

**LAW AND ORDER CODE OF
THE COW CREEK BAND OF UMPQUA TRIBE OF INDIANS**

Title 45 – Peacemaking Court

45-10 SCOPE & DEFINITIONS

45-10-010 Establishment

The Peacemaking Court of the Cow Creek Band of Umpqua Tribe of Indians is hereby established as part of the Tribal Court system. The Chief Judge of the Tribal Court shall oversee the management and operation of the Peacemaking Court.

45-10-020 Purpose

The purpose of the Peacemaking Court is to protect the health, welfare, and morals of the Tribal community by utilizing Tribal customs and culturally appropriate methods to resolve conflicts and assist Tribal community members.

45-10-030 Definitions

“**Chief Judge**” means the Chief Judge of the Tribal Court.

“**Child**” means an unemancipated and unmarried person under eighteen (18) years of age.

“**Peacemaker**” means a person appointed by the Tribal Court who meets the qualifications of Peacemakers as described in Section 45-30-020 to oversee Peacemaking procedures. The Takelma word “xaawiiisaa” (x-ah-WEE-sah), which means “between-person who goes” or “go-between” and refers to a custom of mediation, shall be used interchangeably with Peacemaker.

“**Peacemaking Court**” means the Peacemaking Court of the Cow Creek Band of Umpqua Tribe of Indians.

“**Tribal Court**” means the Tribal Court of the Cow Creek Band of Umpqua Tribe of Indians.

“**Tribal Member**” means an enrolled member of the Cow Creek Band of Umpqua Tribe of Indians.

“**Tribe**” means the Cow Creek Band of Umpqua Tribe of Indians.

45-20 JURISDICTION

45-20-010 Initiation of Case in Peacemaking Court

Disputes between individual Tribal members may be initiated in the Peacemaking Court without filing a complaint in Tribal Court. The parties must file a consent agreement and a description of

the matter on a form to be provided by the Clerk of the Tribal Court. There shall be no filing fee to initiate a Peacemaking matter. If, after initiation of the Peacemaking, either party revokes consent to Peacemaking or if the parties cannot agree to a Xaawíisaa/Peacemaker pursuant to 45-20-030, the case may be removed from the Peacemaking Court and transferred to Tribal Court, if appropriate and upon the filing of a complaint and summons according to Section 3-20.

45-20-020 Transfer of Case to Peacemaking Court

- (a) With the voluntary, written consent of the parties, the Tribal Court, in its discretion, may enter a transfer order transferring any case or dispute to the Peacemaking Court, including any criminal action.
- (b) If litigation has commenced in the matter, the transfer order shall include a stay of such litigation until the matter is resolved by the Peacemaking Court or Peacemaking proceedings are terminated without a resolution. A transfer to the Peacemaking Court shall also stay any applicable statute of limitations.
- (c) If the case is already the subject of a Tribal Court criminal proceeding, the transfer order may include the continued imposition of pretrial release conditions, including conditions issued pursuant to Section 40-40-071 (“Conditions Upon Release Prior to Trial”) of the Cow Creek Rules of Criminal Procedure.
- (d) Cases may be transferred from the Douglas County Circuit Court to the Peacemaking Court pursuant to any appropriate memorandum of understanding or agreement.

45-20-030 Order Assigning Xaawíisaa/Peacemaker

As soon as reasonably possible after the initiation of a case in the Peacemaking Court or the transfer of a case to the Peacemaking Court, the parties shall each propose a Xaawíisaa/Peacemaker from the roll maintained by the Tribal Court pursuant to Section 45-30-020 or an otherwise qualified Tribal member. If the parties cannot agree to a Xaawíisaa/Peacemaker, the Tribal Court shall propose a candidate. If the parties do not consent to the Tribal Court’s proposed candidate, the action will be removed from the Peacemaking Court. If the parties agree or consent to a Xaawíisaa/Peacemaker, the Tribal Court shall issue an order assigning the Xaawíisaa/Peacemaker to the case. The Tribal Court shall coordinate with the Xaawíisaa/Peacemaker to create a proposed timeline and dates for status reports to the Tribal Court. The proposed timeline and status report dates shall be contained in the order assigning a Xaawíisaa/Peacemaker.

45-20-040 Termination of Peacemaking Proceedings

- (a) Any party may file a Motion to Terminate Peacemaking at any time during the Peacemaking proceedings. A Motion to Terminate Peacemaking may be based on, but is not limited to:
 - 1. Lack of personal or subject-matter jurisdiction;

2. A high probability that Peacemaking will be unsuccessful based on well-articulated facts; or
3. The parties' successful out-of-court settlement.

(b) The Tribal Court may, in its discretion, remove a case from the Peacemaking Court.

45-30 XAAWÍISAAHAN/PEACEMAKERS

45-30-010 Xaawíisaa/Peacemaker

A Xaawíisaa/Peacemaker is a non-judicial official appointed to oversee the Peacemaking proceedings and to guide the Peacemaking process in line with culturally appropriate methods and values.

45-30-020 Appointment & Qualifications of Xaawíisaahan/Peacemakers

- (a) Xaawíisaahan/Peacemakers must be enrolled members of the Tribe, have the respect of the Tribal community, and a reputation for honesty, integrity, and humanity. Xaawíisaahan/Peacemakers must have knowledge of appropriate Tribal customs and restorative justice principles, or a willingness to learn such knowledge.
- (b) Xaawíisaahan/Peacemakers shall be appointed by the Tribal Court. The Chief Judge will select and certify names of individuals proposed as Xaawíisaahan/Peacemakers. The individuals selected and certified must agree in writing or by oath administered by the Tribal Court to serve under the direction of the Tribal Court and work with parties under the supervision of the Tribal Court. The Tribal Court shall maintain a roll of Xaawíisaahan/Peacemakers and the Tribal Court shall assign Xaawíisaahan/Peacemakers to cases from that roll. The Chief Judge may add or delete names to or from the roll from time to time. Parties may consent to the use of a Tribal member not listed on the Tribal Court roll if the proposed Tribal member meets all other qualifications and is approved by the Chief Judge.
- (c) All Xaawíisaahan/Peacemakers must satisfactorily complete a background investigation to ensure that nothing in the person's personal history would indicate that they pose a danger or threat to individuals coming before the Peacemaking Court.
- (d) No current Tribal Board Member, Tribal judicial officer, or attorney for the Tribe, may be eligible to be a Xaawíisaa/Peacemaker.

45-30-030 Duties of Xaawíisaahan/Peacemakers

Xaawíisaahan/Peacemakers shall schedule Peacemaking sessions at times and places that are reasonably convenient to all participants. At the outset of any participant's initial session, Xaawíisaahan/Peacemakers shall clearly state that they are not judges and have no authority to

make a decision for parties or to force them to do anything, except as authorized by Tribal law. During Peacemaking, Xaawíisaahan/Peacemakers must at all times maintain an atmosphere that honors Tribal values and promotes peace, healing, and respect among the parties and the community.

45-30-040 Powers of Xaawíisaahan/Peacemakers

- (a) Xaawíisaahan/Peacemakers shall have the authority to resolve disputes and promote healing using restorative justice principles and culturally appropriate methods.
- (b) Xaawíisaahan/Peacemakers may use any reasonable means to obtain the peaceful, cooperative, and voluntary resolution of a dispute subject to Peacemaking so long as such means conform to Tribal law and culture.
- (c) Xaawíisaahan/Peacemakers shall have the power to instruct or lecture individuals on culturally appropriate teachings relevant to their problem or conduct.
- (d) Xaawíisaahan/Peacemakers do not have the authority to violate any Tribal or Federal law, or to jeopardize the health and welfare of any party to a case or any member of the Tribal community as a whole.
- (e) Xaawíisaahan/Peacemakers do not have the authority, either express or implied, to contractually bind the Tribe or waive the sovereign immunity of the Tribe.
- (f) The Xaawíisaahan/Peacemaker, in his or her judgment, may involve all or some participants in each Peacemaking session. Xaawíisaahan/Peacemakers must not meet alone with children without a parent, grandparent, guardian, or other individual approved by the Tribal Court, present.
- (g) Xaawíisaahan/Peacemakers may refuse to serve, or discontinue their service in any case at any time. If an assigned Xaawíisaahan/Peacemaker discontinues service, the Tribal Court will review whether to assign a new Xaawíisaahan/Peacemaker or withdraw the case from the Peacemaking Court.

45-30-050 Xaawíisaahan/Peacemaker Conflict of Interest

- (a) Xaawíisaahan/Peacemakers may not accept appointment to any proceeding in which they or their immediate family have any personal or financial interest in the outcome of the Peacemaking proceeding unless the Tribal Court and the parties consent otherwise. Xaawíisaahan/Peacemakers must also disclose to the assigning Tribal Court judge and to the parties any actual or potential conflicts of interest and any known immediate family or personal relationship between themselves and any party.
- (b) Any party may file a Motion to Change Xaawíisaahan/Peacemaker based on an actual or potential conflict of interest.

45-30-060 Removal of Xaawíisaa/Peacemaker

- (a) The Tribal Court may remove a Xaawíisaa/Peacemaker if the Court finds that the Xaawíisaa/Peacemaker is no longer qualified under 45-30-020, has a conflict of interest under 45-30-050, or removal is otherwise appropriate.
- (b) If any person has a complaint against a Xaawíisaa/Peacemaker, that complaint shall be submitted in writing to the Chief Judge, who shall investigate the matter within a reasonable time.
- (c) Grounds for removal of a Xaawíisaa/Peacemaker include, but are not limited to:
 - 1. Breaching the confidentiality requirements of the Peacemaking Court;
 - 2. Engaging in coercion or biased behavior that is unbecoming of and counterproductive to the role of Peacemaking;
 - 3. Failing to appear for a scheduled Peacemaking Court session without good cause;
 - 4. Failing to conduct Peacemaking Court sessions in a timely fashion;
 - 5. Being convicted of any offense in any state, Federal, or tribal court that may indicate that the Xaawíisaa/Peacemaker poses a danger or threat to individuals coming before the Peacemaking Court or involves fraud, theft, or moral turpitude; or
 - 6. Discovery of an undisclosed conflict of interest.

45-30-070 Compensation of Xaawíisaahan/Peacemakers

Xaawíisaahan/Peacemakers may receive reimbursement for time and expenses reasonably related to their role as a Xaawíisaa/Peacemaker by approval of the Tribal Court. At the conclusion of Peacemaking proceedings, Xaawíisaahan/Peacemakers may accept gifts of nominal value from parties in recognition of their services and pursuant to custom.

45-30-080 Immunity of Xaawíisaahan/Peacemakers

Xaawíisaahan/Peacemakers shall be officers of the Tribal Court. Xaawíisaahan/Peacemakers shall be immune from suit for good faith actions and omissions made in the scope of their authority, in the same manner as judges of the Tribal Court.

45-40 PEACEMAKING PROCEEDINGS

45-40-010 Peacemaking Procedures Generally

- (a) Peacemaking shall be facilitated by Xaawíisaahan/Peacemakers in accordance with culturally appropriate methods, Tribal values, and restorative justice principles.

- (b) Peacemaking shall commence by order of the Tribal Court as described in section 45-20-030.
- (c) Peacemaking may include non-parties suggested by the parties, or that the Xaawíisaa/Peacemaker believes would be useful and appropriate to the issues presented in the case. If a child is involved, a Xaawíisaa/Peacemaker will encourage participation by that child's parent or legal guardian. Xaawíisaahan/Peacemakers may caucus with individual or subgroups of participants without the consent or appearance of the parties.
- (d) Lawyers and spokespersons may participate in Peacemaking only with the advance unanimous consent of the Xaawíisaa/Peacemaker and all parties, with the exception of criminal proceedings. In criminal proceedings, the Tribal Prosecutor and attorney for the defendant may participate in Peacemaking proceedings, as appropriate.
- (e) Peacemaking may include community and Tribal activities that do not reasonably threaten the welfare of participants. Any such activities involving a child must be pre-approved in writing by that child's parent or legal guardian.
- (f) Any person who participates in Peacemaking without acting in good faith to resolve their differences may be excluded or have their participation restricted by the Xaawíisaa/Peacemaker.

45-40-020 Confidentiality and Privilege

Communications made during Peacemaking shall be treated as confidential by all parties and participants, except that Xaawíisaahan/Peacemakers may consult with one another about cases as needed. Communications made during Peacemaking shall be privileged as settlement negotiations and may not be admitted to Tribal Court as evidence unless otherwise agreed to in writing by the parties, or as otherwise provided by Tribal law. This privilege will not apply to communications originally made for purposes other than Peacemaking, or made before Peacemaking begins. Notwithstanding any other provision of this paragraph, a Xaawíisaa/Peacemaker must make a formal report to the appropriate government agency all instances of actual or suspected child abuse or neglect; elder abuse or neglect; or any reasonable belief that a person is a danger to themselves or others. With the permission of all Peacemaking parties, a Xaawíisaa/Peacemaker may testify at a hearing regarding Peacemaking proceedings.

45-40-030 Sanctions

If a participant is not compliant with the requirements of the Peacemaking Court, the Tribal Court may issue sanctions against the participant. Sanctions include but are not limited to community service work, a change in substance abuse program or facility, and an increase in other requirements imposed by the Xaawíisaa/Peacemaker or Tribal Court. If a participant remains non-compliant with the requirements of the Peacemaking Court, the Tribal Court may terminate the participant from the program.

45-40-040 Status Report to Tribal Court

- (a) A Xaawíisaa/Peacemaker will submit status reports to the Tribal Court as required by section 45-20-030 and when the Xaawíisaa/Peacemaker feels that no further Peacemaking need occur.
- (b) The status report may either be in writing or a verbal statement made on the record and will detail what additional Peacemaking sessions are needed and the degree to which the original dispute has been resolved. The report shall identify unresolved issues and the parties involved in those issues. The report shall not include the substance of communications made in the course of Peacemaking that would be considered confidential communications for settlement purposes unless those communications are necessary to satisfy the requirements of this Title, including this section, or other Tribal laws, or the parties give informed consent in writing to the disclosure of the communications.

45-40-050 Peacemaking Resolutions

- (a) When and if a resolution is reached, the Xaawíisaa/Peacemaker, working with the parties, shall put the resolution in writing in a Peacemaking Resolution. 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. The Resolution must be signed by the parties.
- (b) 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. The Chief Judge shall review the Resolution and shall sign it, provided that the Resolution meets the following criteria:
 - 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 full 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:
 - i. The identifying information of each party, and the name of the Xaawíisaa/Peacemaker;
 - ii. 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;

- iii. A statement that the Resolution is based upon the Tribe's Peacemaking Court proceedings;
 - iv. A general, brief description of the dispute or criminal charge; and,
 - v. A satisfactory description of the terms and conditions for each party to the Resolution.
6. The Tribal Court, with the consent of the parties and the Xaawisaa/Peacemaker, may make such modifications to the Resolution so that it complies with the requirements of this section and for the purposes of making it an enforceable order and judgment.
- (c) The Resolution, once signed by all the parties, the Xaawisaa/Peacemaker, and the Chief Judge, shall have the force of an order and judgment of the Tribal Court.
 - (d) Tribal custom values finality after dispute resolution. In accordance with this traditional value, if the Resolution is adopted as an order and judgment of the Tribal Court, and the case was already the subject of a criminal or civil proceeding, the underlying criminal or civil proceeding shall be dismissed whenever possible and appropriate.

45-50 MISCELLANEOUS

45-50-010 Severability

If a court of competent jurisdiction finds any provision of this Title to be invalid or illegal under applicable Tribal and/or Federal law, such provision shall be severed from this Title and the remainder of this Title shall remain in full force and effect.

45-50-020 Sovereign Immunity

Nothing in this Title waives, expressly or impliedly, the sovereign immunity of the Tribe or any of its officers, employees, or representatives.

45-50-030 Construction

This Title shall be interpreted according to the law and customs of the Tribe and shall be construed liberally with the goal of providing just, respectful, and culturally appropriate means of resolving disputes.