

Bureau of Indian Affairs, Interior

§ 11.203

government dispute, unless the relevant tribal governing body passes a resolution, ordinance, or referendum granting the court jurisdiction.

(c) In deciding who is a tribal official, BIA will give deference to a decision of the Court of Indian Offenses, acting as a tribal forum by resolution or ordinance of a tribal governing body under paragraph (b) of this section.

(d) A tribe may not be sued in a Court of Indian Offenses unless its tribal governing body explicitly waives its tribal immunity by tribal resolution or ordinance.

Subpart B—Courts of Indian Offenses; Personnel; Administration

§ 11.200 What is the composition of the Court of Indian Offenses?

(a) Each court shall be composed of a trial division and an appellate division.

(b) A chief magistrate will be appointed for each court who will, in addition to other judicial duties, be responsible for the administration of the court and the supervision of all court personnel.

(c) Appeals must be heard by a panel of magistrates who were not involved at the tribal/trial level.

(d) Decisions of the appellate division are final and are not subject to administrative appeals within the Department of the Interior.

[58 FR 54411, Oct. 21, 1993, as amended at 73 FR 39860, July 11, 2008]

§ 11.201 How are magistrates for the Court of Indian Offenses appointed?

(a) Each magistrate shall be appointed by the Assistant Secretary—Indian Affairs or his or her designee subject to confirmation by a majority vote of the tribal governing body of the tribe occupying the Indian country over which the court has jurisdiction, or, in the case of multi-tribal courts, confirmation by a majority of the tribal governing bodies of the tribes under the jurisdiction of a Court of Indian Offenses.

(b) Each magistrate shall hold office for a period of four years, unless sooner removed for cause or by reason of the

abolition of the office, but is eligible for reappointment.

(c) No person is eligible to serve as a magistrate of a Court of Indian Offenses who has ever been convicted of a felony or, within one year of the date of service or application, of a misdemeanor.

(d) No magistrate shall be qualified to act as such wherein he or she has any direct conflicting interest, real or apparent.

(e) A tribal governing body may set forth such other qualifications for magistrates of the Court of Indian Offenses as it deems appropriate, subject to the approval of the Assistant Secretary—Indian Affairs, or his or her designee.

(f) A tribal governing body may also recommend requirements for the training of magistrates of the Court of Indian Offenses to the Assistant Secretary—Indian Affairs.

§ 11.202 How is a magistrate of the Court of Indian Offenses removed?

Any magistrate of a Court of Indian Offenses may be suspended, dismissed or removed by the Assistant Secretary—Indian Affairs, or his or her designee, for cause, upon the written recommendation of the tribal governing body, and, in the case of multi-tribal courts, upon the recommendation of a majority of the tribal governing bodies of the tribes under the jurisdiction of a Court of Indian Offenses, or pursuant to his or her own discretion.

§ 11.203 How are the clerks of the Court of Indian Offenses appointed and what are their duties?

(a) Except as may otherwise be provided in a contract with the tribe occupying the Indian country over which the court has jurisdiction, the chief magistrate shall appoint a clerk of court for the Court of Indian Offenses within his or her jurisdiction, subject to the superintendent's approval.

(b) The clerk shall render assistance to the court, to local law enforcement officers and to individual members of the tribe in the drafting of complaints, subpoenas, warrants, commitments, and other documents incidental to the functions of the court. The clerk shall