

#### **§ 11.204**

also attend and keep a record of all proceedings of the court and manage all monies received by the court.

(c) The clerk of court shall forward any monies received on judgments due to the person, agency, or corporation to which entitled, within 30 days unless directed otherwise by a magistrate of the Court of Indian Offenses.

#### **§ 11.204 Prosecutors.**

Except as may otherwise be provided in a contract with the tribe occupying the Indian country over which the court has jurisdiction, the superintendent shall appoint a prosecutor for each Court of Indian Offenses within his or her jurisdiction.

#### **§ 11.205 Are there standards for the appearance of attorneys and lay counselors?**

(a) No defendant in a criminal proceeding shall be denied the right to counsel.

(b) The chief magistrate shall prescribe in writing standards governing the admission and practice in the Court of Indian Offenses of professional attorneys and lay counselors.

#### **§ 11.206 Is the Court of Indian Offenses a court of record?**

(a) Each Court of Indian Offenses shall keep a record of all proceedings of the court containing the title of the case, the names of the parties, the complaint, all pleadings, the names and addresses of all witnesses, the date of any hearing or trial, the name of any magistrate conducting such hearing or trial, the findings of the court or jury, the judgment and any other information the court determines is important to the case.

(b) The record in each case shall be available for inspection by the parties to the case.

(c) Except for cases in which a juvenile is a party or the subject of a proceeding, and for cases whose records have been sealed by the court, all case records shall be available for inspection by the public.

(d) Such court records are part of the records of the BIA agency having jurisdiction over the Indian country where the Court of Indian Offenses is located

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and shall be protected in accordance with 44 U.S.C. 3102.

#### **§ 11.207 What are the responsibilities of Bureau of Indian Affairs employees?**

(a) No employee of the BIA may obstruct, interfere with, or control the functions of any Court of Indian Offenses, or influence such functions in any manner except as permitted by Federal statutes or the regulations in this part or in response to a request for advice or information from the court.

(b) Employees of the BIA shall assist the court, upon its request, in the preparation and presentation of facts in the case and in the proper treatment of individual offenders.

#### **§ 11.208 May Individual Indian Money accounts be used for payment of judgments?**

(a) Any Court of Indian Offenses may make application to the superintendent who administers the individual Indian money account of a defendant who has failed to satisfy a money judgment from the court to obtain payment of the judgment from funds in the defendant's account. The court shall certify the record of the case to the superintendent. If the superintendent so directs, the disbursing agent shall pay over to the injured party the amount of the judgment or such lesser amount as may be specified by the superintendent.

(b) A judgment of a Court of Indian Offenses shall be considered a lawful debt in all proceedings held by the Department of the Interior or by a Court of Indian Offenses to distribute decedents' estates.

#### **§ 11.209 How does the Court of Indian Offenses dispose of fines?**

All money fines imposed for the commission of an offense shall be in the nature of an assessment for the payment of designated court expenses. The fines assessed shall be paid over by the clerk of the court to the disbursing agent of the reservation for deposit as a "special deposit, court funds" to the disbursing agent's official credit in the Treasury of the United States. The disbursing agent shall withdraw such

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funds, in accordance with existing regulations, upon order of the clerk of the court signed by a judge of the court for the payment of specified expenses. The disbursing agent and the clerk of the court shall keep an account of all such deposits and withdrawals available for public inspection.

### Subpart C—Criminal Procedure

#### § 11.300 Complaints.

(a) A complaint is a written statement of the essential facts charging that a named individual(s) has committed a particular offense. All criminal prosecutions shall be initiated by a complaint filed with the court by a law enforcement officer and sworn to by a person having personal knowledge of the offense.

(b) Complaints shall contain:

(1) The signature of the complaining witness, or witnesses, sworn before a magistrate, a court clerk, a prosecutor, or any law enforcement officer.

(2) A written statement by the complaining witness or witnesses having personal knowledge of the violation, describing in ordinary language the nature of the offense committed including the time and place as nearly as may be ascertained.

(3) The name or description of the person alleged to have committed the offense.

(4) A description of the offense charged and the section of the code allegedly violated.

(c) Complaints must be submitted without unnecessary delay by a law enforcement officer to the prosecutor and, if he or she approves, to a judge to determine whether an arrest warrant or summons should be issued.

(d) When an accused has been arrested without a warrant, a complaint shall be filed forthwith with the court for review as to whether probable cause exists to hold the accused, and in no instance shall a complaint be filed later than at the time of arraignment.

#### § 11.301 Arrests.

(a) Arrest is the taking of a person into police custody in order that he or she may be held to answer for a criminal offense.

(b) No law enforcement officer shall arrest any person for a criminal offense except when:

(1) The officer shall have a warrant signed by a magistrate commanding the arrest of such person, or the officer knows for a certainty that such a warrant has been issued; or

(2) The offense shall occur in the presence of the arresting officer; or

(3) The officer shall have probable cause to believe that the person arrested has committed an offense.

#### § 11.302 Arrest warrants.

(a) Each magistrate of a Court of Indian Offenses shall have the authority to issue warrants to apprehend any person the magistrate has probable cause to believe has committed a criminal offense in violation of the regulations under this part based on a written complaint filed with the court by a law enforcement officer and bearing the signature of the complainant.

(b) The arrest warrant shall contain the following information:

(1) Name or description and address, if known, of the person to be arrested.

(2) Date of issuance of the warrant.

(3) Description of the offense charged.

(4) Signature of the issuing magistrate.

(c) Such warrants may be served only by a BIA or tribal police officer or other officer commissioned to enforce the regulations of this part.

#### § 11.303 Notification of rights prior to custodial interrogation.

Prior to custodial interrogation, the suspect shall be advised of the following rights:

(a) That he or she has the right to remain silent.

(b) That any statements made by him or her may be used against him or her in court.

(c) That he or she has the right to obtain counsel and, if indigent, to have counsel appointed for him/her.

#### § 11.304 Summons in lieu of warrant.

(a) When otherwise authorized to arrest a suspect, a law enforcement officer or a magistrate may, in lieu of a warrant, issue a summons commanding the accused to appear before the Court