

PART 88—RECOGNITION OF ATTORNEYS AND AGENTS TO REPRESENT CLAIMANTS

Sec.

88.1 Employment of attorneys.

88.2 Employment by tribes or individual claimants.

AUTHORITY: 5 U.S.C. 301.

CROSS REFERENCES: For law and order regulations on Indian reservations, see part 11 of this chapter. For probate procedure, see part 15 of this chapter. For regulations governing the admission of attorneys to practice before the Department of the Interior and the offices and bureaus thereof, see 43 CFR part 1. For regulations governing the execution of attorney contracts with Indians, see part 89 of this subchapter.

§ 88.1 Employment of attorneys.

(a) Indian tribes organized pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461-479), as amended, may employ legal counsel. The choice of counsel and the fixing of fees are subject under 25 U.S.C. 476 to the approval of the Secretary of the Interior or his authorized representative.

(b) Attorneys may be employed by Indian tribes not organized under the Act of June 18, 1934, under contracts subject to approval under 25 U.S.C. 81 and the Reorganization Plan No. 3 of 1950, 5 U.S.C. 481, note, by the Secretary of the Interior or his authorized representative.

(c) Any action of the authorized representative of the Secretary of the Interior which approves, disapproves or conditionally approves a contract pursuant to paragraph (a) or (b) of this section shall be final.

(d) Practice of such attorneys before the Bureau of Indian Affairs and the Department of the Interior is subject to the requirements of 43 CFR 1.1 through 1.7.

[27 FR 11548, Nov. 24, 1962. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 88.2 Employment by tribes or individual claimants.

All such attorneys or agents seeking approval of their employment by Indian tribes or desiring to represent individual claimants before the Indian Bureau shall be required to comply

fully with the regulations of the Department promulgated September 27, 1917, governing admission to practice, and to take the oath of allegiance and to support the Constitution of the United States, as required by section 3478 of the United States Revised Statutes (31 U.S.C. 204).

[22 FR 10538, Dec. 24, 1957. Redesignated at 47 FR 13327, Mar. 30, 1982]

PART 89—ATTORNEY CONTRACTS WITH INDIAN TRIBES

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AUTHORITY: 5 U.S.C. 301; secs. 89.30 to 89.35 also issued under 25 U.S.C. 2, 9, and 82a; secs. 89.40 to 89.43 also issued under 25 U.S.C. 13, 450 *et seq.*

CROSS REFERENCE: For recognition of attorneys and agents to represent claimants, see part 88 of this subchapter.

TRIBES ORGANIZED UNDER THE INDIAN REORGANIZATION ACT

§ 89.1-89.26 [Reserved]

FIVE CIVILIZED TRIBES

§ 89.30 Contents and approval of contracts.

All contracts for the services of legal counsel or technical specialists negotiated and executed with the Choctaw, Chickasaw, Cherokee, Creek, or Seminole Tribes or Nations, also known as the Five Civilized Tribes, shall be in strict compliance with the requirements of section 2103 of the Revised

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Statutes of the United States (25 U.S.C. 81).

[37 FR 10440, May 23, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.31 Negotiation of contract.

That person or governing entity recognized as having authority to act for and in behalf of any one of the Five Civilized Tribes in matters of importance may, when it is found there is a substantial need and demand therefor, negotiate and contract for services of a tribal counsel or counsels and technical specialist or specialists, subject to the approval of the Secretary of the Interior or his authorized representative.

[37 FR 10440, May 23, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.32 Notice from the principal officer.

Notice of intention to negotiate with attorneys or with technical specialists shall be sent by the principal tribal officer to the Superintendent. Such notice shall be accompanied by a full statement concerning the need for retaining counsel or specialists, as the case may be, the purpose for which such assistance is needed and the scope of the intended employment. The notice and statement shall be transmitted to the Area Director by the Superintendent together with the latter's report and recommendations with respect to the approval of such contract.

[37 FR 10440, May 23, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.33 Notice from attorney.

Attorneys desiring to execute contracts with any one of the Five Civilized Tribes shall be required to give written notice to the Area Director through the Superintendent having jurisdiction over said tribe.

[37 FR 10440, May 23, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.34 Tentative form of contract.

The principal officer of any one of the Choctaw, Cherokee, Creek, Seminole, and Chickasaw Tribes may, if he desires, obtain a tentative form of contract by written application to the office of the appropriate Agency Super-

intendent. Requests for forms for an attorney contract should include a statement reciting whether the attorney is desired as a general legal counsel in connection with the business of the tribe or as counsel in respect to specific problems on which legal counsel is desired, or specific matters requiring representation in court or before committees of Congress and the Departments of Government. Requests for forms for technical service contracts should include a statement of the particular type of service required and the purpose for which it is needed. The anticipated term of each proposed contract should be stated.

[37 FR 10440, May 23, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

§ 89.35 Execution in quintuplet.

The contract should be executed in quintuplet, and all copies of it shall be transmitted by the Superintendent to the Area Director.

[37 FR 10440, May 23, 1972. Redesignated at 47 FR 13327, Mar. 30, 1982]

PAYMENT OF TRIBAL ATTORNEY FEES WITH APPROPRIATED FUNDS

SOURCE: 48 FR 3969, Jan. 28, 1983, unless otherwise noted.

§ 89.40 General policy.

In ordinary circumstances, legal services with respect to trust resources are provided for Indian tribe(s):

(a) By private counsel employed by tribes when such tribe is financially able and elects to do so, or

(b) By the United States as trustee through the Office of the Solicitor and/or the Department of Justice.

It is the policy of the Department of the Interior not to use federally appropriated funds to pay for private counsel to represent Indian tribes. Exceptions to that policy are listed in § 89.41 of this part.

§ 89.41 Exceptions to policy.

The Assistant Secretary—Indian Affairs upon concurrence of the Solicitor and receipt of a recommendation as provided by § 89.43 may, in his/her discretion, authorize the direct or indirect expenditure of appropriated funds to