

# Ordinance 4-4 Update

Legal Departments and Tribal Court

JUSTICE



# Amendments

- We are seeking to amend 4-4 to allow attorneys to practice in civil matters in tribal court.
  - Currently, attorneys are allowed to practice in criminal, juvenile and dependency matters.
  - **BUT** they are restricted from assisting in civil matters. This includes cases such as probate, divorce, forcible detainer, and similar matters.
    - The limitations also include the inability to cover a hearing on behalf of an advocate or to serve in a co-counsel role.





# Basis for the Request

- At present, we are unable to offer sufficient options to community members due to a limited conflict counsel pool.
  - There are only two advocates available for hire, and if both are unable to assist a member, there are no alternative options for them to turn to.
- Some cases present significant challenges, and community members would greatly benefit if an attorney were able to assist with or handle the case—something that is currently not permitted under the existing code.



# Two proposals

- Proposal One
  - No Limitations
- Proposal Two
  - Restricts professional attorneys to practice in tort cases when it involves the government departments or enterprises.
  - Language added to preserve the utilization of lay advocates in tribal court.



# Request

- We would like to gather feedback from community members on the two proposed versions of this amendment. Their input will help us determine which version best addresses the community's needs.
- Requesting a 60 day comment period.





A photograph of a modern building with a glass and wood facade, surrounded by a gravel landscape with young trees and a clear blue sky. The building has a prominent glass section on the left and a wood-clad section on the right. The foreground is a gravel-covered area with several small, young trees planted in rows. The sky is a clear, light blue with a few wispy clouds on the right side. The overall scene is bright and sunny.

# Questions?

#### **Sec. 4-4. Professional attorneys and lay advocates.**

(a) *Professional attorneys.*

(1) Professional attorneys shall be permitted to practice in all divisions or case types of community court.

(2) Any person appearing before the Community court shall have the right to have the assistance of a professional attorney ~~in eminent domain matters, provided that this must be at their his or her~~ own expense or provided by Community Legal Services, and provided that any professional attorney making an appearance before the Community court must be admitted to practice pursuant to the rules of the Community court. ~~Professional attorneys shall not be permitted to practice before the court in civil matters other than the eminent domain.~~

(3) If the Community court determines that the civil rights of any person appearing before the court in a juvenile or mental health proceeding ~~require include the right to have~~ the assistance of a professional attorney, or if the juvenile or mental health chapters of this Community Code of Ordinances so requires, the court shall ~~permit appoint~~ a professional attorney to represent that person.

(4) In all criminal matters, ~~a person criminal defendants~~ shall be appointed the assistance of counsel in accordance with the rules of criminal procedure, which rules may be amended from time to time.

(b) *Lay advocates.* Any person appearing before the Community court shall have the right at their ~~his or her~~ own expense, to have the assistance of a lay advocate or provided by Community Legal Services. The term "lay advocate" means any person who is duly admitted to practice before the Community court pursuant to the rules of the Community court and is not an attorney.

(c) *Insurance carriers; advocates for the Community.*

(1) Cooperative agreements with insurance carriers. The Community manager may, on behalf of the Community, enter into written agreements with insurance carriers who have issued policies of insurance in favor of the Community for specified risks which will allow the insurance carriers to have the assistance of the Community in the defense of actions filed in Community court for claims insured by such policies of insurance and which will ensure the full coverage of the policies of insurance and the defense of the insured parties. Any such agreement will specify the assistance to be rendered by the Community to the insurance carrier and that such assistance is consistent with and will not constitute a breach or modification of the agreements or conditions of the policies of insurance. The assistance that may be agreed to by the Community manager will consist of the services of a lay advocate or attorney employed in the office of the General Counsel Community's staff attorney and working under the supervision of the Community's General Counsel~~staff attorney~~. The extent of the services will be a subject of the agreement. The agreement will provide for the payment by the insurance carrier of all costs for the services rendered.

(2) *Designation of lay advocate.* The Community ~~manager~~ General Counsel shall designate a lay advocate or attorney employed in the office of the Community's ~~staff~~ attorney General Counsel to have the responsibility to represent the Community, its divisions, departments, officers and employees in any civil action filed in the Community court in which any of them is

(a). Defendant and when such case involves an official action of the Community or any of its divisions or departments; or an alleged action or breach of duty of any officer or employee of the Community or any of its divisions or departments acting in his or her official capacity, and when the claim asserted is not insured against, by the Community, or if the claim is insured against, only after an agreement satisfying the requirements of subsection (c)(1) of this section is entered into; and

(b). Plaintiff or nominal plaintiff in a civil action brought by or on behalf of the Community or any of its divisions.

Such designated lay advocate shall work under the supervision of the staff attorney.

(3) The enactment of subsections (c)(1) and (2) of this section does not waive the sovereign immunity of the Community against suit beyond any amount for which the Community, its officers and employees and its divisions and their officers and employees are insured and any judgment is satisfied.

(Code 1981, § 4-4; Code 2012, § 4-4; Amd. to Ord. No. SRO-33-75, § 1.13, 5-5-1980; Ord. No. SRO-111-88, § 3, 2-17-1988; Ord. No. SRO-265-2000, 3-29-2000; Ord. No. SRO-396-2012, 4- 4, 6-1-2012; Ord. No. SRO-402-2012, § 4-4, 5-30-2012)



#### **Sec. 4-4. Professional attorneys and lay advocates.**

##### **(a) Professional attorneys.**

(1) Professional attorneys shall be permitted to practice in all divisions or case types of community court except in tort cases involving government departments or enterprises.

(2) Any person appearing before the Community court shall have the right to have the assistance of a professional attorney in eminent domain matters, provided that this must be at their his or her own expense or provided by Community Legal Services, and provided that any professional attorney making an appearance before the Community court must be admitted to practice pursuant to the rules of the Community court. Professional attorneys shall not be permitted to practice before the court in civil matters other than the eminent domain.

(3) If the Community court determines that the civil rights of any person appearing before the court in a juvenile or mental health proceeding require include the right to have the assistance of a professional attorney, or if the juvenile or mental health chapters of this Community Code of Ordinances so requires, the court shall permit appoint a professional attorney to represent that person.

(4) In all criminal matters, a person criminal defendants shall be appointed the assistance of counsel in accordance with the rules of criminal procedure, which rules may be amended from time to time.

##### **(b) Lay advocates.**

(1) Any person appearing before the Community court shall have the right at their his or her own expense, to have the assistance of a lay advocate or provided by Community Legal Services. The term "lay advocate" means any person who is duly admitted to practice before the Community court pursuant to the rules of the Community court and is not an attorney.

(2) The Community Legal Departments will utilize lay advocates whenever appropriate and available.

##### **(c) Insurance carriers; advocates for the Community.**

(1) Cooperative agreements with insurance carriers. The Community manager may, on behalf of the Community, enter into written agreements with insurance carriers who have issued policies of insurance in favor of the Community for specified risks which will allow the insurance carriers to have the assistance of the Community in the defense of actions filed in Community court for claims insured by such policies of insurance and which will ensure the full coverage of the policies of insurance and the defense of the insured parties. Any such agreement will specify the assistance to be rendered by the Community to the insurance carrier and that such assistance is consistent with and will not constitute a breach or modification of the agreements or conditions of the policies of insurance. The assistance that may be agreed to by the Community manager will consist of the services of a lay advocate or attorney employed in the office of the General Counsel Community's staff attorney and working under the supervision of the

Community's ~~General Counsel~~staff attorney. The extent of the services will be a subject of the agreement. The agreement will provide for the payment by the insurance carrier of all costs for the services rendered.

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