

Bureau of Indian Affairs, Interior

§ 11.311

(1) If the accused pleads “not guilty” to the charge, the magistrate shall then inform the accused of the trial date and set conditions for release prior to trial.

(2) If the accused pleads “guilty” to the charge, the magistrate shall accept the plea only if he or she is satisfied that the plea is made voluntarily and that the accused understands the consequences of the plea, including the rights waived by the plea. The magistrate may then impose sentence or defer sentencing for a reasonable time in order to obtain any information he or she deems necessary for the imposition of a just sentence. The accused shall be afforded an opportunity to be heard by the court prior to sentencing.

(3) If the accused refuses to plead, the judge shall enter a plea of “not guilty” on his or her behalf.

(e) The court may, in its discretion, allow a defendant to withdraw a plea of guilty if it appears that the interest of justice would be served by doing so.

§ 11.310 Bail.

(a) Each person charged with a criminal offense under this part shall be entitled to release from custody pending trial under whichever one or more of the following conditions is deemed necessary to reasonably assure the appearance of the person at any time lawfully required:

(1) Release on personal recognizance upon execution by the accused of a written promise to appear at trial and all other lawfully required times;

(2) Release to the custody of a designated person or organization agreeing to assure the accused’s appearance;

(3) Release with reasonable restrictions on the travel, association, or place of residence of the accused during the period of release;

(4) Release after deposit of a bond or other sufficient collateral in an amount specified by the magistrate or a bail schedule;

(5) Release after execution of a bail agreement by two responsible members of the community; or

(6) Release upon any other condition deemed reasonably necessary to assure the appearance of the accused as required.

(b) Any law enforcement officer authorized to do so by the court may admit an arrested person to bail pending trial pursuant to a bail schedule and conditions prepared by the court.

(c) A convicted person may be released from custody pending appeal on such conditions as the magistrate determines will reasonably assure the appearance of the accused unless the magistrate determines that release of the accused is likely to pose a danger to the community, the accused, or any other person.

(d) The Court of Indian Offenses may revoke its release of the defendant and order him or her committed at any time where it determines that the conditions of release will not reasonably assure the appearance of the defendant, or if any conditions of release have been violated.

§ 11.311 Subpoenas.

(a) Upon request of any party, the court shall issue subpoenas to compel the testimony of witnesses, or the production of books, records, documents or any other physical evidence relevant to the determination of the case and not an undue burden on the person possessing the evidence. The clerk of the court may act on behalf of the court and issue subpoenas which have been signed either by the clerk of the court or by a magistrate of the Court of Indian Offenses and which are to be served within Indian country over which the Court of Indian Offenses has jurisdiction.

(b) A subpoena shall bear the signature of the chief magistrate of the Court of Indian Offenses, and it shall state the name of the court, the name of the person or description of the physical evidence to be subpoenaed, the title of the proceeding, and the time and place where the witness is to appear or the evidence is to be produced.

(c) A subpoena may be served at any place but any subpoena to be served outside of the Indian country over which the Court of Indian Offenses has jurisdiction shall be issued personally by a magistrate of the Court of Indian Offenses.

(d) A subpoena may be served by any law enforcement officer or other person

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appointed by the court for such purpose. Service of a subpoena shall be made by delivering a copy of it to the person named or by leaving a copy at his or her place of residence or business with any person 18 years of age or older who also resides or works there.

(e) Proof of service of the subpoena shall be filed with the clerk of the court by noting on the back of the subpoena the date, time and place that it was served and noting the name of the person to whom it was delivered. Proof of service shall be signed by the person who actually served the subpoena.

(f) In the absence of a justification satisfactory to the court, a person who fails to obey a subpoena may be deemed to be in contempt of court and a bench warrant may be issued for his or her arrest.

§ 11.312 Witness fees.

(a) Each fact witness answering a subpoena is entitled to a fee of not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1) and any of its subsequent revisions, plus actual cost of travel. Each fact witness testifying at a hearing shall receive pay for a full day (eight hours) plus travel allowance.

(b) The Court of Indian Offenses may order any party calling a witness to testify without a subpoena to compensate the witness for actual traveling and living expenses incurred in testifying.

(c) If the Court of Indian Offenses finds that a complaint was not filed in good faith but with a frivolous or malicious intent, it may order the complainant to reimburse the court for expenditures incurred under this section, and such order may constitute a judgment upon which execution may levy.

§ 11.313 Trial procedure.

(a) The time and place of court sessions, and all other details of judicial procedure shall be set out in rules of court approved by the chief magistrate of the Court of Indian Offenses.

(b) Courts of Indian Offenses shall be bound by the Federal Rules of Evidence, except insofar as such rules are superseded by order of the court or by the existence of inconsistent tribal rules of evidence.

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§ 11.314 Jury trials.

(a) In any criminal case punishable by a sentence of six months in jail and in any criminal case in which the prosecutor informs the court before the case comes to trial that a jail sentence will be sought, the defendant has a right, upon demand, to a jury trial. If the prosecutor informs the court that no prison sentence will be sought, the court may not impose a prison sentence for the offense.

(b) A jury shall consist of eight Indian residents of the vicinity in which trial is held, selected from a list of eligible jurors prepared each year by the court. An eligible juror shall be at least 18 years of age, shall not have been convicted of a felony, and shall not otherwise be unqualified according to standards established by the Court of Indian Offenses under its general rulemaking authority. Any party may challenge without cause not more than three members of the jury panel so chosen.

(c) The magistrate shall instruct the jury with regard to the applicable law and the jury shall decide all questions of fact on the basis of the law.

(d) The jury shall deliberate in secret and return a verdict of guilty or not guilty. Six out of the eight jurors must concur to render a verdict.

(e) Each juror who serves on a jury is entitled to a fee not less than the hourly minimum wage scale established by 29 U.S.C. 206(a)(1), and any of its subsequent revisions, plus mileage not to exceed the maximum rate per mile established by the Federal Government of jurors and witnesses. Each juror shall receive pay for a full day (eight hours) for any portion of a day served, plus travel allowance.

§ 11.315 Sentencing.

(a) Any person who has been convicted in a Court of Indian Offenses of a criminal offense under the regulations of this part may be sentenced to one or a combination of the following penalties:

(1) Imprisonment for a period not to exceed the maximum permitted by the section defining the offense, which in no case shall be greater than six months.