

**LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS
TRIBAL COURT**



Chapter 5

“Judicial Conduct Court Rules”

Adopted April 21, 2008

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Judicial Conduct Court Rules

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CHAPTER 5

5.000 JUDICIAL CONDUCT COURT RULES

5.100 Purpose and Definitions

- 5.101 **Purpose.** The purpose of this Chapter is to provide for and guide the professional conduct of Little Traverse Bay Bands of Odawa Indians judges and appellate justices.
- 5.102 **Applicability of this Judicial Conduct Court Rule.** This Chapter applies to all tribal court judges and appellate justices who serve the Court on a full-time, part-time or *pro tempore* basis.
- 5.103 **Definitions.** When used in this Chapter, unless the context clearly otherwise indicates:
- (A) "Chief Judge" means the chief trial court judge, who also serves as the chief judge of the judiciary.
 - (B) "Complainant" means the person who files the request for an investigation.
 - (C) "Judiciary" means collectively all tribal court judges and appellate court justices of the Little Traverse Bay Bands of Odawa Indians.
 - (D) "Respondent" means a judge or justice who is the subject of a complaint.
 - (E) "Tribal Council" means the legislative body of the Tribe.
 - (F) "Tribe" means the Little Traverse Bay Bands of Odawa Indians.

5.200 Judicial Conduct

- 5.201 **Honesty and Independence.** An independent and honorable tribal judiciary is essential to justice in the tribal community. A tribal judge or appellate justice should help create and maintain such a judiciary, and should observe high standards of conduct toward achieving this goal. A member of the Judiciary should maintain a separation between the judicial branch and other branches of tribal government.
- 5.202 **Impropriety and the Appearance of Impropriety.** A member of the Judiciary should avoid all impropriety and the appearance of impropriety in all his or her activities. In addition, a member of the judiciary should:

- (A) respect and comply with the laws and traditions of the Tribe and should at all times act in a manner that promotes public confidence in the honesty and impartiality of the Judiciary;
- (B) not allow family, social or other personal relationships to influence judicial conduct. A member of the Judiciary should not attempt to use the prestige of the office to advance the private interests of others and should not convey the impression that anyone has special influence on the judiciary member; and
- (C) distance him or herself from any litigation and only appear as a witness in a court proceeding when subpoenaed.

5.203 **Impartial and Diligent Performance of Duties.** A member of the judiciary should perform the duties of the office impartially and diligently. The judicial activities of a full-time Judiciary member should take precedence over all other non-judicial job assignments. This standard does not apply to a part-time Judiciary member. The judicial duties of a Judiciary member include all the duties of the office as prescribed by the tribal constitution, tribal statute or court rules. Those duties include but are not necessarily limited to the following:

- (A) Adjudicative Responsibilities
 - (1) A Judiciary member should adhere to the laws, customs and traditions of the tribe, should not be swayed by partisan interests, public clamor, political pressure, or fear of criticism, and should resist influences by other tribal officials, governmental officials or any others attempting to improperly influence the Judiciary member.
 - (2) Members of the Judiciary should be patient, dignified and courteous in all of their dealings in the court and the community and should encourage similar conduct of other persons in court proceedings and those court personnel who are subject to their direction and control.
 - (3) A member of the Judiciary should not consider nor permit *ex parte* communication with a litigant, attorney or lay advocate concerning a pending or impending proceeding, unless all parties to the proceeding are present or such communication is otherwise authorized by law.
 - (4) A member of the Judiciary should maintain order in the court and should not interfere in the proceedings except where necessary to protect the rights of the parties.

- (5) A member of the Judiciary should deal promptly with the business of the court.
- (6) A member of the Judiciary should not comment publicly on any pending court proceeding and should also prohibit other court personnel from making such public comment. However, this subsection does not prohibit members of the Judiciary from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

(B) Administrative Responsibilities

Judiciary members should:

- (1) diligently perform their administrative responsibilities;
- (2) require staff and court officials to observe high standards of honesty and diligence; and
- (3) if a witness to violations of this chapter, report such violations to the appropriate authorities.

(C) Disqualification

A member of the Judiciary must disqualify himself or herself if the Judiciary member:

- (1) has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts;
- (2) has personally been or is currently in practice with someone who has served as a lawyer, advocate, or personal representative in the matter before the court;
- (3) or a family member has a personal financial interest in the outcome of the case other than an interest held in common by all tribal members;
- (4) or his or her spouse, or a person in a reasonably close family relationship to either of them:
 - a) is a party to the proceeding or an officer, director, or trustee of a party;

- b) is acting as a lawyer or lay advocate in the proceeding;
 - c) has an interest that could be substantially affected by the outcome of the proceeding; and/or
 - d) is likely to be a material witness in the proceeding.
- (D) Alternative to Disqualification. If the Judiciary member discloses and all other members of the Judiciary agree in writing that the Judiciary member's participation is not prejudicial or that the financial interest is insubstantial, the Judiciary member is no longer disqualified, and may participate in the proceeding.

5.204 Improvement of the Legal System and the Administration of Justice.

Judiciary members should engage in activities to promote the community's understanding, access, and appreciation of the judicial system.

5.205 Extra-Judicial Activities.

- (A) Judges and justices should not:
- (1) be involved in activities that detract from the performance of judicial duties;
 - (2) participate in an organization that will likely be involved in proceedings that will come before the court; or
 - (3) engage in financial or business dealings that may adversely affect his or her judicial position or duties.
- (B) Because it is recognized that the position of appellate justice may be a part-time position or a tribal judge may serve on a *pro tempore* basis, such a Judiciary member may accept other employment and participate in the operation of a business, subject to the following:
- (1) A part-time member of the Judiciary should not practice law either as a lawyer or an advocate:
 - (a) in the tribal court in which he or she serves; or
 - (b) in any court or administrative proceeding subject to the appellate jurisdiction of the tribal court on which he or she serves.

- (2) A part-time member of the Judiciary should not act as a lawyer or advocate in any proceeding in which he or she has judicially served or in any related proceeding.
 - (3) Should not allow his or her family to accept a gift or loan that would affect or create the appearance of affecting his or her impartiality.
- (C) A member of the Judiciary may accept an appointment to governmental committees as a service to the community. A member may not serve on any committee that would be dealing with issues that may come before the court. If a conflict arises, the member of the Judiciary must either recuse or inform the Judiciary that he or she cannot rule on any matter related to the dispute if it comes before the court.
- (D) A member of the Judiciary may represent the Tribe on ceremonial occasions or in connection with historical, educational, or cultural activities.

5.206 **Political Activities.**

- (A) Judiciary members shall not be candidates for or serve on the Tribal Council, nor be actively involved in the campaign of another for Tribal Council.
- (B) A Judiciary member should refrain from all political activities or actions that could be interpreted in the tribal community as supporting any political position. All actions should be consistent with this belief and supportive of this community standard. This prohibition does not mean that a Judiciary member cannot, if he or she chooses, engage in activities of electoral politics at the local, state, or national level. This prohibition is specific and is not meant to prevent a Judiciary member from participating in political activities that are designed to preserve the jurisdictional and sovereign rights of the tribal community.

5.207 **Continuing Educational Activities.**

Judiciary members, regardless of education and experience prior to being appointed, should seek further legal and pertinent non-legal education designed to improve their performance as a judge or justice and improve the judicial system.

5.300 **ENFORCEMENT OF ETHICAL RULES**

5.301 **Enforcement of this Chapter.**

Enforcement of this Chapter will be by action under 5.301(A) and 5.301(B) of these Rules:

- (A) Any violation of this Chapter will be referred to the Judiciary regarding:
 - (1) physical or mental disability which prevents the performance of judicial duties;
 - (2) persistent failure to perform duties in a timely manner;
 - (3) gross misconduct that is clearly prejudicial to the administration of justice;
 - (4) ineligibility, under Article IX of the LTBB Constitution, to serve as a member of the Tribal Judiciary;
 - (5) conviction by any court of competent jurisdiction of a felony while serving as judge or justice; or
 - (6) conviction of a misdemeanor involving dishonesty or acts offensive to the morals of the community.

- (B) Referrals may only be made by a member of the Judiciary except that:

If a LTBB member believes that grounds exist for discipline of a member of the judiciary, he or she shall state the allegations in writing to the Court Administrator who shall distribute copies to each member of the Tribal Judiciary. After reviewing the written allegations, the Tribal Judiciary will decide whether sufficient grounds exist for a removal hearing.

5.302 **Responsible Authority**

The Judiciary shall have the responsibility of enforcing the provisions of this Chapter.

5.303 Complaint.

- (A) A complainant alleging judicial misconduct must file a complaint setting forth the alleged misconduct in writing, describing the alleged misconduct, setting forth the specific facts of the misconduct, including the approximate times and places, and citing the specific ethical rule violated. The complaint must be signed and dated by the complainant and filed with the Court Administrator.
- (B) A Judiciary member subject to a complaint or discipline must receive a copy of the written complaint.
- (C) The Chief Tribal Court Judge may compel the respondent to answer questions, furnish documents, and present any information deemed relevant to the investigation. Failure to do so on the part of the judiciary member is misconduct and grounds for discipline.

5.304 Disciplinary Action - Disposition.

- (A) At each stage of the misconduct investigation, the goal will be to have a fair inquiry.
- (B) The respondent will be informed of the resolution of the complaint in writing.
- (C) If the Judiciary finds that a provision of Chapter 5 has been violated by the respondent, it shall make one or more of the following dispositions, taking into account the severity of the offense and other factors the judiciary deems relevant:
 - (1) issue a reprimand;
 - (2) suspend the respondent from his or her office or duties for a period of time;
 - (3) place respondent on probation for a specific period of time;
 - (5) require the respondent to make restitution in an appropriate amount, if applicable; or
 - (6) removal.

5.305 Removal of a Member of the Judiciary.

(A) A tribal judge or justice may only be removed by the Tribal Judiciary itself. The Judiciary may remove any judge or justice by an affirmative vote of a majority of a panel consisting of all other members of the Judiciary, only for one or more of the following reasons:

- (1) unethical conduct which shall be deemed to be a violation of any of the provisions of Section 5.200 of these rules;
- (2) physical or mental disability which prevents the performance of judicial duties;
- (3) persistent failure to perform duties in a timely manner;
- (4) gross misconduct that is clearly prejudicial to the administration of justice;
- (5) ineligibility, as defined in Article IX of the tribal constitution, to serve as a member of the Judiciary; or
- (7) conviction of a felony while serving as a judge or justice by any court of competent jurisdiction.

(B) Procedures for Removal:

- (1) If a judge or justice believes that grounds exist for removal of another judge or justice, he or she shall state the charges in writing, and distribute copies of the written charges to all members of the Judiciary, including the accused. As soon as practicable, but no more than sixty (60) days after receipt of the written charges, the judiciary shall hold a hearing with all members present at which the accused shall have the opportunities to call and cross examine witnesses. The member shall have the right to subpoena witnesses and be represented by an attorney.
- (2) If a Little Traverse Bay Bands of Odawa Indians member

believes that grounds exist for removal of a judge or justice, he or she shall state the charges in writing and deliver them to the court administrator, who shall distribute copies to each member of the Judiciary. After reviewing the written charges, the judiciary shall by majority vote decide whether sufficient grounds exist to hold a removal hearing as described in these rules. This hearing shall be held as soon as practicable, but shall not be held more than sixty-three (63) days following the receipt of written charges.

5.306 Appeal.

A respondent may appeal in writing to the Judiciary within twenty-one (21) days of the Judiciary's action. After the Judiciary has received the respondent's appeal, it may hold a hearing to receive additional information, and/or to hear testimony relevant to the appeal, or the Judiciary may make a decision without a hearing based on the facts received. The final decision of the Judiciary on the appeal shall be final.

5.307 Confidentiality.

All papers, files and communications in an investigation and proceedings before the judiciary prior to the decision to proceed with a disciplinary action are confidential.

5.400 Short Title And Effective Date

5.401 Short Title.

These procedures shall be titled the Judicial Conduct Court Rules.

5.402 Effective Date.

These procedures become effective when adopted by the Tribal Judiciary of the Little Traverse Bay Bands of Odawa Indians and signed below by the Chief Judge.

CERTIFICATION OF ADOPTION

The Tribal Judiciary unanimously adopted the above Judicial Conduct Court Rules on April 21, 2008.

Honorable JoAnne Gasco, Tribal Judiciary Chief Judge