

Fort Peck Assiniboine and Sioux Tribes Tribal Public Defender=s Office

Policy Guidelines

Eligibility

1. Enrolled members of the Fort Peck Assiniboine and Sioux Tribes, members of other federally recognized tribes, and other Indians subject to Tribal Court.
2. Cases in Tribal Court
3. Meet income guidelines set out in Financial Eligibility Form

Cases

1. Criminal: The Public Defender may assume representation for adult misdemeanor or felony offenses in which the defendant is facing potential imprisonment, including Class A misdemeanor and Felony offenses under the Fort Peck Comprehensive Code of Justice.
2. Civil: Other cases may be specially referred to the Public Defender by a Tribal Court Judge, subject to availability, time, and resources after fulfilling priorities listed below.
3. Conditions and Limitations:
 - a) When there are simultaneous requests by opposing individuals that meet the income eligibility requirements, such as in the case of co-defendants, the Public Defender will represent the first individual to make a request or the first party referred by a judge.
 - b) The Public Defender shall not represent any tribal member against another tribal member.

Priorities:

The following cases will have priority:

1. All felony cases
2. Class A misdemeanors: abuse of child, neglect of child, statutory rape, stalking, sexual assault, simple assault, domestic abuse, concealed weapon, driving under the influence, hindering law enforcement, criminal contempt, resisting, false imprisonment, abandonment of child, elder abuse, possession of explosives, use of dangerous weapons by children, unlawful possession of dangerous drugs, unlawful possession of toxic substances, drug paraphernalia, violation of temporary restraining order, resisting arrest, threats and other improper influences in official matters.

Non-priorities:

The Public Defender will have discretion to represent the following charges based on current caseload, facts of the particular case, implications of representation, and potential sentence.

1. Class A Misdemeanors: aiding suicide, harboring a child, indecent exposure, criminal trespass, theft (less than \$100), criminal mischief (damage more than \$100), injury to public property (more than \$100), issuing bad checks (3rd or subsequent offense), forgery (less than \$100), violation of tribal permit or lease, void liens, unlawful discharge of firearms, unlawful possession of liquor by someone under 21 (2nd or subsequent offense), unlawful sale or distribution of liquor to minor, contributing to the delinquency of a minor, unlawful distribution of tobacco to minor, unlawful possession of dangerous drugs, unlawful possession of toxic substances, interfering with elections, tampering with witnesses or

informants, disorderly conduct, desecration of tribal flag, failure to support dependent persons, failure to send children to school, curfew, restaurants and itinerant restaurants, entering a closed area, driving without a license, reckless or careless driving, unlawful use of or tampering with a motor vehicle, driving in violation of an order of the court, mandatory financial responsibility.

2. Juvenile and Family Law cases—The Public Defender will consider Juvenile and Family Law cases which are referred by a Judge, but will not represent one tribal member against another tribal member.

Service Delivery

1. The Tribal Court Judges may refer any individual, adult or juvenile, that meets the eligibility requirements to the Public Defender for representation.
2. Any individual that meets the eligibility criteria may request the advice of the Public Defender before he/she pleads to the charge pursuant to CCOJ, Title 6, Ch. 4, Sec. 401(c)(2)(d).
3. Individuals who have not been taken into custody and who desire representation for a criminal proceeding may contact the Public Defender's Office to determine eligibility.
4. An individual seeking representation must fill out an application and financial statement.
5. The Public Defender will either accept or decline representation within two business days or notify the individual of reason for delay.
6. The Public Defender shall not accept any applications for cases in which trial has been scheduled for two weeks or less from the date of the application.
7. The Public Defender shall contact new clients as soon as possible after accepting their applications.

Duration of Representation

A person who is eligible to be represented by the Public Defender is entitled to be defended at all stages of the matter beginning with the earliest possible stage in the proceeding and through the exhaustion of all avenues of relief from conviction, including sentencing, preserving the defendant's right to appeal, post-conviction review, or revocation of probation or parole.

Declining or Terminating Representation

1. The Public Defender has the authority and discretion to decline or terminate representation if:
 - a. The client requests the attorney to engage in illegal or fraudulent conduct.
 - b. The client harasses, threatens, or acts in an inappropriate manner towards the Public Defender.
 - c. The client fails to keep in contact with the Public Defender
 - d. Other good cause for withdrawal exists.
2. If declining representation the Public Defender will immediately send notice in writing to the client, including the reasons for declining representation.
3. To terminate representation, the Public Defender must make a motion with the Court to withdraw and take reasonable steps to protect the client's interest.

Suggested Caseload:

In order to assure quality representation, the Public Defender should limit the caseload as deemed appropriate. The Public Defender=s caseload shall never be so large as to interfere with the rendering of quality representation or lead to the breach of ethical obligations. The Public Defender is obligated to decline applications or referrals above such levels. The concept of workload shall be measured according to factors including case complexity, support services, and the Public Defender=s nonrepresentational duties. The following suggested caseload serves as a guide for maximum caseloads:

Code of Ethics

The Public Defender shall adhere to the Fort Peck Tribal Court Code of Ethics for Attorneys and Lay Counselors of the Fort Peck Indian Reservation.

Conflicts

1. The Public Defender shall be cognizant of the existent of any potential or actual conflicts of interest which would impair the Public Defender=s ability to represent a client.
2. Except for preliminary matters such as arraignment, the Public Defender shall not represent a client when a conflict of interest exists between co-defendants or multiple defendants such that the representation of one client will be directly adverse to the other client.
3. When the Public Defender discovers a conflict of interest that would adversely affect representation after initiating representation for a client, the Public Defender shall make a motion to withdraw with the Tribal Court.

Referrals

The Public Defender may maintain a list of local attorneys and lay advocates to refer fee generating cases for which the Public Defender has declined representation.