

TULALIP TRIBAL COURT

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MEMORANDUM

TO: BOARD OF DIRECTORS; NICS; MIKE TAYLOR, RESERVATION ATTORNEY; SHELLY LACY, GENERAL MANAGER; CHERIE ROSS, BEDA?CHEHL; CHIEF SMITH, TULALIP POLICE DEPARTMENT; RIC KILMER AND TAMMY BEATTY, PROSECUTOR'S OFFICE; MARTIN NAPEAPI, ADMINISTRATION; LENA HAMMONS, TGA

FROM: TULALIP TRIBAL COURT JUDGES

SUBJECT: 2008 ANNUAL REPORT

DATE: JANUARY 1, 2009

This report covers the Calendar Year January 1, 2008 to December 31, 2008.

I. Annual Summary of Activities.

A. Summary of Caseload.

1. Case Statistics: The total number of criminal filings remained substantially the same in 2008. These numbers continue to be a decrease over 2006 and thus there remains about a 12% decrease from 2006. This is particularly impressive because the number of adult enrolled tribal members continues to increase each year without an increase in new criminal filings. The traffic infractions have increased substantially over a three year period. 2007 had a doubling of infractions from 2006 and these more than doubled again in 2008.

Civil case filings are down about 15% from 2007 which saw about a 20% increase from 2006. Thus, overall civil filings remain up over the last three years and again are higher than criminal filings. Youth in need of care filings are down about 20% (from 85 in 2007 to 65 filings in 2008). Child custody case filings are slightly down but Dissolution and Guardianship filings remain substantially the same. The general civil filings were down about 12% overall from 2007. New for 2008 is the tracking of child support cases. There were a total of 25 new child support cases filed in 2008. This will set the foundation for comparison for 2009 when the Tulalip Child Support Program becomes fully operational.

Since the Court began providing Annual Reports in 2006, the following chart demonstrates the three year comparison of the Court's annual caseload.

YEAR COMPARISON	2006	2007	2008
Criminal	353	311	318
Traffic	140	260	533
Civil	486	601	504
Total Cases	979	1172	1355
Total Hearings		5084	6674

In 2007 the Court began tracking the total number of hearings held by the Tribal Court each year. In 2007, the court held 5084 hearings which averaged about 21 hearings per day. In 2008, the Court held about 6674 hearings which are about 26 hearings per day.

II. ANNUAL STATISTICS.

TULALIP TRIBAL COURT											
ACTIVITY REPORT FOR THE PERIOD											
January Through December 2008											
Type of Cases	Filed by Quarter					Disposed by Quarter					Total Pending
	1 st	2 nd	3 rd	4 th	Total	1 st	2 nd	3 rd	4 th	Total	
Criminal Alcohol	18	21	13	13	65	26	28	26	21		30
Criminal Drugs	7	5	7	3	22	16	17	12	8		17
Criminal Domestic Violence	13	14	14	3	44	22	26	21	19		18
Criminal Fishing	0	0	2	9	11	1	1	2	9		3
Criminal General	44	41	56	35	176	46	70	76	57		122
TOTAL CRIMINAL	82	81	92	63	318	111	142	136	114		190
Traffic	128	126	177	102	533	161	154	184	118		145
TOTAL: Criminal & Traffic	210	207	269	165	851	272	296	321	232		335
Civil Anti-Harassment	17	3	3	3	26	0	6	17	1		25
Civil Child Support	3	1	16	9	29	1	1	1	1		53
Civil Child Custody	8	6	7	4	25	8	6	8	2		149
Civil Divorce	11	8	6	6	31	8	6	5	3		90
Civil Employment	7	1	4	4	16	6	3	1	1		26
Civil Gaming	8	8	3	6	25	3	14	4	0		19
Civil General	27	27	30	26	110	14	8	5	5		260
Civil Guardianship	22	11	14	6	53	15	11	4	13		153
Civil Paternity	0	0	2	0	2	0	0	0	0		13
Civil Restraining Order	10	9	5	13	37	10	1	16	5		66
Civil Unlawful Detainer	17	1	3	2	23	11	1	0	1		49
Civil Youth in Need of Care	29	13	8	15	65	22	31	23	8		153
TOTAL CIVIL CASES:	172	115	113	104	504	95	99	87	42		1172
TOTAL CASES:	382	322	382		1355	380	396	417	270		1507
TOTAL HEARINGS:	1630	1600	1843	1610	6674						

2. Not Included in Statistics: The court issued 551 bench warrants and quashed 189 in 2008. As in 2007 approximately 1/3 of bench warrants issued are voluntarily resolved. The remaining is outstanding or is served on the Defendant when he is booked into jail. The Court of Appeals heard and issued decisions for 3 cases for 2008. 2 new appeals were filed in 2008, the same number as in 2007. One case filed in late 2007 was heard in early 2008.

Fines and Filing fees were up in 2008, primarily because of the increased number of traffic infractions. In 2008, the court collected \$47,084.91 in receipts. In 2007, that amount was \$38,002.94 and \$21,545.40 in 2006.

All three personal injury cases filed in 2007, settled and were dismissed without a trial in 2008. The issue of civil juries remains to be decided but there was not a need for civil juries in 2008. In fact, there were no jury trials in 2008.

B. Wellness Court: The Wellness Court continues to operate and meet one time per week to staff cases. In 2008, the Court graduated 3 persons from Wellness Court for a total of 5 people in 2 years. None of the 5 persons have been re-arrested since graduation. In the first quarter of 2008, the Wellness Court had a retreat and reviewed the effect of the program after its first full year of operation. Wellness Court began in June of 2006. Between June of 2006 and the December of 2007, the Wellness Court accepted 23 clients. 2 clients graduated, 8 were currently in Wellness Court and 13 were dismissed because of their substantial non-compliance or refusal to comply with Wellness Court rules. Interestingly, of those 13 dismissed clients, 10 still have not had new criminal charges filed and all have been in or completed treatment and/or are employed. Only 3 have either had new charges or had a warrant remain unserved since they left Wellness Court.

The Court piloted Wellness Court II with 3 clients in 2008. Recently Wellness II staff had a training and retreat. The result is that for violent offenses the Court will place its clients on a regular criminal review rather than the therapeutic setting of Wellness II because the therapeutic setting was ineffective for these clients. This will start in January of 2009 for the clients involved.

C. Meetings and Trainings: The Judges participated in several internal meetings with Tulalip staff and several trainings conducted by the Judges with external agencies.

1. Trainings or Presentations by the Judges:

a. Judge Pouley presented at the "Emerging Leaders Conference" for the University of Arizona on Tulalip's Alternative Sentencing Program. Judge Pouley also was a presenter at the Federal District Court for the ABA's Annual Leadership Institute, the NICS First Annual Conference on Tribal Courts, the University of Washington's Annual Seminar for Attorneys, the National Child Support Program's Annual Conference, the Washington State Judicial Conference, the National Tribal Gaming Conference, and the University of Washington for the Native Student's meeting.

b. Judge Pouley was also invited by the Senate Committee on Indian Affairs to provide testimony on the new Tribal Law and Order Bill in July of 2008. This bill is being sponsored by Senator Dorgan which would increase funding to Tribal law enforcement and Tribal courts.

C. Judge Bass presented at the Nevada Inter-Tribal Court of Appeals Conference on Appellate work.

2. Meetings attended:

a. The Court continues to participate in Monthly Law and Justice Committee Meetings to coordinate and update various departments on changes and recommendations for changes in the judicial systems.

b. The judges participated in community meetings in early 2008 to discuss issues for which the community action group requested meetings. The judges continued to meet with Services Committee to provide information on Court process, Wellness Court, statistical information and staffing needs.

c. All legal staff including the Judges continued to work on the revisions to Ordinance 49 throughout 2008. The meetings began in February and were held 2 to 4 times per month depending on the participant's schedules.

d. Judge Bass participated in the Snohomish County Juvenile Court meetings in 2008. He plans to continue his participation to extend the use of Tulalip's Elders Panel to Tulalip Youth in the County Court system in 2009.

e. Both Judges participated in the Coordinated Community Response Trainings on Domestic Violence organized and facilitated by Mending the Sacred Hoop.

f. Judge Bass participated in and completed the Wraparound Training series offered by Tulalip Behavioral Health.

g. The Court continues to work on rules and procedures for implementing Electronic Home Monitoring and transferring the monitoring for the program to the probation department.

h. The court had visitors from a variety of Tribes seeking to establish Courts or seeking to set up Wellness Court's in our area. The Puyallup Tribal Court visited the Wellness Court. The Snoqualamie Tribe is setting up a brand new Court and spent a couple of days at Tulalip to see its operation. Tlingit-Haida from Juneau, Alaska was at Tulalip to see the Dependency Court and visit with Beda?chelh. In December, Judge Pouley went to a conference sponsored by Tlingit-Haida to continue plans for their new court.

i. As a result of the Congressional testimony of Tribes and Tulalip in particular, the Department of Justice, U.S. Attorney's Office set up a meeting with Tulalip Law Enforcement Officers, the Chief of Police and Tulalip Judges to discuss ongoing prosecution of federal cases in Indian Country. As a result of the meeting, a number of Tulalip cases which had not been filed have now been filed in federal court and information on other cases was provided.

D. Other Court Programs:

1. Elders Panel: The Tulalip Elders Panel completed its second year. It continues to be comprised of volunteer Tulalip elders who wish to provide services for young first time offenders (between about 21 to 25 years of age). In December of 2008, the Everett Herald published an article highlighting the efforts of the Elders Panel. In 2009, Judge Bass hopes to get Snohomish County Juvenile Court to use Tulalip's Elders

Panel for possible diversion or community service for youth found delinquent or on diversion from the county court.

2. **Probation Office:** The Tulalip Tribes Probation Department was new in 2006. In December of 2008, Probation added an assistant. The goal of the Probation Department is to provide assistance to tribal members in meeting their court-ordered requirements.
3. **Mediation:** The Court had three personal injury cases filed in 2008. Two were under Tulalip's Tort Claims Act and one was a private party personal injury case. All three cases settled without a trial. Two of the cases settled as a direct result of court-ordered mediation. For 2009, the court plans on continuing to mediate both injury and dissolution cases in an attempt to foster agreed solutions. The Court has arranged with NICS to provide an on-site mediator one day per month for the first six months. The Court will then evaluate the effectiveness of those services and may request an additional six months.
4. **Guardian Ad Litem and Conflict Defense Attorneys:** The Court extensively relies on guardian ad litem, attorneys for the children, in child custody cases. The Court also maintains a list of outside attorneys it uses when the University of Washington has a conflict representing a client. The Court's 2008 budget was about \$20,000.00 for these services. For 2009, the budget has been drastically reduced. The Court will closely monitor these costs, but anticipates it will have to ask for additional funding for these services.
5. **Electronic Home Monitoring (EHM) by GPS:** The Court staff and Probation Department had several meetings to begin using EHM for its clients sentenced to jail. It is anticipated that the Probation Department will begin monitoring clients on EHM in early 2009 and continue to decrease the jail costs associated with incarceration.

III. Planning for 2009 – Court Development

- A. **Judges:** In 2009, Judge Bass and Judge Pouley will again change their primary court calendars. Judge Bass will return to the criminal calendar and Judge Pouley will return to the civil calendar. The Judges plan to continue to rotate the primary calendars' on a yearly basis. Just as with last year's change, this should fundamentally affect decision-making.
- B. **Court Staff:** One of the much welcomed changes for 2009 will be the addition of a Court Director. Interviews are scheduled for the 1st week of 2009. The addition of a Director will allow the Court to tackle a variety of training, procedural and

planning matters that have been handled only on an emergent basis for the last 3 years.

- C. Court Decisions: A variety of Court of Appeals cases and Trial Court decisions of note were issued in 2008.

Fryberg v. TGA and *Bill v. Tulalip Tribes* were both employment cases decided by the Court of Appeals. In *Fryberg*, TGA's termination decision was upheld even though they did not comply with the HRO 84 requirements for a "last chance agreement" because there were other sufficient violations of the "major offense" provisions of the HRO to sustain the dismissal.

In *Bill*, the Court of Appeals reversed a decision of the trial court that reinstated the employee's job. The Court of Appeals found that even when an employee is serving a jail sentence for Wellness Court, this does not provide good cause not to treat the absence as excused and the Tribes could count the absences as "no-call, no show" justifying termination.

The Court of Appeals also issued a decision in *In re the guardianship of E.D. and L.D.*. This case involved interpretation of Ordinance 81 on the preference for guardians. The Ordinance provides a placement preference for guardians who are Tulalip Tribal members or Indians of other tribes. The Appellant claimed she should be given the preference over the children's biological grandparents because she was part of a "customary adoption" into a Tulalip family. The Court of Appeals affirmed the trial court that the Appellant was not within the Ordinance 81 definition of "relative" and thus the grandparents were the proper placement.

The Tulalip Trial Court issued a ruling interpreting Ordinance 49.2.14 and .15 which requires particular warning be given when the police "stop and frisk" a person prior to arresting them. The Court ruled, although this section is not a constitutional right, that a statutory right created by the Tulalip Tribes must be treated the same and therefore excluded evidence when proper warning were not given to the defendant.