

THE KLAMATH PEACEMAKER ORDINANCE
KLAMATH TRIBAL CODE
Title 2 Chapter 18

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18.01 Authority and Purpose. This Klamath Peacemaker Ordinance is adopted pursuant to the authority vested in the Klamath Tribes' General Council by virtue of its inherent authority as a sovereign Indian tribal government and pursuant to the authority set out in Article V of the Klamath Tribes' Constitution. The purpose of this Ordinance is to establish a Peacemaker Court for the Tribal Court system in order to provide a non-adversarial alternative to traditional court and to use culturally appropriate mediation to reach conciliatory results rather than court-imposed sanctions, where appropriate. The Ordinance is also intended to provide formal support, structure, and enforcement to traditional Tribal methods of resolving disputes. This Ordinance shall be interpreted liberally and formally with the goal of providing a fair, informal, inexpensive, and traditional means of resolving disputes. This Ordinance upon adoption shall become part of the Klamath Tribes' Tribal Code.

18.02 Definitions. The following words shall have the following meanings under this Ordinance.

- (a) "Dispute" means any civil conflict or any case brought to the Tribal Court involving two or more parties who are contesting their legal rights and responsibilities in any circumstance.
- (b) "Chief Judge" means the Chief Judge of the Tribal Court of the Klamath Tribes.
- (c) "Civil Conflict" means a conflict between two or more parties over money, property, damages, harm, rights, interests, or responsibilities, or any other matter, so long as the conflict does not involve criminal conduct or criminal charges.
- (d) "Conflict of Interest" means any situation in which a Peacemaker is asked to mediate a matter in which a close family member is a party, or in which the Peacemaker has a personal or financial interest. A close family member shall mean a father, mother, brother, sister, spouse, son, daughter, grandchild, grandparents, mother-in-law, father-in-law, brother-in-law, sister-in-law, or first cousin.
- (e) "General Council" means the Klamath Tribes' General Council.
- (f) "Indian Country", the "territorial jurisdiction" or the "jurisdiction" of the Tribes means all lands within the Reservation of, owned by, held in trust

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for, leased, occupied or otherwise controlled by the Tribes, as well as any such ownership or use by an entity of the Tribes. Those terms shall include any and all areas which may constitute the "Indian Country" of the Tribes under applicable provisions of its laws or the laws of the United States.

- (g) "Juvenile Matter" means any case where a Tribal member who is less than eighteen years old has been arrested and/or charged with committing acts that would be crimes if committed by an adult or with status offenses (acts that are criminal due to the age of the minor, such as minor in possession of alcohol and truancy).
- (h) "Klamath Reservation" means the Klamath Reservation as that term is defined in Section 11.02(k) of the Tribal Court Ordinance of the Klamath Tribes, and shall include and incorporate any changes or amendments to that definition.
- (i) "Klamath Tribes" or "Tribes" means the Klamath Indian Tribe of Oregon, a federally recognized Indian tribe.
- (j) "Member" or "Tribal Member" means a member of the Klamath Tribes.
- (k) "Ordinance" means this Klamath Peacemaker Ordinance.
- (l) "Peacemaker" means a person who is appointed under this Ordinance to assist the parties to a Tribal Court case achieve a mediated resolution of a dispute or Juvenile Matter through the Peacemaker Court.
- (m) "Peacemaker Court" means the alternative, non-adversarial process set out in this Ordinance for resolving disputes that have come into the Tribal Court system or Juvenile Matters.
- (n) "Person" means an individual natural person, trust, firm, association, partnership, limited liability company, public or private corporation, political subdivision, government agency, municipality, industry, and any entity whatsoever, and includes the Tribes.
- (o) "Resolution," for the purpose of this Ordinance only, means a written document which contains a statement of a dispute between parties to a case in the Tribal Court or the facts underlying a Juvenile Matter, and

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which also contains a statement describing the settlement or resolution to the matter which is mutually agreed to by the parties. It shall be signed by the individuals involved in the dispute or the Juvenile Matter, and by the Peacemaker, and, where the parties intend it to be an order and judgment of the Tribal Court, signed by the Chief Judge.

- (p) "Tribal Council" means the Klamath Tribes' Tribal Council.
- (q) "Tribal Court" means the Tribal Court of the Klamath Tribes.

18.03 Establishment. The Klamath Tribes Peacemaker Court has been established as part of the Tribal Court system pursuant to the Tribal Court Ordinance, Title 2, Chapter 11 of the Klamath Tribal Code and shall function according to the rules, procedures, and standards set out in this Ordinance.

18.04 Applicability. Persons with a dispute who wish to have the dispute resolved through the Peacemaker Court, the parties to any dispute that comes to the Tribal Court, and any juvenile who is the subject of a Juvenile Matter in Tribal Court or in state court are eligible to have their case heard and resolved through the Peacemaker Court. Before a case can be transferred to the Peacemaker Court, all persons involved in the dispute or who are parties to the case must consent to participate in the process. Participation in the Peacemaker Court is entirely voluntary.

18.05 Philosophy. The Peacemaker Court is intended to be different from traditional adversarial court proceedings. Unlike traditional proceedings, which are often divisive and involve a judge or jury making the decisions for others, Peacemaker Court encourages people to solve their own problems collaboratively. Planning, respect and consensus in Peacemaker Court replace imposed decisions that use damages awards or punishment to correct behavior. The Peacemaker Court involves:

- (a) Discussing issues in a respectful manner.
- (b) Assisting individuals with understanding and accepting responsibility for their actions.
- (c) Promoting healthy relationships and a healthy community.
- (d) Encouraging people to solve their own problems in a safe environment.

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- (e) Working with participants to plan and make collaborative decisions about future actions.
- (f) Assisting in the development of Resolutions to disputes that are not patterned upon state or federal courts but are more closely allied to traditional, culturally appropriate Tribal mediation processes.

18.06 Peacemakers: Qualifications, Appointment, Authorities

- (a) Roster. The Tribal Court shall have a roster of at least three Peacemakers at all times, each of whom shall have a contract with the Tribal Court to serve as a Peacemaker when assigned to a specific case by the Chief Judge.
- (b) Selection and Appointment. Peacemakers shall be selected and appointed by the Chief Judge. The Chief Judge will select Peacemakers with a diversity of backgrounds and experiences so that when appointing a Peacemaker to a particular matter, the Chief Judge will be able to appoint a Peacemaker with background or experience relevant to that matter.
- (c) Background Check. Peacemakers must submit to a background check to ensure that there is nothing in their personal history that would indicate that they pose a danger or threat to persons coming before the Peacemaker Court.
- (d) Qualifications. Peacemakers shall have the following qualifications:
 - (1) At least 35 years of age.
 - (2) Member of a federally recognized Indian tribe.
 - (3) Some demonstrable experience or training in mediation.
 - (4) Does not use illegal drugs or abuse alcohol.
 - (5) Is non judgmental.
 - (6) Avoids stereotyping.

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- (7) Provides a positive role model to others.
 - (8) In his/her heart is truly willing to help others with dispute resolution.
 - (9) Tribal elders would be preferred, but this is not a prerequisite.
 - (e) Agreement or Oath. Peacemakers selected by the Chief Judge must agree in writing or by oath administered by the Chief Judge to serve under the direction of the Tribal Court and work with individuals under the supervision of the Tribal Court.
 - (f) Responsibilities. Peacemakers shall have the following responsibilities:
 - (1) To conduct Peacemaking sessions as assigned.
 - (2) To complete case follow up and proper case management.
 - (3) To reach and issue a Resolution, where possible, in matters coming before them for Resolution.
 - (4) To participate in ongoing trainings.
 - (5) To be timely for all meetings.
 - (6) To maintain strict confidentiality for all information that he or she learns during the course of carrying out Peacemaker responsibilities.
 - (7) To disqualify themselves from participating in any matter in which they have a conflict of interest.
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- (8) To conduct themselves with honesty and integrity.
 - (g) Officers of the Tribal Court. Peacemakers are officers of the Tribal Court when acting as Peacemakers and performing the functions of the Peacemaker Court, and they shall have the same immunities as Tribal Court judges.

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- (h) Consent of Parties Required for Settlement. Peacemakers do not have authority to settle and decide a disputed matter unless all parties to the dispute consent to such authority in writing as a prior condition of participating in the Peacemaker Court.
- (i) Authority. Peacemakers shall have the following authority:
- (1) To mediate disputes among persons involved in the Peacemaker Court by attempting to get them to agree as to the nature of the problems affecting them and to agree on what should be done to resolve those problems.
 - (2) To use traditional ways of mediation and community problem solving.
 - (3) To instruct or lecture individuals on the traditional Tribal teachings relevant to their problem or conduct.
 - (4) To encourage persons involved in a dispute, affected by it, or in any way connected with it to meet to discuss the problem being worked on and to participate in all necessary peacemaking efforts.
 - (5) Where a juvenile has come before the Peacemaker Court from a Juvenile Matter, to establish certain requirements that the juvenile must meet to provide healing, restitution, rehabilitation, and/or repentance for the act committed, in a manner that recognizes and is consistent with traditional Tribal teachings.
 - (6) To refer a matter back to the Tribal Court, or, in the case of a Juvenile Matter referred from another court, to refer the case back to that court, if the Peacemaker determines that no satisfactory Resolution can be reached through the Peacemaking process.
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- (7) To assist in developing innovative and alternative methods of dispute resolution, and not to be bound by prior Tribal Court decisions.
 - (8) To use any lawful and reasonable means to obtain the peaceful, cooperative, and voluntary resolution of a dispute subject to

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peacemaking. No force, violence, or violation of rights secured to individuals by the Indian Civil Rights Act or by Tribal Law or custom will be permitted.

18.07 Removal. The Chief Judge shall have authority to remove a Peacemaker from the Tribal Court's roster of Peacemakers at any time for cause. If any person has a complaint against a Peacemaker, that complaint shall be submitted in writing to the Chief Judge, who shall investigate the matter within a reasonable time. Grounds for removal include, but are not limited to, the following:

- (a) Breaching the confidentiality requirements of the Peacemaker Court.
- (b) Engaging in coercion or biased behavior that is unbecoming of and counterproductive to the role of Peacemaker.
- (c) Failing to show up for a scheduled Peacemaker Court session.
- (d) Failing to conduct Peacemaker Court sessions in a timely fashion.
- (e) Being convicted of a felony in any state or federal, or being convicted in any tribal court of any offense which has resulted in the imposition of a jail sentence.
- (f) Failing to recuse him or herself from a matter in which he or she has a conflict of interest.

18.08 Confidentiality All information, documents, items, and all discussions brought before the Peacemaker Court shall be kept in strict confidentiality.

- (a) Non-Disclosure Agreement Required. Prior to the beginning of any Peacemaker Court proceeding, all the parties and all participants in such proceeding, including the Peacemaker, and all Tribal employees assisting the Peacemaker Court, shall sign a non-disclosure agreement reflecting their understanding of and commitment to the confidentiality of all proceedings before the Peacemaker Court.
- (b) Proceedings Private and Confidential. All proceedings of the Peacemaker Court shall be private and confidential. The parties to any proceeding may,

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however, mutually agree that named individuals may attend specific proceedings.

- (c) No Documents to be Released without Consent. No documents shall be released by any employee or member of the Peacemaker Court to any person or governmental agency unless mutually agreed to in writing by the parties.
- (d) Cannot be Used as Evidence. No statement, other evidence, or other information given during the Peacemaking process may be entered in evidence or otherwise considered in any subsequent judicial proceeding in any court. No Peacemaker may be called to give evidence in any judicial proceeding in any court that involves any dispute to which he or she had been assigned. No record of the discussions or the substance of any discussions themselves may be introduced in any court as evidence or for any other purpose.

18.09 Procedure for Requesting Matter to be Heard by Peacemaker Court

- (a) Request. Any Tribal member who requires assistance to resolve a dispute with another Tribal member may file a request to have the matter heard by the Peacemaker Court ("Peacemaker Request"), whether or not a case has already been filed in the Tribal Court.
- (b) Statute of Limitations Tolled. If no case has been filed, the filing of a Peacemaker Request to resolve a dispute will serve to toll any statute of limitations applicable in Tribal Court to that dispute, which tolling will elapse if and when the Chief Judge decides the case is not appropriate for Peacemaker Court.
- (c) Non-Tribal Members. The Peacemaker Court may, in its unrestricted discretion and upon submission of a Peacemaker Request by a party, exercise jurisdiction over disputes involving non-tribal members (including those involving non-Indians).
- (d) Filing of Request. Peacemaker Requests shall be filed with the Chief Judge of the Tribal Court on a form developed and provided by the Court. Peacemaker Requests must be filed within six months of the date of the incident which gave rise to the dispute.

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- (e) **Copies Provided to Parties.** The Court Clerk or Court Administrator, if the Clerk is not available, shall provide a copy of the Peacemaker Request to all parties to the dispute, and shall attach a copy of this Ordinance to the copies distributed.
- (f) **Consent in Writing Required from All Parties.** All parties to the dispute must consent in writing to having the matter heard by the Peacemaker Court. If there is not consent by all the parties, the Peacemaker Court will not proceed any further.
- (g) **Persons Who are Not Parties.** Persons who are not parties to the dispute can neither request nor object to the hearing of a matter by the Peacemaker Court.

18.10 Determination by Chief Judge.

- (a) **Presentation of Request to Chief Judge.** Upon filing of a Peacemaker Request, the Court Clerk or, if the Clerk is not available, the Court Administrator, will present the request to the Chief Judge.
- (b) **Timing of Decision on Request.** The Chief Judge shall make a decision on the Request within 14 days of receiving the Request. If the Chief Judge makes no decision within that period of time, the Request will be deemed denied, except that the Chief Judge upon written notice to the parties may extend the time for making a decision on the Request by a period of up to 30 days.
- (c) **Procedure for Denying Request.** If the Request is denied, the Chief Judge shall give the reasons for the denial in a brief writing and send a copy to the parties who submitted the Request.
- (d) **Procedure for Granting Request.** The Chief Judge may grant the Request on the basis of the information provided in the Request, grant or deny the request in open court or in chambers, or order an informal conference among the parties in chambers prior to making a decision on the request.
- (e) **Order Granting Request.** If the Request is granted, the Chief Judge will so indicate in a brief order and will appoint one of the Peacemakers to hear

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the matter. A copy of the order will be sent to all the parties and to the appointed Peacemaker.

- (f) Stay of Litigation. If the matter under dispute is already the subject of a Tribal Court civil proceeding, the order shall include a stay of such litigation until the matter is resolved by the Peacemaker Court or is referred back without a Resolution. Any applicable statute of limitations shall commence running upon a determination that further Peacemaking attempts are futile or by a refusal of any party to participate in the Peacemaking process.
- (g) Conditions on Referral. A case may be transferred to the Peacemaker Court upon any reasonable condition, and the Peacemaker Court proceedings may be terminated and the case transferred back upon breach of or failure to satisfy any condition imposed.

18.11 Peacemaking Process

- (a) Peacemaker to Contact Parties. The appointed Peacemaker shall, within 14 calendar days of his or her appointment, contact each of the parties to the dispute. The Peacemaker may contact witnesses and may interview such people as necessary, in the view of the Peacemaker, to develop an understanding of the dispute.
 - (b) Peacemaker to Work with Parties. The Peacemaker shall work with the parties to arrive at a collaborative and mutually acceptable Resolution of the dispute, and shall schedule as many meetings between the parties as the Peacemaker feels would be necessary and useful for resolving the dispute. There shall be no strict requirements on how the process works. Instead, the Peacemaker shall develop an approach that best suits the parties and the circumstances, which may involve separate meetings with each of the parties in addition to bringing all the parties together.
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- (c) Determination that Resolution Cannot be Reached. If at any time during the course of the Peacemaking process, the Peacemaker, or any of the parties to the Peacemaking process, determines that a satisfactory Resolution cannot be reached through the Peacemaking process and that it is futile to continue, the Peacemaker shall refer the matter back to the Chief Judge. The Chief Judge may assign another Peacemaker to attempt

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to continue the Peacemaking process, if the Chief Judge, in his or her sole discretion, determines that appointment of a different Peacemaker might result in development of a Resolution. If not, the Chief Judge will dismiss the Peacemaking process and, if the dispute was an existing case in the Tribal Court, return the case to the active court docket and lift the stay of litigation.

- (d) No Decision as to Fault or Liability for Damages. Peacemakers shall not decide fault or liability for damages, although the parties may agree that one should make payment to the other as part of a Resolution.
 - (e) No Coercion Permitted. Peacemakers have no authority to force or otherwise coerce the parties into a resolution of the mediation request.
 - (f) Resolution Must be Put in Writing. When and if a Resolution is reached, the parties shall, working with the Peacemaker, put the Resolution in writing. The Resolution shall describe the terms and conditions of the agreement reached between the parties. Each party to the Resolution shall agree that they will abide by all terms and conditions of the Resolution.
 - (g) Review of Success of Resolution. The Peacemaker assigned to the dispute shall, within 30 days of the signing of the Resolution, review the success of the Resolution with the parties. At this meeting, the parties may affirm the Resolution, modify the Resolution, or reject the Resolution as unsuccessful. To affirm or modify the Resolution, all parties must agree and sign off. A Resolution will be deemed unsuccessful if any party rejects it.
 - (h) Successful or Modified Resolution. If a Resolution is deemed successful, or a modified Resolution is agreed upon, it will be signed by all the parties and by the Peacemaker, and the Peacemaker shall submit the Resolution to the Chief Judge.
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- (i) Resolution May Be Adopted as Order and Judgment; Conditions. If the parties wish to have the Resolution adopted as an order and judgment of the Tribal Court, the written Resolution shall have a signature line for the Chief Judge of the Tribal Court. The Chief Judge shall review the Resolution and shall sign it, provided that the Resolution meets the following criteria:

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- (1) The Tribal Court has jurisdiction over the parties involved.
- (2) All necessary parties for implementing the Resolution have actual knowledge of the Resolution and have agreed to it.
- (3) The Resolution contains the complete agreement of the parties and contains sufficient information regarding that full agreement so that a dispute as to the provisions of the Resolution is not likely to arise in the future.
- (4) The Resolution is otherwise proper and enforceable by the Tribal Court.
- (5) The Resolution contains the following information:
 - (A) Names and jurisdictional information with regard to each party, and the name of the Peacemaker.
 - (B) A statement that all necessary parties have actual knowledge of the Resolution and have agreed to it becoming an order and judgment of the Tribal Court.
 - (C) A statement that the Resolution is based upon the Klamath Tribes' Peacemaker Court proceedings.
 - (D) A general, brief description of the dispute.
 - (E) A satisfactory description of the terms and conditions for each party to the Resolution.

The Chief Judge, with the consent of the parties and the Peacemaker, may make such modifications to the Resolution so that it complies with the requirements of this Section for the purposes of making it an enforceable order and judgment.

- (j) Legal Force of Resolution. The Resolution, once signed by all the parties, the Peacemaker, and the Chief Judge, shall have the force of an order and judgment of the Tribal Court.

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- (k) Destruction of Records upon Completion of Process. Upon completion of the Peacemaker process, and when all parties are satisfied that it has been concluded (either successfully or unsuccessfully), the assigned Peacemaker, in the presence of the parties, shall (except for the agreed Resolution), destroy all written records, documents or notes used in the Peacemaker Process.
- (l) Copies of Resolution to be Preserved. Each party to the Resolution and the Peacemaker assigned to the Peacemaker Process shall preserve a copy of the Resolution. All signed statements containing a Resolution shall be kept confidential by all parties and the Peacemaker.

18.12 Additional Procedures for Juvenile Matters for Peacemaker Court. Because of the unique and special nature of Juvenile Matters, the transfer of such matters to the Peacemaker Court shall be governed by the following additional procedures. Provided, however, that all other provisions of this Ordinance will apply to Juvenile Matters transferred to the Peacemaker Court to the extent that they are consistent with the provisions of this section.

- (a) Eligibility of Juveniles for Peacemaker Process. Those Klamath Tribe members who are below the age of 18 and who are the subject of a pending Juvenile Matter in Tribal Court or in state court may have their matter heard through the Peacemaker Court.
- (b) Request for Peacemaker. A juvenile who wishes to submit his or her Juvenile Matter to the Peacemaker Court shall submit a written request to the Tribal Court on an application form developed by the Tribal Court for that purpose. On that form, the juvenile shall indicate his or her consent to submit to the authority of the Peacemaker Court and to abide by the decision and Resolution reached by through the Peacemaking process. If the court with jurisdiction over the Juvenile Matter consents to having the matter heard through the Peacemaker Court, the Tribal Court judge shall appoint a Peacemaker and assign the matter to him or her.
- (c) Participation of Parents, Families, and Victims. The Peacemaker shall provide for active participation from parents and families whose children are involved in a case, as well as for the victim(s) of the juvenile's behavior.

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- (d) Responsibility for Wrongful Behavior. The Peacemaker shall provide an environment for the wrong-doer to take responsibility for his/her wrongful behavior, and shall provide an environment that is safe for victims and wrong-doers to work out problems and begin the healing process.
- (e) Traditional Practices and Teachings. The Peacemaker shall assist in locating traditional practices and teachings and community based services to children, youth, family members and others.
- (f) Cooperative and Collaborative Process. The Peacemaker shall, through a cooperative and collaborative process, develop a Resolution for the matter that is acceptable to all the parties involved.
- (g) Compliance with Resolution; Consequences for Failure to Do So. The juvenile shall comply with all the terms and conditions of the Resolution, and if he or she fails to do so, the case may be transferred back to the court with original jurisdiction over the Juvenile Matter for resolution through that court's process.
- (h) Referral of Matter Back to Court. The Peacemaker has the authority to refer a Juvenile Matter back to the court with original jurisdiction over the Juvenile Matter, if at any time during the course of the Peacemaking process, the Peacemaker determines that a satisfactory Resolution cannot be reached through the Peacemaking process.

18.13 Principles of Construction. The following principles of construction apply to this Ordinance unless a different construction is obviously intended to obtain a reasonable result:

- (a) Masculine words shall include the feminine, and singular words shall include the plural, and vice versa.
- (b) Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.
- (c) This Ordinance shall be construed as a whole to give effect to all its parts in a logical, consistent manner.

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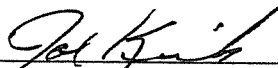
- (d) All other issues of construction shall be decided using a generally accepted principle of construction that will effect the underlying principles and purposes of this Ordinance.
- (e) The provisions of this Ordinance shall supersede any inconsistent provisions in the Klamath Tribal Code or in the Rules of Court for the Klamath Tribal Court.

18.14 Severability. If any provisions of this Ordinance or the application of any provision to any person or circumstance is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of this Ordinance and its application to any other person or circumstances and, to this end, the provisions of this Ordinance are severable.

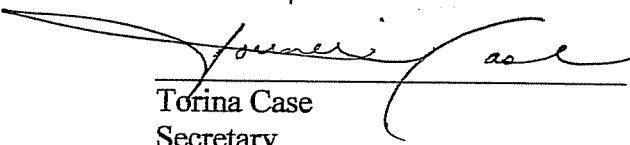
18.15 Sovereign Immunity. Except as expressly and specifically waived by a resolution of the Klamath Tribes or by Klamath Tribal Law, the Klamath Tribes shall be immune from suit, and their officers and employees also shall be immune from suit for liability arising from the performance of their official duties.

Tribal Council Certification

We, the undersigned, Tribal Council Chairman and Secretary of the Klamath Tribes, do hereby certify that at a regularly scheduled General Council meeting held on the 15th day of November, 2008, the General Council adopted this Ordinance to be effective as of 11-15-08, by a vote of 33 for, 6 opposed, and 5 abstentions. Quorum: 56



Joe Kirk
Chairman
The Klamath Tribes



Torina Case
Secretary
The Klamath Tribes