shall not apply in the event such care consists of a wanton or reckless disregard of the injured party's rights and safety.
  - (2) The protection afforded by subsection (1) of this section is extended to first aid specialists certified by the American Red Cross or the United States Bureau of Mines who render first aid services at work sites pursuant to an occupational safety and health standard promulgated by the Occupational Safety and Health Standards Board.



**1-2-110. Statute of Limitations.** The following shall be the statute of limitations for the Southern Ute Indian Tribal Court:

- (1) All actions against peace officers upon any liability incurred by them by the doing of any act in their official capacity or by the omission of any official duty shall be brought within 6 months after the cause of action occurs and not after that period.
- (2) All other actions, including but not limited to, all actions of contract, tort, fraud, forfeiture, waste and trespass, slander and libel shall be commenced within 2 years after the cause of action accrues and not afterwards. A cause of action shall not accrue until the injury is or should be known.
- (3) No statute of limitations shall apply to bar a civil action brought by the Southern Ute Indian Tribe as a plaintiff.
- (4) If service of process cannot be brought against someone because they have removed themselves from the jurisdiction of the court and their whereabouts are unknown, the statute of limitations will not be effective from the date of their disappearance to the date of their return within the jurisdiction of the court or until their whereabouts are known and they can be served.

**Article 3. TRIBAL COURT, JUDGES, AND OTHER PERSONNEL**

**1-3-101. Establishment.** The Tribal Court of the Southern Ute Indian Tribe is hereby established and may be referred to as Tribal Court. It shall be the duty of the Tribal Court to administer justice equally and fairly in conformance with the Constitution of the Southern Ute Indian Tribe and the laws of the United States of America and to protect the rights, property, life and welfare of all people within its jurisdiction.

**1-3-102. Southern Ute Tribal Court Judge.**

- (1) The Tribal Council shall appoint as many tribal court judges as it may deem necessary and shall fix the salaries of the tribal court judges. If more than one judge is appointed, the council shall designate one as the chief judge and all others shall be designated as associate judges.
- (2) Each judge shall be appointed to a term of 3 years; and upon the expiration of any term, said judge shall be eligible for succession in office.
- (3) The tribal judge is an officer of the court who has general, civil, and criminal power to try cases which may arise under the laws and ordinances of the Tribe and are brought before the court.
- (4) In order for a person to be eligible to serve as either a chief judge or as an associate judge of the Southern Ute Tribal Court, such person must possess the following qualifications:

- (a) Must be an American citizen who has reached the age of 22 years at the time of his selection to the court;
- (b) Has never been convicted of a felony in any court of competent jurisdiction and has not been convicted of any misdemeanor in any court of competent jurisdiction within a period of 1 year past from the date of his selection;
- (c) Is a person of good moral character and judicial temperament; and
- (d) Shall not be an attorney otherwise employed or under contract to the Tribal Council of the Southern Ute Indian Tribe.

**1-3-103. Officers of the Tribal Court.**

- (1) Officers of the Tribal Court include:
  - (a) Clerk of the court, assistant clerk, and any deputy, probation officer, referee or master;
  - (b) Enforcement officers, including all regularly employed police officers of the Southern Ute Indian Tribe, special officers, policemen, conservation officers, or their lawfully appointed agents; and
  - (c) Attorneys who are members of the bar of the Southern Ute Indian Tribe, and lay counselors admitted to practice in the Southern Ute Indian Tribal Court.

**1-3-104. Removal of Judges.** A judge may be removed from office prior to the expiration of his term by the affirmative vote of the Tribal Council upon the grounds of neglect of duty, gross misconduct, or breach of contract. A public hearing may be held at which time the judge, after being given not less than 10 days' notice, has an opportunity to answer all charges against him and present evidence on his own behalf.

**1-3-105. Powers and Duties of Judges.**

- (1) A judge shall administer justice and discharge all duties imposed upon him by law and shall hear and decide matters of a judicial nature and enter judgments and orders regarding these matters.
- (2) The chief judge shall be responsible for the administration of all courts and shall supervise all probation and parole officers as well as the assignment of cases and the management of the court's calendar and business. The chief judge shall designate an associate judge to act as chief judge in his absence.
- (3) All judges of the Southern Ute Indian Tribe shall act in accordance with the Code of Judicial Conduct as adopted by the American Bar Association, which shall be available for public inspection in the tribal court clerk's office.
- (4) Every judicial officer has the power to:

- (a) Preserve and enforce order in his immediate presence and in proceedings before him when he is engaged in the performance of his official duty;
- (b) Compel obedience to his lawful orders;
- (c) Compel the attendance of persons to testify in proceedings before him;
- (d) Administer oath to persons and proceedings before him and in any other case where such shall be necessary in the exercise of his powers and duties;
- (e) Punish for contempt to assure the effective exercise of these powers; and
- (f) Marry people in accordance with this Code.

**1-3-106. Disqualification of Judges.**

- (1) A judge shall disqualify himself from any hearing in any matter in which he has a direct interest or in which any party is a relative by blood in the fourth degree (first cousins), or where he feels he is unable to render a just decision because of his knowledge of the parties or the facts underlying the case.
- (2) Any party to a legal proceeding may request a change of assignment of judges to hear the proceedings by filing a written affidavit of prejudice stating grounds why the judge assigned should not hear the case. Such affidavit shall be presented to the judge assigned to hear the case who shall rule on the sufficiency of the affidavit, and if sufficient, either disqualify himself or turn the affidavit over to the chief judge or some other judge for a decision as to whether a different judge should be assigned to the case.

**1-3-107. Oath of Office of Judges.**

- (1) Every judge, prior to taking office, shall take the following oath or affirmation:

I, \_\_\_\_\_, do solemnly swear (affirm) that I will support and defend the Constitution, laws and treaties of the Southern Ute Indian Tribe and of the United States and that I will support and defend the laws, ordinances, and resolutions of the Southern Ute Indian Tribe and that I will faithfully and impartially discharge the duties of my office to the best of my ability.
- (2) Said oath may be administered by the Chairman of the Tribal Council or by the chief judge of the Tribal Court.

**1-3-108. Clerks of the Courts.**

- (1) There should be a chief clerk of the court of the Southern Ute Indian Tribe and such other assistant clerks as required.

- (2) The appointment, qualifications, term of office, and compensation of clerks shall be determined by the Southern Ute Indian Tribal Council.

**1-3-109. Duties and Powers of Clerks.** It shall be the duty of the clerk of the Tribal Court to supervise and keep all records, files, dockets, or other records required to be kept by this Code, by rule of court, tribal resolution, or as otherwise established; and, further, it shall be the clerk's duties to keep a record of all proceedings of the court, to administer oaths, to issue and mail subpoenas, to collect and account for all fines, bail or bond money, fees or other charges which cause money to come to the court, to deposit and account for all such monies in the manner prescribed by the Tribal Council and to disburse such money as authorized by law. The clerk shall further assist the court in any way required to facilitate the performance of its duties, aid the police or private citizens in their dealings with the court and may render assistance to individual members of the Southern Ute Indian Tribe or their counsel in the drafting of documents incidental to proceedings of the courts.

**1-3-110. Probation and Parole Officers.**

- (1) The Tribal Chairman, with the consent of the Tribal Council, shall appoint one or more persons to be a probation and parole officer.
- (2) The qualifications, terms of employment and compensation of probation and parole officers shall be determined by the Tribal Council.
- (3) Probation and parole officers are subject to the supervision of the chief judge. Said officers shall have the responsibility of assuring the faithful performance of probation or parole agreements by persons subject thereto, counseling such persons and their families, preparing per-sentence or other reports as requested by a tribal judge, and doing such other things as may be directed by a tribal judge or otherwise required by law.
- (4) A probation and parole officer shall have the authority of the police officer to make arrests for violation of probation or parole agreements.

**1-3-111. Rules of Court.**

- (1) The time and place of court sessions, and all other details of judicial procedure not prescribed in this Code, shall be established by rules promulgated by the Tribal Court and approved by the Tribal Council.
- (2) It shall be the duty of the judge of the Southern Ute Tribal Court to make recommendations to the Tribal Council for the enactment or amendment of such rules of court.

**1-3-112. Bonding of Court Personnel.** All judges and clerks of the Southern Ute Indian Tribal Court shall be bonded at the Southern Ute Indian Tribe's expense in amounts determined by the Tribal Council to secure the honest performance of their duties. In addition, the Tribal Council may provide for the bonding of jailers of the Southern Ute

Indian Tribal jail for the specific and limited purpose of receiving cash bail and bonds to secure the release of persons incarcerated in said tribal jail.

**1-3-113. Counselors and Professional Attorneys.**

- (1) All persons appearing as a party in any judicial proceeding before a court of the Southern Ute Indian Tribe shall have the right to be represented by counsel (be that a professional attorney admitted to the bar of the Southern Ute Indian Tribal Court or a lay counselor) and to have such person assist in the preparation and presentation of his case.
- (2) Any person appearing as a lay counselor shall be subject to the same ethical obligations of honesty and confidentiality as a professional attorney, and the attorney-client testimonial privilege shall apply.
- (3) Professional and lay counselors shall be deemed officers of the court for purposes of their representation of a party and shall be subject to disciplinary authority of the court in all matters relating to their representative capacity.
- (4) Any attorney who wishes to practice before the courts of the Southern Ute Indian Tribe must first be admitted to the bar of the Southern Ute Indian Tribe.

**1-3-114. Admission of Attorneys.** Any attorney who is certified to practice before the highest court of any state or the United States Supreme Court or the Federal courts in any state, and is in good standing before such court, shall be eligible to be admitted to practice before the court of the Southern Ute Indian Tribe.

**1-3-115. Discipline of Lay Counsel and Attorneys.**

- (1) Every attorney admitted to practice before the court of the Southern Ute Indian Tribe and every lay counsel representing another person before such court shall conform his conduct in every respect to the requirements and suggested behavior of the Code of Professional Responsibility as adopted by the Tribal Court.
- (2) Whenever it is demonstrated to the chief judge of the Tribal Court that any attorney admitted to practice before the court of the Southern Ute Indian Tribe has been disbarred or suspended from the practice of law, such attorney shall be given notice that he shall be indefinitely suspended from further practice before the court of the Southern Ute Indian Tribe unless he can appear within 10 days and show good cause why an order to that effect should not be made.
- (3) Any attorney or lay counsel shall be suspended from practice before the Southern Ute Indian Tribal Court subject to having been:
  - (a) Convicted of a felony;
  - (b) Not to have conformed his conduct to the Code of Professional Responsibility as adopted by the American Bar Association;

- (c) In contempt of court;
  - (d) Acting in any unethical or improper manner of functioning as an attorney or a lay counsel.
- (4) Upon the filing of a complaint by any person against any attorney or lay counsel asking for the suspension of said person for one or more of the above reasons, notice shall immediately be served upon the attorney or lay counsel who shall be given an adequate opportunity to appear in court and in a public hearing to show cause why he should not be suspended from practicing. The burden of proof in such hearing shall be upon the complainant who must show by a preponderance of evidence that said attorney or lay counsel should be suspended for the grounds listed above.
- (5) All suspension from practicing before the Tribal Court shall be for an indefinite period unless the judge specifically orders otherwise. An attorney or lay counsel suspended for an indefinite period or once suspended for a specific period may petition the Tribal Court for permission to practice at the end of 1 year or at the end of the specific period of suspension, and such permission shall be granted if it is made to appear at a hearing or otherwise that the suspended attorney has been adequately reprovved and now appears willing to conduct himself in a proper manner, and that the petitioner has been reinstated to practice if previously disbarred or suspended in another jurisdiction.

**1-3-116. Standard of Conduct for Counsel.**

- (1) Every attorney admitted to practice before the court of the Southern Ute Indian Tribe and every lay counsel employed or appointed to represent another before such court when acting in such capacity or in matters in any way related thereto shall conform his conduct to the requirements of the Code of Professional Responsibility as adopted by the American Bar Association.
- (2) **Oath of Attorneys and Counselors.** Prior to admission to practice as provided herein, counsel shall take the following oath:

I do solemnly swear (affirm) that I will support the Constitution and laws of the United States and of the Southern Ute Indian Tribe, and I will support and defend this Tribal Code and all resolutions and ordinances of the Southern Ute Indian Tribe, and that I will maintain the respect due the Southern Ute Indian Tribal Court, and judicial officers of the Southern Ute Indian Tribe.

**1-3-117. Contempt.**

- (1) The following acts or failures to act may serve as a basis for finding any individual in contempt of court:

- (a) Disorderly, contemptuous, or insulting behavior before the judge during court which tends to interrupt the course of the proceedings or undermine the dignity of the court;
- (b) A breach of the peace or loud or boisterous conduct which tends to interrupt the course of a judicial proceeding;
- (c) Misbehavior in office or other willful neglect or violation of duty as a counselor, attorney, or other spokesman, or clerk, court administrator, police officer, or other person appointed, elected, or hired to perform a representative, judicial, or ministerial service in connection with the operation of the court;
- (d) Deceit or abuse of process or proceedings of the court by a party or counselor to a judicial proceeding;
- (e) Disobedience to a lawful judgment, order, or process of the court;
- (f) Acting without authority as an officer, spokesman, or other official of the court;
- (g) Acting contrary to court orders including taking any person or property from the court or an officer acting under lawful court order;
- (h) Unlawfully detaining or otherwise interfering with a witness or a party to an action while such person is going to or from a court proceeding;
- (i) Disobedience of a subpoena duly served or refusing to be sworn or answer to witness; or
- (j) Any other interference with the process, proceedings, or dignity of the court or a judge of the court while in the performance of his official duties.

**1-3-118. Civil Contempt.** Civil contempt is prosecuted to preserve, protect, enforce, or restore the duly adjudicated rights of a party to a civil action against one under legal obligation to do or refrain from doing something as a result of judicial decree or order. Relief in a civil contempt proceeding may be coercive or compensatory in nature as to the complaining party and may include a fine payable to the court or to the complaining party or imprisonment of the party in contempt in order to secure his compliance or both.

**1-3-119. Criminal Contempt.** Conduct which is directed at or detrimental to the dignity and authority of the court is criminal contempt. Criminal contempt is an offense which may be punishable at the discretion of the court, based on the nature of the conduct in question, with a fine of up to \$500 or 6 months in jail, or both.

**1-3-120. Contempt Procedure.**

- (1) A direct contempt is one committed in the presence of the court or so near thereto as to be disruptive of court proceedings. The accused may be removed so that court proceedings may continue. The judge who alleges contempt cannot be the judge who determines the guilt or innocence of the party who is allegedly held in contempt or is accused of acting in contempt of the court.
- (2) All other contempt shall be determined at a hearing at which the person accused of contempt is given notice and an opportunity to be heard.

**1-3-121. Unclaimed Funds – Tribal Court.** All fees, court costs, trust funds, and other moneys paid to the clerks of the Tribal Court or into the registry of the Court, which have been or shall be unclaimed, for a period of 1 year after the final determination of any case in which said fees were collected or money paid, may be disposed of as provided in Section 1-3-122.

**1-3-122. Report of Unclaimed Funds- Tribal Court.** Within 60 days from January 1 of each year, the clerk of the Tribal Court shall report to the Chief Judge what sums of money are held unclaimed in the clerk's accounts or the registry of the Court, for a period of more than 1 year after the final determination of the case in which said moneys have been paid or deposited, and, if it appears to the Court that no claim for said moneys has been presented to the clerk of the Court for more than 1 year, then the Court may order that said moneys be deposited in the Southern Ute Indian Tribe's General Fund; but if it appears to the Court by specific order made in any case, or from any other cause or circumstances, the Court in its discretion may withhold making such order in any case.

**Article 4. COLLECTION OF DEBTS OWED TO THE SOUTHERN UTE INDIAN TRIBE AND PROTECTION OF FINANCIAL RESOURCES**

**1-4-101. Purpose.** The purpose of this Article is to protect the resources and financial integrity of the Southern Ute Indian Tribe and to promote sound governmental practices in connection with the collection of money obligations owed to the Southern Ute Indian Tribe. Therefore, compliance with this Article shall be a condition precedent to obtaining any tribal benefit, service or consideration; granting any business opportunity, contract, or procurement activity; processing or obtaining any assignment, easement, permit, license, or lease; or considering any loan application by or from the Southern Ute Indian Tribe not otherwise exempted by this Article to any person.

**1-4-102. Definitions.**

- (1) **Delinquent Accounts Receivable** shall mean any monetary amount owed to the Southern Ute Indian Tribe which is at least 120 days past due and is not expressly exempted by the provisions of this Article.
- (2) **Person** shall mean any individual, business, corporation, partnership, or entity other than the Southern Ute Indian Tribe.



- (3) **Tribe** shall mean the Southern Ute Indian Tribal Council, all elected and appointed officials of the Southern Ute Indian Tribe, all departments, divisions, programs, and entities of the Southern Ute Indian Tribe, including the Southern Ute Indian Housing Authority, and all enterprises of the Southern Ute Indian Tribe.

**1-4-103. Ineligibility for Tribal Benefits and Services.**

- (1) No person shall be eligible to obtain any benefit, service, or consideration; transact or be granted any business opportunity, contract, purchase order, or other accounts payable; or be granted or otherwise obtain an assignment, easement, permit, license, lease, grant, or loan of any type not otherwise exempted by this Article from the Tribe if any of the following circumstances apply:
  - (a) If there is an outstanding money judgment in favor of the Tribe from a court of competent jurisdiction, or a court order requiring the payment of restitution, or a valid delinquent accounts receivable debt, which is due and owing to the Southern Ute Indian Tribe from the person; or
  - (b) If under any transaction, contract, or legal relationship with the Tribe, there has been a failure to meet a material contractual or financial obligation to the Tribe, or failure to materially comply with applicable laws, or material delay resulting in monetary or other detriment to the Tribe by the person; or
  - (c) If the person has been convicted of, or pleaded guilty to, a criminal offense within the previous 10 years under any tribal or federal law for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or a criminal offense related to obtaining a contract or in the performance of such contract, where the Tribe was the victim of the offense.

**1-4-104. Exempt Services and Payments.**

- (1) The following benefits and services, and any payments made pursuant to the following benefits and services, are exempt from application of both the ineligibility and offset provisions stated in this Article:
  - (a) Family Emergency Services;
  - (b) Permits for tribal members to hunt or fish on tribal lands;
  - (c) Land assignments for home-sites or home-site leases of tribal lands;
  - (d) Attendance at the Southern Ute Indian Academy;
  - (e) Benefits from the Health Services Resource Pool;

- (f) Such other benefits and services as are determined in writing by the Executive Officer of the Southern Ute Indian Tribe on a case-by-case basis to be necessary to provide an individual tribal member with basic health, welfare, or educational services. In making this determination, the Executive Officer shall consider the following factors:
  - (i) whether the service or benefit is essential to the basic health, welfare or education of the tribal member. Services that are not basic, or that are discretionary in nature, should not be considered for exemption under this provision;
  - (ii) whether the tribal member has access to similar services or benefits through other sources, including non-tribal sources;
  - (iii) whether the tribal member has made reasonable efforts to resolve the circumstances that were the basis for the determination of ineligibility;
  - (iv) whether the tribal member has the actual present ability to resolve the circumstances that were the basis for the original determination of ineligibility.
- (2) The following payments are exempt from application of the ineligibility, but not the offset, provisions stated in this Article:
  - (a) Tribal per capita payments;
  - (b) Tribal dividend payments;
  - (c) Elders' retirement payments.

**1-4-105. Determination of Eligibility.** As a condition precedent to review and processing of any application for services or benefits subject to this Article, an initial determination of eligibility shall be made by the entity of the Tribe, which receives the application and shall be confirmed by either:

- (1) Evidence verifying that the applicant is not ineligible by reason of any of the circumstances stated in Section 1-4-103, by contacting the Tribe's Finance Department, the Tribal Court, the Tribal Executive office, or any other entity of the Tribe likely to have information on the eligibility criteria; or
- (2) Evidence provided by the applicant verifying that the circumstances that were the reason for a determination of ineligibility have been corrected through payment or posting of a bond, as stated in Section 1-4-106.

**1-4-106. Removal of Ineligibility through Payment or Posting of Bond.**

- (1) A determination of ineligibility based upon circumstances stated in Section 1-4-103(1)(a) may be removed by paying in full all outstanding amounts owed to the

Tribe or by entering into an agreement for the withholding of any payments received by the applicant from the Tribe until the amount owed to the Tribe is paid in full. Only upon full and complete payment, or upon execution of an agreement that ensures complete and full payment within the shortest reasonable time, will the person become eligible to receive the services or benefits that are subject to this Article.

- (2) A determination of ineligibility based upon circumstances stated in Section 1-4-103(1)(b) may be removed through posting of a bond, or other financial undertaking, sufficient to protect the Tribe from losses which might reasonably be incurred if the applicant commits a material breach of his obligations under the current application similar to the prior material breach that caused the determination of ineligibility.

**1-4-107. Tribal Right of Offset.**

- (1) If the person has an outstanding money judgment against it in favor of the Tribe, or a court order requiring the payment of restitution, or a delinquent accounts receivable debt, which is due and owing to the Tribe, upon due notice to the person the Tribe may offset its money claim against any amount it pays, owes, or has an account payable to the person.
- (2) Such notice of offset may be in any form reasonably calculated to give actual notice of the proposed offset.

**1-4-108. Administrative Review Process.**

- (1) Any person may file a written protest within 7 business days of receipt of a determination of ineligibility or notice of intent to offset. The protest shall be filed with the Tribe's Finance Department.
- (2) The Finance Department will, within 1 business day of receipt, forward the protest to the Administrative Appeals and Hearings Office, and a hearing shall be held by the Administrative Appeals and Hearing Office. Unless the parties agree to an extension, such hearing shall be held within 10 business days of the Office's receipt of protest.
- (3) The Hearing Officer shall render a final decision within 5 business days of the hearing. Such decision shall include findings of fact and conclusions of law.
- (4) A final decision of the Hearing Officer may be appealed to the Southern Ute Indian Tribal Court in accordance with Title 1, Article 5 of this Code.

**1-4-109. Severability.** If any court of competent jurisdiction holds any provision of this Article invalid, the remaining provisions of the Article shall have full force and effect.

**1-4-110. Prior Inconsistent Laws Repealed.** All prior laws, resolutions, regulations, rules, and provisions of the Tribe previously adopted are repealed to the extent that they are inconsistent with the provisions of this Article.

#### **Article 5. ADMINISTRATIVE APPEALS AND HEARINGS OFFICE**

**1-5-101. Establishment.** The Southern Ute Indian Tribal Council hereby establishes the Southern Ute Indian Tribe Administrative Appeals and Hearings Office. The Office shall be separate and independent from all other departments, divisions, programs, commissions, enterprises, boards, or other Southern Ute tribal government entities.

**1-5-102. Purpose and Application.** The Administrative Appeals and Hearings Office shall serve as an informed, fair, and impartial non-judicial forum for hearing administrative cases as provided in the following codes, regulations, and policies:

- (1) Collection of Debts Owed to the Southern Ute Indian Tribe and Protection of Financial Resources;
- (2) Children's Code;
- (3) Exclusion and Removal Code;
- (4) Range Code;
- (5) Traffic Code;
- (6) Liquor Code;
- (7) Severance Tax Code;
- (8) Casino Complaint and Board of Review Procedures;
- (9) Permanent Fund Personnel Policy No. III.G., Grievance & Appeal;
- (10) Tribal Health Department Clinical Staff By-laws;
- (11) Tribal Member Health Benefit Plan; and
- (12) Workers' Compensation Code.

This Code supersedes conflicting provisions of the above-named codes and policies.

**1-5-103. Organization and Staff.**

- (1) **Director Duties & Term.** The Director, who will also act as the chief hearing officer, shall be selected by the Tribal Council upon recommendation from the Tribe's Judicial Review Committee for a term of 6 years, pursuant to a contract between the Director and the Tribe.

- (a) Upon completion of a 6-year term, the Director may be considered for appointment to additional 6-year terms.
- (b) The Director shall not be a political appointment, nor shall he/she serve at the pleasure of any person or entity.
- (c) Subject to any limitation in the Director's employment contract, the Director has all of the rights of a regular status contractual employee under the Tribe's Personnel Policies and Procedures.
- (d) The Director is responsible for the administration of the Office, and must exercise the powers and authority granted to the Office.
- (e) Every 2 years the Judicial Review Committee will provide Tribal Council with an evaluation of the Director's performance.

(2) **Staff.**

- (a) The Director may hire hearing officers and support staff authorized by the Tribal Council in the annual tribal budget, in accordance with applicable laws and regulations of the Southern Ute Indian Tribe.
- (b) All personnel will be hired, employed, and compensated under applicable Personnel Policies and Procedures. Hearing officers may be employed pursuant to contracts.
- (c) Hearing officers, including the Director, must possess the following qualifications:
  - (i) education or experience in applying administrative law and procedures;
  - (ii) education and experience in conducting case hearings;
  - (iii) analytical skills, including the ability to weigh evidence, apply law to fact, decide contested issues, and make reasoned findings of fact and conclusions of law;
  - (iv) writing skills and ability to draft clear findings of fact and conclusions of law; and
  - (v) familiarity with the Southern Ute Indian Tribe's administrative structure and the Southern Ute Indian Tribal Code.

- (3) **Removal.** Upon recommendation of the Judicial Review Committee, the Director may be removed by the Tribal Council for cause after advance reasonable notice to the Director and an adequate opportunity to be heard. "Cause," for purposes of removal of the Director, includes: disregard of duties prescribed in the Director's

employment contract, failure to adhere to personal and professional standards of conduct reasonably expected of persons occupying judicial positions, or gross malfeasance.

**1-5-104. Power and Authority.** In addition to all powers and authority reasonably necessary to carry out the purposes set forth herein, the Administrative Appeals and Hearings Office has the following specific powers and authority:

- (1) To hear and decide cases pursuant to Southern Ute laws, regulations, and policies.
- (2) Exercise those powers and duties necessary to carry out the functions of this Code.
- (3) In administering hearings, a hearing officer may:
  - (a) Administer oaths, examine witnesses, and receive evidence; however, no person may be compelled to divulge information that such person could not be compelled to divulge based on recognized privilege in the Southern Ute Tribal Court;
  - (b) Issue subpoenas, procedural orders, and other orders necessary to the hearing procedures referred to in this Code, including the authority to issue subpoenas to employees of the Tribe that require the appearance of the employee in their employment capacities, notwithstanding SUITC § 1-1-115;
  - (c) Receive relevant evidence and rule upon offers of proof and other evidentiary matters;
  - (d) Cause depositions to be taken;
  - (e) Regulate the conduct of the hearing;
  - (f) Hold settlement conferences or conferences to simplify the issues;
  - (g) Dispose of procedural matters by decision, on the basis of the pleadings alone or after a hearing on the procedural matter;
  - (h) Take official notice of matters that could be given judicial notice pursuant to the Federal Rules of Evidence;
  - (i) Issue contempt citations or levy fines against an individual who fails to obey a properly-issued subpoena or refuses to testify;
  - (j) Call upon tribal members and elders for advice regarding relevant aspects of culture and tradition; and

- (k) Take any other action authorized by Southern Ute laws, regulations, and policies.
- (4) Adopt rules to govern hearings where no such rules already exist in Southern Ute codes, regulations, and policies. At a minimum, such rules must provide the following:
  - (a) Unless a different standard is established in the code, regulation, or policy that is the basis for the hearing, the burden of proof in all actions shall be by a preponderance of the evidence;
  - (b) Formal rules of evidence are not applicable, but the hearing officer may exclude evidence that is irrelevant or unduly repetitious;
  - (c) The parties must receive reasonable written notice of all proceedings and proof of such notice must be in the record;
  - (d) Unless a different time is established in the Southern Ute Indian Tribal Code provision, regulation, or policy that is the basis for the hearing, the claimant must file his or her request for a hearing or appeal within 30 days of the decision or action being appealed, and serve it upon all parties; and
  - (e) Unless a different time is established in the Southern Ute Indian Tribal Code provision, regulation, or policy that is the basis for the hearing, the hearing officer shall render a final written decision not over 30 days following conclusion of the hearing, and serve it upon all parties.

**1-5-105. Judicial Enforcement of Orders and Subpoenas.**

- (1) If an individual fails to obey a subpoena issued by a hearing officer, or obeys a subpoena but refuses to testify concerning any matter under examination or investigation at the hearing, the aggrieved party may petition the Administrative Appeals and Hearings Office to enforce the subpoena.
- (2) In addition to other remedies provided by law or regulation, the aggrieved party may seek enforcement of the Office's rules, regulations, rulings, or orders by filing a petition for civil enforcement in the Southern Ute Tribal Court and may request declaratory relief, temporary or permanent injunctive relief, or any other civil remedy, or combination of remedies, within the authority of the Southern Ute Tribal Court to grant.

**1-5-106. Right of Appeal.**

- (1) A person aggrieved by a final decision of the Administrative Appeals and Hearings Office may appeal that decision.

- (2) Unless otherwise provided by law, jurisdiction for an appeal of decisions of the Administrative Appeals and Hearings Office is exclusively in the Southern Ute Tribal Court.
- (3) The notice of appeal and the appellant's opening brief must be filed and served within 30 days from the date of the final written decision that is the subject of the appeal, or the Tribal Court shall have no jurisdiction to hear the appeal. The appellee shall have 30 days from date of filing or service of the opening brief, whichever is later, to file and serve its response.
- (4) Review by the Tribal Court shall be limited to a review of the administrative hearing record without taking additional evidence. The Tribal Court shall affirm the decision of the Administrative Appeals and Hearings Office unless it finds that the decision was arbitrary and capricious or unsupported by the evidence, or that the hearing officer abused his or her discretion or erroneously interpreted the law. In reviewing the decision of the hearing officer, the Tribal Court shall accept the findings of fact made by the hearing officer as true and shall not substitute its own judgment on factual matters for that of the hearing officer or independently weigh the evidence. The Tribal Court shall review the hearing officer's conclusions of law *de novo*. The decision of the Tribal Court shall be final.
- (5) Unless otherwise provided by law, filing a notice of appeal does not stay the enforcement of the decision or order of the Hearing Officer. The Tribal Court may stay the enforcement of the decision or order of the Hearing Officer only after weighing the commonly recognized factors for entry of a stay.

**1-5-107. Sovereign Immunity.** Except to the extent expressly stated and authorized herein, nothing in this Code is or will be interpreted to be a waiver of the sovereign immunity of the Southern Ute Indian Tribe, its agencies, or enterprises.



## TITLE 1

### GENERAL PROVISIONS

#### **History and Amendments<sup>1</sup>**

Title 1 adopted (Resolution No. 80-120), approved by the Bureau of Indian Affairs and effective on February 20, 1981.

Article 2, §§1(D) and 2 revised and amended (Resolution No. 86-14), approved by the Bureau of Indian Affairs and effective on August 18, 1986.

Title 1 section and page numbering scheme revised and amended (Resolution No. 89-34), effective on March 21, 1989.

Section 1-1-115, Sovereign Immunity amended (Resolution No. 96-143 (Ordinance No. 96-02)), approved by the Bureau of Indian Affairs on October 24, 1996.

Section 1-2-110 amended (Resolution No. 2002-108) on June 18, 2002.

Title 1, Article 4, *Collection of Debts Owed to the Southern Ute Indian Tribe and Protection of Financial Resources* adopted on December 31, 2002 (Resolution No. 2002-235), approved by the Bureau of Indian Affairs on January 8, 2003.

Exhibit 1, *Administrative Hearing Procedures for Review of Disputed Debts*, added on April 22, 2003 (Resolution No. 2003-72); repealed on August 4, 2014 (Resolution 2014-25).

Section 1-4-104(1), *Collection of Debts Owed to the Southern Ute Indian Tribe and Protection of Financial Resources* amended on April 22, 2003 (Resolution No. 2003-74).

Sections 1-3-121 and 1-3-122 amended on August 30, 2005 (Resolution No. 2005-226), approved by the Bureau of Indian Affairs on November 15, 2005.

Sections 1-1-116 through 1-1-119 deleted on March 13, 2007 (Resolution No. 2007-66), approved by Bureau of Indian Affairs on May 24, 2007.

Section 1-4-108 amended, Section 1-4-109 deleted, Sections 1-4-110 and 111 renumbered on November 4, 2014 (Resolution No. 2014-215), approved by the Bureau of Indian Affairs on December 12, 2014.

Title 1, Article 5, Administrative Appeals Hearings Office Code adopted (Resolution No. 2014-25), approved by the Bureau of Indian Affairs on August 4, 2014.

Appendix B - Administrative Appeals Hearings Office, Administrative Order AAHO-ADMIN-2015-001 adopted rules to govern appeals and hearings on September 1, 2015.

Appendix C - Administrative Appeals Hearings Office amended administrative rules to govern appeals and hearings, effective on April 29, 2019.

**Title 1 – General Provisions** repealed and replaced (Resolution No. 2021-151) with a reformatted version for online publication and approved by the Bureau of Indian Affairs - \*except for §1-1-107 and Appendix A pending amendment - and effective on May 12, 2023.

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<sup>1</sup> This page does not constitute an official part of any code. Information contained on this page is solely for informational and historical purposes and is from sources deemed reliable.