

RESOLUTION
HOPI TRIBE
H-12-76

To Establish The Hopi Trial Courts As Courts Of Record; To Establish An Order Of Precedence For Authority To Guide Trial Courts In Making Decisions; And To Clarify The Procedures Of The Appellate Court Of The Hopi Tribe.

BE IT ENACTED BY THE HOPI TRIBAL COUNCIL ASSEMBLED:

Section 1. Courts of Record.

(a) The Courts of the Hopi Tribe, both Trial and Appellate are hereby declared to be Courts of Record and the Clerk thereof is hereby authorized to certify under seal as to the accuracy and validity of the files and records of all proceedings before the Courts of the Hopi Tribe.

(b) The Clerk of the Courts of the Hopi Tribe is hereby authorized to take, preserve and certify under seal to the accuracy of a verbatim record of the proceedings before the Courts of the Hopi Tribe. Such record may be taken and recorded by a stenographic, electronic, mechanical, or other recording means of devices approved by the Chief Judge of the Court as a trustworthy means of creating a permanent verbatim record of all proceedings.

(c) The Chief Judge of the Trial and Appellate Courts shall, by rule, prescribe the length of time such verbatim transcripts shall be preserved by the Clerk.

(d) It shall be a criminal offense, punishable by the penalties and under the rules and procedures of Hopi Ordinance 21, dated July 10, 1972, as amended, for the Clerk of the Trial Courts to knowingly make or keep a false file, record or certificate or to alter, amend or destroy any file, record or transcript without lawful authority.

Section 2. Precedential Authority for Trial Courts.

(a) The Courts of the Hopi Tribe, in deciding matters of both substance and procedure, in cases otherwise properly before the Courts of the Hopi Tribe, shall look to and give weight as precedent to, the following:

- (1) The Hopi Constitution and Bylaws;
- (2) Ordinances of the Hopi Tribal Council;
- (3) Resolutions of the Hopi Tribal Council;
- (4) Customs, traditions and culture of the Hopi Tribe;
- (5) Laws, rules and regulations of the Federal Government and cases interpreting such. Such laws, rules and regulations may, in circumstances dictated by the Supremacy Clause of the U.S. Constitution, be required to take a higher order or precedence.
- (6) The laws and rules, and cases interpreting such laws and rules, of the State of Arizona. This provision shall not be deemed to be an adoption of such laws or rules as the law

of the Hopi Tribe nor as a grant or cession of any right, power or authority by the Hopi Tribe to the State of Arizona.

(7) The Common Law

(b) The Courts of the Hopi Tribe shall not recognize nor apply any federal, state, or common law rule or procedure which is inconsistent with either the spirit or the letter of either the Hopi Constitution and Bylaws or any Hopi Ordinance or Resolution or the custom, traditions, or culture of the Hopi Tribe, unless otherwise required, in the case of federal law, by the Supremacy Clause of the U. S. Constitution.

Section 3. Appellate Procedure.

(a) There shall be no right to a trial de novo (new trial) in appeals from the Trial Courts to the Appellate Court, unless a trial de novo is stipulated by a particular statute. The decision of the Appellate Court shall be made on the basis of the file and verbatim record of the proceedings in the Trial Court plus the briefs and memoranda submitted by the parties to the appeal.

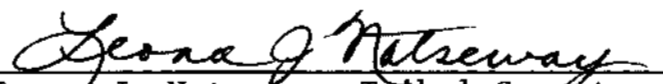
(b) Upon the stipulation (agreement) of all parties to an appeal, the decision of the Appellate Court may be made upon the basis of stipulated (agreed) facts and/or issues of law and without, or with less than all of, the file and/or verbatim record of the Trial Court, plus, in any case, the briefs and memoranda submitted by the parties to the appeal.

C E R T I F I C A T I O N

I hereby certify that the foregoing resolution was regularly adopted by the Hopi Tribal Council in accordance with Article VI, Section 1(g) and 1(n), of the Hopi Tribal Constitution on the 16th day of December, 1975, by a vote of 13 in favor, 0 opposed, 2 abstaining, with Chairman not voting.


Abbott Sekaquavewa, Chairman
Hopi Tribal Council

ATTEST:


Leona J. Natseway, Tribal Secretary
Hopi Tribal Council

RECIPROCAL EXTRADITION AGREEMENT

This agreement, entered into this _____ day of _____, _____ between the Hopi Tribe and _____, by and through their authorized representatives, is intended to provide a practical, workable framework in which said jurisdictions can obtain the extradition, for purposes of criminal prosecution, of persons violating the laws of either jurisdiction and fleeing to or found in the territory of the other.

Section 1. Definitions

(1) "Executive Authority" means the Chairman of the Hopi Tribe, in the case of the Hopi Tribe, and the _____ in the case of _____.

(2) "Territorial Jurisdiction" means all lands and property within the limits of the territorial jurisdiction of either party hereto.

(3) "Criminal offense" means any act or failure to act which is defined by the law of the requesting jurisdiction to be criminal, and in the case of the Hopi Tribe shall include any act or failure to act made criminal by any ordinance of the Hopi Tribal Council, and in the case of _____, shall mean any act or failure to act which is declared to be, or punished as if it were, a felony. "Criminal offense" shall include a sentence of imprisonment for a criminal offense from which the accused person has fled or escaped before completing or being released by lawful procedure.

(4) "Requesting jurisdiction" means the jurisdiction which initiates a request for the other jurisdiction to turn over a person accused of a criminal offense.

(5) "Responding jurisdiction" means the jurisdiction which receives a request to turn over a person accused of a criminal offense.

(6) "Prosecuting authority" means the officer of either jurisdiction charged with the duty to prosecute the criminal offense for which extradition is sought.

Section 2. Persons charged with criminal offense to be delivered upon demand.

Subject to the laws applicable to each party hereto, and except as otherwise provided in this agreement, the executive authority of each jurisdiction which is a party hereto shall cause to be arrested and delivered up to the executive authority of the requesting jurisdiction, any person within the territorial jurisdiction of the responding jurisdiction accused of committing a criminal offense within the territorial jurisdiction of the requesting jurisdiction, upon receipt of a request for extradition as specified herein.

Section 3. Request for Extradition

(1) The request for extradition shall be in writing and addressed from the executive authority of the requesting jurisdiction to the executive authority of the responding jurisdiction, and shall request the extradition of a person charged with com-

mitting a criminal offense in the requesting jurisdiction and having thereafter fled from the requesting jurisdiction.

(2) The request for extradition must be accompanied by certified copies of the following documents:

(a) The indictment, information, or criminal complaint, together with any affidavits relating thereto, or, in the case of the failure to serve or complete a sentence or imprisonment lawfully imposed, the judgement and sentence and any affidavits or documents relating thereto plus a certificate of the executive authority of the requesting jurisdiction that the person requested has escaped from the confinement, or has otherwise unlawfully failed to complete the same.

(b) A warrant of arrest issued by the requesting jurisdiction.

(3) The indictment, information or criminal complaint, together with supporting affidavits, must substantially charge the person requested with having committed a criminal offense under the law of the requesting jurisdiction.

(4) The authenticity of the documents submitted and the validity and good faith of the request for extradition must be certified to in the request by the executive authority of the requesting jurisdiction.

Section 4. Procedure Upon Receipt of a Request for Extradition

The executive authority of the responding jurisdiction

shall, within 5 days after receipt of a request for extradition, do one of the following:

(1) Forward the request, with his approval endorsed thereon, to a judge of his jurisdiction empowered to issue warrants of arrest; or

(2) Return the request to the executive authority of the requesting jurisdiction with his reasons for not approving the request endorsed thereon, provided however, that the executive authority shall not inquire into the guilt or innocence of the accused as a condition to granting or withholding approval.

Section 5. Arrest of Accused Person

(1) Upon receipt of a request for extradition with the approval of the executive authority of the responding jurisdiction endorsed thereon, the judge of the responding jurisdiction shall issue a warrant of arrest for the person named in the request, and deliver said warrant of arrest to the law enforcement officers of the responding jurisdiction having authority to make arrests.

(2) The warrant of arrest so issued shall substantially conform to the requirements for such documents in the responding jurisdiction and shall recite the facts necessary to the validity of its issuance.

(3) Such warrants of arrest shall authorize the arrest of the accused at any time or place within the territorial jurisdiction of the responding jurisdiction in the manner pro-

vided for other arrests in that jurisdiction, and the authority of the officers executing said warrant shall be the same as when making other arrests.

Section 6. Procedure upon Arrest

(1) As soon as practicable after the arrest of the accused, he shall be taken before the judge issuing the warrant of arrest and, after confirming his identity, there he shall be advised of the cause of the arrest, and, if he so desires, given an opportunity to obtain counsel.

(2) If the accused or his counsel desires to test the legality of the arrest, a hearing to determine such issue shall be scheduled and held as soon as is practicable. Notice of such hearing shall be given to the prosecuting authority of the responding jurisdiction, and to the agent of the requesting jurisdiction into whose custody the accused would otherwise be delivered.

(3) No person arrested under this agreement shall be delivered up to the requesting jurisdiction until he has either had a hearing to test the legality of his arrest, or has, in open court, made an informed waiver of such hearing.

(4) Persons arrested pursuant to this agreement shall be incarcerated in the local jail of the respective jurisdiction, as in the case of regular arrests.

(5) Any person arrested pursuant to this agreement shall be given the opportunity to make bail in any case where his delivery to the requesting jurisdiction is not imminent. Such

bail shall be in amount sufficient to reasonably assure the appearance of the accused at a time and place specified by the court. Forfeiture of bail and arrest for nonappearance, where appropriate, may be made as in other cases.

Section 7. Procedure if Prosecution is pending in the Responding Jurisdiction

If a criminal prosecution has been instituted in the responding jurisdiction against the person whose extradition is sought, the executive authority of the responding jurisdiction, in his discretion, may either surrender the accused to the requesting jurisdiction or hold him until he has been tried and discharged or convicted and punished in the responding jurisdiction.

Section 8. Manner of Initiating Requests for Extradition

The prosecuting authority of each jurisdiction shall have authority to initiate requests for extradition, to administer the details thereof, and to designate officers to receive persons extradited from the other jurisdiction.

Section 9. Prosecution in Requesting Jurisdiction

(1) A person extradited under this agreement shall be given the same rights and privileges under the laws of the requesting jurisdiction as any other person accused of a criminal offense by that jurisdiction.

(2) Criminal prosecution in the requesting jurisdiction shall not be limited to the criminal offense specified in

the request for extradition.

Section 10. Sovereignty

Nothing in this agreement or in the implementation hereof shall be deemed to be a grant, cession or waiver of any of the sovereign governmental rights, powers, or jurisdiction of either party hereto.

Section 11. Duration of Agreement

(1) This agreement shall become effective upon its execution by the executive authorities of the parties hereto.

(2) This agreement shall remain in effect until cancelled by notification from the executive authority of either jurisdiction to the other.

Done at _____ on the day and year first above written.

HOPI TRIBE

by _____
Chairman

by _____



Tribal Operations

January 14, 1976

Memorandum

To: Area Director, Phoenix Area
ATTN: Tribal Government Services

From: Superintendent

Subject: Hopi Tribal Council Resolution No. H-12-76

We are enclosing one copy of the above resolution in which the tribal council establishes the Hopi Tribal Court as a court of record, to establish an order of precedence for authority to guide Trial Courts in making decisions, and to clarify the procedures of the appellate court of the Hopi Tribe.

Alph H. Secakuku

Enclosure

cc: John S. Boyden w/encl.
Chairman - Hopi Tribe w/encl.