

LITTLE TRAVERSE BAY BANDS OF ODAWA INDIANS

Mnodaawin



PEACEMAKING PROGRAM

ORIENTATION MANUAL

Mnodaawin
Peacemaking Program Orientation Manual

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Table of Contents

Table of Contents.....i

Preface.....ii

Section I Mnodaawin Program Development

History.....I-1

Models of Peacemaking in Indian Country I-4

Section II Information About Mnodaawin for Families and Juveniles.....II-1—4

Section III A Guide to Mnodaawin for Volunteers and StaffIII-1—17

Section IV Facilitators’ HandbookIV-1—10

Section V Facilitator Training ManualV-1—84

Appendix A Mnodaawin Court Rule & Policies and Procedures.....A-1—5

Appendix B Supplementary Policies and ProceduresB-1—14

Appendix C Program FormsC-1—21

Preface

This manual was prepared as resource for everyone involved with the Mnodaawin program of the Little Traverse Bay Bands of Odawa Indians: the referral sources, juveniles and their families, volunteer Facilitators, members of the Mnodaawin Advisory Committee, Circle Participants, program staff, the Judiciary, and others. The manual brings together in one binder most of the information needed to acquire a basic understanding of the program, as well as take part in it.

All users of the manual may be interested in Section I, which provides background information on the development of the Mnodaawin program as well as descriptions of other peacemaking programs that influenced our project.

Section II is intended to help juveniles and their families who are coming to the program, or just trying to decide if Mnodaawin is the right thing for them. The information in Section II also may be useful to community members who are invited to participate in peacemaking circles.

The operational details of Mnodaawin can be found in Section III, including roles and responsibilities. This section should be particularly valuable to Court and program staff, and the members of the Advisory Committee.

Section IV is designed as a Facilitators' Handbook listing all the essential steps of the peacemaking circle process. Volunteers may want to carry the Handbook to the circles they facilitate.

A Facilitator Training Manual for use with the forty-hour peacemaking training curriculum is included as Section V.

Appendices consist of (A) the Mnodaawin Court Rule and Policies and Procedures developed by the tribal judiciary, (B) the Supplementary Policies and Procedures originating from the Mnodaawin Advisory Committee, and (C) a collection of the Program Forms.

As long as the program exists, this manual will be in a state of evolution. The staff of Mnodaawin will make every effort to amend the manual whenever necessary. The most current version of the manual will be in the possession of the Peacemaking Coordinator. Please contact the Peacemaking Coordinator if there are any questions about current policies, procedures, or other aspects of the program.

Section I

Mnodaawin Program Development

History

As a whole, Native people have not fared well in the justice systems of the states, provinces, or the federal governments of the United States and Canada. Arrest and incarceration rates for Native people have been disproportionately high over the decades. Not surprisingly, Indian people associate the courts with the long history of oppression at the hands of Euro-Americans, and they often distrust the courts. Moreover, many tribal courts bear a strong resemblance to the federal, state, and provincial courts that focus on punishment and use adversarial processes (a win-lose contest between prosecutors and defendants, or between the parties to a dispute). In many Indian communities such practices are alien and offensive. A more acceptable process for Indians would be one concerned primarily with healing and the restoration of harmony.

The earliest initiatives for developing culturally appropriate alternatives appeared in the 1980s in the American Southwest, American Northwest, and Canada. Arguably, the best known early effort in the United States was the Navajo Peacemaking Court. North of the border, a well-known initiative involved the Territorial Court of the Yukon Territory. In that case, a non-Native territorial judge collaborated with Aboriginal communities in establishing sentencing circles (later called peacemaking circles). As a consequence of the publicized successes of peacemaking on the Navajo Reservation and in the Yukon, excitement was generated across Indian Country. Closer to home, courts at the Grand Traverse Band of Ottawa and Chippewa Indians and the Little River Band of Ottawa Indians got on the peacemaking bandwagon in the mid-1990s. Around the same time, Anishinabe communities north of the Great Lakes instituted peacemaking programs in collaboration with the Canadian courts and provincial police.

In 1999, LTBB tribal citizen Wenona Singel conducted a survey to determine whether tribal members were interested in peacemaking, and if they saw a need for implementing

it. Around that time, with very limited financial resources, LTBB Tribal Court was still in its infancy and toiling to develop essential capacities. In 2003, the Court was prepared to progress to the next step. With the support of Tribal Council, the Tribal Court submitted a grant application to the Bureau of Justice Assistance for the financial resources needed to enhance its civil court system. Among others, the grant application included the objective of developing a non-adversarial justice system.

After a lengthy search, Tribal Court hired a Civil Court Development Specialist with responsibility for coordinating development of the non-adversarial justice system. Key elements of the project included educating the Court personnel and the community on concepts and models of peacemaking in Indian Country, engaging the community in determining the design and operating procedures of a peacemaking system, drafting an orientation manual, and training members of the community to be facilitators of the peacemaking process.

Especially in the first two years of the project, the Coordinator, tribal judiciary, and the Court Administrator were actively identifying and accessing available peacemaking information resources including publications, videos, websites, workshops, consultants, and practitioners from other tribal communities. The grant funds even covered the costs of visiting several communities with established peacemaking programs or traditional courts: the Ho-Chunk Nation; Garden River Ojibwe First Nation; Grand Traverse Band of Ottawa and Chippewa Indians; Little River Band of Ottawa Indians; the Organized Village of Kake. At the workshops attended, the Court personnel were able to meet and learn from the peacemaking practitioners of additional Native communities, including the Navajo Nation.

LTBB Tribal Citizens were extensively involved in the various phases of developing the Mnodaawin program. Tribal Court hosted “Cultural Immersion Workshops” where everyone in the community was welcome, and information related to peacemaking was shared by knowledgeable presenters from inside and outside the Tribe. Some of the information acquired during the project was posted on the LTBB website. In order to get

better acquainted with Odawa peacemaking and justice traditions, one-on-one interviews were conducted with elders and other informants. Numerous talking circles were organized in order to share information learned by the staff along the way, and provide important opportunities for community input. The talking circles eventually led to establishment of a Peacemaking Advisory Committee consisting of elders, adults, and young people willing to contribute their time and ideas to the development of a peacemaking program. Rita Gasco-Shepard, Veronica Medicine, Jannan Cornstalk, Kevin Gasco, Matt Davis, Tony Davis, Andrea Otto, and Joe Mitchell are just some of the volunteers who at one time or another participated in Advisory Committee meetings.

The recommendations from the Peacemaking Advisory Committee covered the critical elements of a peacemaking process and program. These included guiding principles, cultural elements to be incorporated into the process, criteria for acceptable cases, ground rules for circles, qualifications for circle Facilitators, a Code of Conduct for Facilitators, prescribed steps in the circle process, methods for evaluating the program, and more.

A curriculum was developed for educating the necessary volunteers, and a training manual was prepared. The initial training was forty hours long, and contained an introduction to the concepts and process of peacemaking blended with development of core skills of facilitation. Role-playing was a prominent feature of the training. The initial training with a group of 15 volunteers took place in October and November of 2006. Supplemental training sessions are ongoing. The training manual developed during the project is a part of this manual.

It's important to point out, while Mnodaawin is a program of the Tribal Court, and subject to Tribal Court budgeting and general oversight, the daily business of Mnodaawin is administered independently. To the greatest extent possible, the Advisory Committee, Facilitators, Circle Participants, and Coordinator carry out their responsibilities with support from the management of Tribal Court, and with a minimum of interference. It is believed that this high degree of independence will contribute to the community's

acceptance of Mnodaawin, and to its ability to strengthen the relationships which bond the community.

Models of Peacemaking in Indian Country

Below are descriptions of 3 notable peacemaking programs that provided inspiration to the people who helped to make Mnodaawin a reality. These programs continue to influence Native and non-Native communities around the country.

Circle Peacemaking, Organized Village of Kake, Alaska

In 1999, in an effort to curb youth alcohol abuse, tribal members of the Organized Village of Kake (a federally recognized Tribe of Kake, Alaska) established the Healing Heart Council and Circle Peacemaking, a reconciliation and sentencing process embedded in Tlingit traditions. Working in conjunction with Alaska's state court system, Circle Peacemaking intervenes in the cycle by which underage drinking becomes an entrenched pattern of adult alcoholism. Today, the program not only enforces underage drinking sentences in an environment where such accountability had been rare, but also restores the Tlingit culture and heals the Kake community.

The Organized Village of Kake had long recognized the devastating toll of rampant alcoholism. Unfortunately, one of the means of combating the problem the justice system appeared unavailable to Kake's Native citizens. The Alaska State justice system had not successfully addressed these issues in Alaska Native communities for decades. A primary problem was that its resources were stretched thin. The juvenile probation officer assigned to Kake lived on another island that was accessible only by ferryboat or plane. Responding to felony offenses consumed most of his time; therefore, he could pay only limited attention to the seemingly less serious misdemeanors of Kake's youth. Unfortunately, without the consequences that good probation monitoring could provide, the minor infractions of village youth tended to grow into entrenched adult behavior.

By the late 1990s, Kake residents realized that without breaking this cycle, the Village's future looked bleak. Despite the confined jurisdictional space in which they operated (the state of Alaska has authority over most aspects of criminal justice in Native Alaska), they also realized that they could craft a solution that relied on local human and cultural resources. Looking to the philosophy of peacemaking and the process of "circle sentencing", Kake village volunteers organized the Healing Heart Council and Circle Peacemaking in 1999. This reconciliation and sentencing process is embedded in Tlingit tradition and works in conjunction with the Alaska State court system.

Circle Peacemaking begins when a Kake juvenile enters a guilty plea with the state court. Then, the state judge, with the concurrence of the prosecutor, the public defender, and the offender, may turn the juvenile's case over to the Healing Heart Council for sentencing. The Council initiates Circle Peacemaking by bringing together a group of village volunteers to formally sentence the young offender(s). Through the close attention, encouragement, and admonishment of this circle of volunteer justices, the juvenile's misdemeanors have a lower probability of leading to more serious adult substance abuse and crime. Circle Peacemaking heals the offender by addressing the underlying causes of the offending behavior and restores the rupture in community life by repairing the relationship between the offender and victim.

More specifically, Circle Peacemaking involves the participation of individuals and groups who rarely come together under western systems of justice the offender, the victim, families, friends, church representatives, police, substance abuse counselors, and concerned or affected community members. Participants, who may number from six to sixty, sit in a circle while a Keeper of the Circle facilitates the discussion. Discussions always begin and end with a prayer, and negative comments are strictly forbidden. Circle discussions are kept entirely confidential, and the Keeper encourages participants to speak from their hearts. The meetings typically last two to four hours, but they can only end when forgiveness and healing are apparent and consensus is reached about the offender's sentence. This sentence then becomes public.

But Circle Peacemaking does not conclude with sentencing. The circle participants are themselves responsible for ensuring that offenders adhere to their sentences. A typical sentence for underage alcohol consumption might include a curfew, community service, or a formal apology. It might also require that the offender meet with elders or others who have worked through comparable experiences. Frequently, a sentence requires the offender's participation in other support circles. Importantly, the circle participants play a key role in assessing whether the offenders compliance is satisfactory. It is not uncommon for them to call for additional circles. Non-compliant offenders must return to the Alaska State court for sentencing.

Only two offenders out of the eighty sentenced during the program's first four years rejected a circle's outcome and returned to state court for sentencing. All of the twenty-four juveniles who were assigned to circle sentencing for underage drinking successfully completed the terms of their sentences. Circle Peacemaking also reports very low levels of recidivism. Sixty-eight adults participated in circles without repeating their offenses or violating other laws during their probation periods.

Peacemaker Court, Navajo Nation

Navajo custom involves the idea of Hozhooji (living in “right relationship”). If a person believes he’s been wronged by another he first makes a demand for the perpetrator to put things right—a demand for compensation. It is also a demand to readjust the relationship so that the proper thing is done. If unsuccessful, the wronged person may turn to a respected community leader to facilitate and organize a peacemaking process. The *Navajo Justice (NJ)* process involves family and clan members of victims and perpetrators talking through matters to arrive at a solution. The community leader performs the role of peacemaker, using traditional teachings to clarify false values and correct untrue assumptions about behavior. The process opens with a prayer to seek spiritual assistance. Parties then have an opportunity to lay out their grievances. The victim has the opportunity to disclose not only the facts, but their impact. People have an

opportunity to say how they feel about the event and make a demand that something be done about it. The person who is the focus of the discussion is provided an opportunity to explain his or her behavior in full. Denial and excuses are exposed by the people who know the wrongdoer best—his spouse, parents, siblings, other relatives and neighbors. The peacemaker will then give reality therapy and do values clarification in a talk to the parties designed to guide them. The parties return to discussion of the nature of the problem and what needs to be done to resolve it. Often, the action taken is in the form of restitution or reparation. Payments can be in the form of money, horses, jewelry, or other goods. The payment can be symbolic only. The focus is not on adequate compensation, but upon a holistic kind of remedy. The feelings and relationships of the parties are what is most important. The *NJ* process ends in an action plan to solve the problem.

Sentencing Circles/Peacemaking Circles, Yukon Territory

Traditional behavioral norms among various Yukon tribes were that “a person should maintain peaceful and mild relations with other individuals no matter what his true feelings may be.” Elaborate “peace-making ceremonies” were used to work through disputes, especially those involving loss of life. A community-based *Sentencing Circle (SC) process* in the Yukon arose in response to the recognition that change was needed in the way policing and justice was carried out in Aboriginal communities. A *SC* is a community directed process, in partnership with the criminal justice system, for developing consensus on a sentencing plan which addresses the concerns of all interested parties. *SCs* use traditional circle ritual and structure to create a respectful space in which all interested community members, victim, victim supporters, offender, offender supporters, judge, prosecutor, defense counsel, police and court workers can speak from the heart in a shared search for understanding of the event and to identify the steps necessary to assist in healing all affected parties and prevent future occurrences. Pre-requisites for offenders include an acceptance of responsibility, a plea of guilty, a connection to the community, a desire for rehabilitation, concrete steps toward rehabilitation, support within the community for the offender, and the input of the victim. Acceptance into the circle is decided by a community justice committee or circle support group. Communities select one or two local people to act as keepers of the circle who act as facilitators.

Circles open with prayer and introductions by the keepers of the circle. The sacred eagle feather travels around the circle four times during a *SC* session. The *SC* process is inclusive. Everyone in the community has a stake in the outcome, and thereby a reason to participate. Everyone may not participate, but it is important for everyone to know they can and are encouraged to do so.

During the first round many express concern for victims, offenders, and their families, and speak of their hope for the circle to find a way to heal all who share in the circle. Introductions help set the tone for the circle and begin to identify the pain, anger and hope of different participants. Keepers discuss the teachings of the circle and explain the guidelines extracted from the teachings. Most guidelines—such as speaking from the heart, remaining until the end in the circle, allowing others to speak by speaking briefly, respecting others by not interrupting and by recognizing the value of their contribution—are common to most communities. The second circle is people speaking to the victim, absolving the victim of guilt and shame. They praise her or him for the courage for bringing this out, saying that what happened to them was not their fault. The third circle is to speak to the offender because the crime that offender has committed has not only touched the victim, it has also touched the family and the kinship system. People speak directly to the offender, saying how it's made them feel and what their expectations are for that person. The fourth circle is to give recommendations to the judge saying what should happen to this person. The closing rituals include summarizing what has or has not been agreed, outlining next steps, thanking everyone for their participation, passing the feather for closing comments by all the participants, and a closing prayer.

Section II

Information about Mnodaawin for Families and Juveniles

With advice and assistance from tribal citizens, the LTBB Tribal Court developed an alternative to the typical adversarial justice process. This alternative is currently available only to juveniles and their families in order to deal with situations such as truancy, incorrigibility, running away, and curfew noncompliance.

The program, called Mnodaawin [Good Life], utilizes the traditional talking circle. Mnodaawin also is known as the Peacemaking Program, and it is a community-based response to problems that may otherwise be resolved in the formal justice system. While Mnodaawin is a program of the Tribal Court and subject to Tribal Court budgeting and general oversight, the daily business of Mnodaawin is administered independently. The Facilitators, Peacemaking Advisory Committee, Peacemaking Coordinator, and Circle Participants largely carry out their responsibilities with little interference from court staff, yet with their support and assistance.

Mnodaawin circles are not for judging or blaming—they are about real accountability, healing, and restoring harmony in the community. Because accountability begins with owning your deeds, the circle is not available to juveniles who don't accept responsibility for wrongdoing. In addition, accountability is assured by including in the circle the people most affected by the wrongdoing.

Facilitators of Mnodaawin Circles are members of the tribal community who help participants talk about the problems and the ways to “make things right”. To be a Facilitator, a person must attend training in mediation and circle facilitation, and pass a background check.

Utilizing the Circle is voluntary for the juvenile and his/her parents or guardian. Participants sitting in a Mnodaawin Circle usually include the juvenile, the parents or guardian, family members, elders, and other community members. If there is an identified victim, he or she has the option to participate, but could be represented in the Circle by relatives or supporters. Everyone in the Circle has the opportunity to talk without interruption. A talking stick is passed around as many times as needed in order to hear stories about the incident from the juvenile, victim, and the community, determine the issues, and find ways to restore harmony. Discussion continues until there is a consensus agreement that can be written down and signed by all participants.

An agreement may include commitments by the juvenile to improve grades, perform community service, participate in cultural activities, and, when appropriate, attend counseling and make restitution. Family members and community members could commit to assist the juvenile and the victim. In every case, the agreement is tailored to individual circumstances. Compliance with the agreement is monitored by the Coordinator and one or more participants, and in follow-up circles.

Because Mnodaawin is oriented to healing and restoring harmony, and not concerned with determination of guilt or innocence, the vocabulary and process are less formal and less stigmatizing. The Mnodaawin program tries to avoid the use of words such as *proceedings*, *offense*, and *sentence*, in favor of words such as *circle*, *incident*, and *agreement*.

Odawa culture and traditional values are evident throughout the process. The circle opens with a prayer, and smudging with one of the traditional medicines. Traditional teachings may be offered during the circle. The juvenile's attendance at a traditional gathering could be an element in the consensus agreement.

In order to assure quality, evaluation of the program is ongoing. Furthermore, a Code of Conduct for Facilitators, as well as a complaint process, has been developed.

For the juvenile and his or her parents or guardian, participation in Mnodaawin would typically follow the process described below:

- A referral is received by the Peacemaking Coordinator, and, if the case is acceptable to the program, an interview is scheduled.
- At the interview, the Mnodaawin Circle process is explained and information is gathered on topics including the juvenile's personal history, who the family wants to invite to the circle, and how the juvenile wants the situation to be resolved.
- Facilitators are assigned, and notices of the date and time for the Mnodaawin Circle are mailed to all participants.
- On the day of the Circle, cultural items (traditional sacred medicine plants, water, and other items) are placed in the center of a circle of chairs, and each Participant is given the option to be smudged.
- The Circle opens with a prayer, an explanation of the reason for the Circle, discussion of the ground rules, and signing of confidentiality pledge forms by all Participants.
- The talking stick is passed around for individual introductions and oral acceptance of the ground rules. Generally, the only person allowed to speak is the one holding the talking stick. The Facilitators have the discretion to establish exceptions to this ground rule.
- The talking stick is passed around to hear the story from the victim or community members, and everyone can talk about the incident in turn.
- The next time the talking stick is passed, the juvenile tells his or her story, and participants have another opportunity to express their thoughts.

- Then the Facilitators pass the talking stick and ask Participants to talk about the issues raised, and begin offering their ideas for “making things right”.
- The talking stick will continue to be passed around the Circle until consensus is achieved on all the elements of an agreement. There is no consensus without the juvenile’s concurrence with everything in the agreement.
- If necessary, the Circle will recess long enough for the Facilitators to write the agreement. The agreement is signed by all participants, and the Circle closes with an appropriate ending ritual, such as a prayer, handshakes, a song, or some other ending
- Additional Circles could be scheduled if progress is being made, but no consensus on the first day.
- Separate Healing/Talking Circles could be arranged for the juvenile, the victim, or others participants. These Circles would not be geared to reaching any kind of agreement, and would not have a direct connection to the Tribal Court.
- The signed agreement would be monitored for compliance over a period of weeks or months. Follow-up Circles for the purpose of monitoring could be one element in the agreement. In the event of continual non-compliance, the Mnodaawin Circle could opt to refer the case back to Tribal Court or the appropriate referral source.
- After all elements of an agreement are satisfied, the Peacemaking Coordinator would schedule a final Circle and potluck celebration.

It is important for families and juveniles to know that what they say in the circle is privileged communication which would not be subject to discovery in Tribal Court at a later date. This can be significant when, for whatever the reason, a juvenile’s case is referred back to the Tribal Court.

Section III

A Guide to Mnodaamin for Volunteers and Staff

Contents

Contents	III-1
Introduction	III-2
Program Name and Logo; Policy Statement	III-3
Principles of Mnodaawin.....	III-3
Alternative Terminology	III-4
Relationship with Tribal Court.....	III-5
Mnodaawin Advisory Committee	III-6
Responsibilities of the Peacemaking Coordinator	III-8
Facilitators; Qualifications; Training; Code of Conduct.....	III-8
Mentors and Monitoring.....	III-9
Healing Circles	III-10
Reporting Abuse and Neglect.....	III-11
Stipends and Reimbursements	III-11
Cases Acceptable for Peacemaking	III-11
Mnodaawin Circle Participant.....	III-12
Circle Guidelines.....	III-13
Confidentiality and Privilege	III-14
The Circle Process.....	III-14
Cultural Elements.....	III-15
Community Resources.....	III-16
Program Evaluation and Quality Improvement	III-17

Introduction

Mnodaawin is a community-based program of the Little Traverse Bay Bands of Odawa Indians (LTBB). It came into being mainly because the judiciary of LTBB was committed to assuring that Odawa values and traditions were evident in a young and evolving Tribal Court. Much was being reported about the Peacemaker Court of the Navajo Nation and a handful of similar initiatives by other tribes in the U.S. and Canada. The Peace Makers Division of Tribal Court at the Grand Traverse Band of Ottawa and Chippewa was one such initiative, close to home.

The judiciary, with support from Tribal Council, put its vision of peacemaking into an application for federal funds to enhance the civil court system, and received an award in 2003. Throughout the roughly three-year-long project, tribal citizens and other community members played prominent roles, and were instrumental in determining the shape of the peacemaking program. Today, tribal citizens and other community members fill the ranks of volunteers participating on the Mnodaawin Advisory Committee, and in the corps of trained Facilitators.

This Guide provides volunteers and the Tribal Court staff with vital information for carrying out their responsibilities in the ongoing operation of the Mnodaawin program. Though the guide will not answer every question or address every situation that could arise, it should be a valuable resource for understanding where the Mnodaawin program fits into the overall LTBB justice system, and the primary resource for describing the established processes and procedures.

Program Name and Logo

Mnodaawin, the Anishinabemowin word adopted as the name of the peacemaking program, means Good Life. Odawa citizen Tom Teuthorn designed a circular image for the program logo. His design includes floral representations for women (strawberries), men (blueberries), all people (maple leaves), medicine (swamp rose), and peace (Indian pipe flower). Pictured in the center are tail feathers of the Red-Tailed Hawk, and the Sacred Fire held by the hands of Great Spirit.

Peacemaking Policy Statement

Mnodaawin—Odawa peacemaking—draws upon the community’s wisdom, strength, knowledge, and experience to provide a holistic justice forum where the circle comes together to listen, share and teach through each others’ stories and perspectives with the aim of healing, restoring relationships, and strengthening the individual, family and community.

Principles of Mnodaawin

Numerous discussions by the Mnodaawin Advisory Committee led to consensus on the operative principles for Mnodaawin. The following eleven principles were important guides for determining a detailed framework for the program, and the steps of the peacemaking circle process:

- Peacemaking Circles for juveniles are a first step to developing an array of processes to serve as alternatives to the adversarial court system.
- Talking circles are a cultural and historical means to problem resolution and healing in Waganakising.
- Talking circles can be a prevention tool. Talking circles, including Peacemaking Circles, demonstrate positive problem-solving techniques to everyone participating in the Circles.
- Community-based Healing Circles are needed in the community. Though independent of Tribal Court, they can support the Peacemaking Circles that are centered on disposition.
- Peacemaking Circles should be as inclusive as reasonably possible.

- The peacemaking process incorporates cultural elements and fosters exposure to Odawa culture outside of the Circle.
- Training in facilitation is essential for program volunteers. Specialized training in topics such as substance abuse, suicide, and domestic violence will be provided to facilitators.
- Many community members have not experienced talking circles. The Tribal Court will organize talking circles at certain events it sponsors, and foster the inclusion of talking circles at activities throughout the community.
- The ideal is to conduct Circles around the Sacred Fire, and in a traditional lodge.
- Whenever reasonable, alternatives will be utilized for the words *offender*, *proceedings*, *sentence*, and similar court terminology.
- The general rule on confidentiality is as follows: What is said in the Circle stays in the Circle. Furthermore, case records shall not be open to review by the general public.

Alternative Terminology

In the spirit of restorative justice, it was decided to avoid stigmatizing and punitive terminology utilized in the Anglo court systems, as much as possible. A few examples of Mnodaawin alternatives are provided below:

Anglo Justice Terms

Hearing; trial; proceedings

Dispute; lawsuit

Sentence; judgment; order

Offender; delinquent; defendant

Victim; complainant; plaintiff

Offense; crime; misdemeanor

Mnodaawin Alternatives

Process; gathering; circle

Differences; disagreement; disharmony

Peacemaking agreement; making things right; resolution

Juvenile; young person; (just use person's name)

(just use person's name)

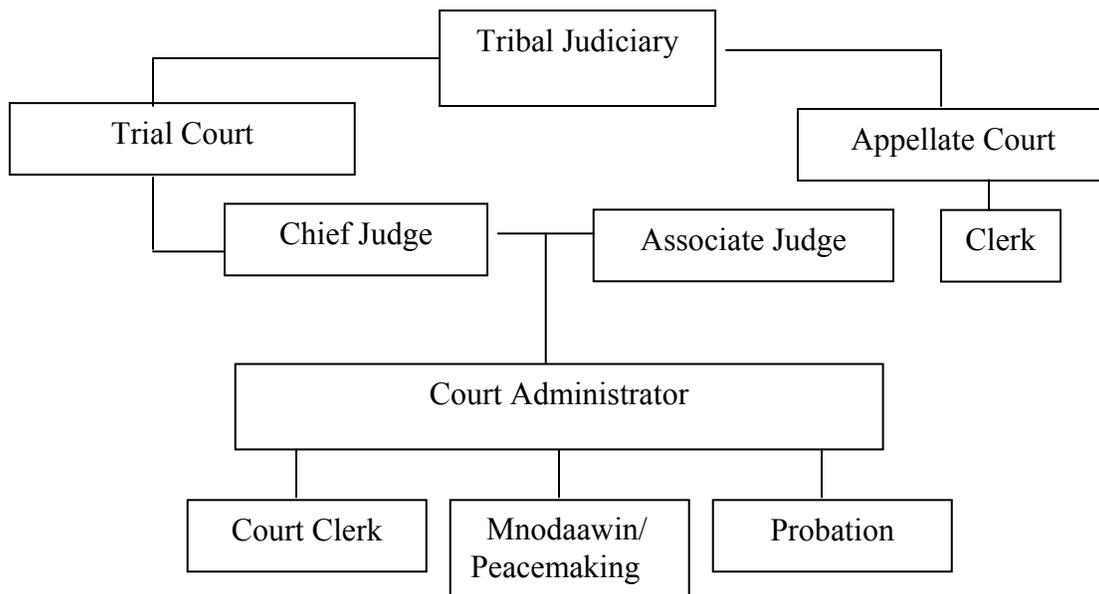
Problem; harm done; situation

Relationship with Tribal Court

The Mnodaawin Policies and Procedures approved by the judiciary prescribe that the daily business of the program shall be “administered independent of the Tribal Court’s interference”. Therefore, even though Mnodaawin is organizationally attached to the Tribal Court and “subject to Tribal Court decisions concerning budgets and Advisory Committee appointments”, the Facilitators, Advisory Committee, and Circle Participants can exercise a great amount of discretion. For example, the termination of services to a juvenile can be determined by the Mnodaawin Circle rather than a judge or manager in the hierarchy of the Tribal Court.

Additionally, the judiciary established a Mnodaawin Court Rule (see Appendix A for the full text of Rule XXIX, and Mnodaawin Policies and Procedures) within the Rules of Civil Procedure governing procedure and practice in LTBBs trial and appellate courts. The Rule is short, and simply states that when all parties to a civil case agree to use Mnodaawin and be bound by the result, and the program verifies it can accept the case, the case may be transferred by the Court to the program.

Below is a straightforward graphic on the structure of the LTBB Tribal Court showing Mnodaawin’s link to Tribal Court and the judiciary.



A broader picture would reveal the status of Tribal Court as one of three separate branches of the LTBB Tribal Government. Also missing is the tribal prosecutor who performs his duties on behalf of the tribal membership, independent of the Tribal Court.

Mnodaawin Advisory Committee

According to the Mnodaawin Policies and Procedures, “the Tribal Court shall maintain a Mnodaawin Advisory Committee composed of a cross-section of the LTBB community, including elders, traditional leaders, young people, members of the tribal judiciary, and others”. The Chief Judge has the authority to make appointments to the Advisory Committee from recommendations by the Judges, court staff, and the other members of the Advisory Committee. The number appointed is at the discretion of the Chief Judge. Specific responsibilities of the Advisory Committee include the following:

1. developing, reviewing, and revising supplementary program policies and procedures, provided they are consistent with those developed and approved by the Tribal Court;

Some matters that may be addressed in supplementary policies and procedures developed by the Advisory Committee:

- the program’s policy statement;
- the operative principles of Mnodaawin;
- the types of cases for which Mnodaawin may be appropriate;
- an explanation of the cultural elements of Mnodaawin;
- rules regarding confidentiality;
- the training requirements for Mnodaawin Facilitators;
- the process used by Mnodaawin;

- the ground rules (guidelines) that apply to Mnodaawin Circles;
- policies for the Advisory Committee;
- policies for the Peacemaking Coordinator;
- policies for the selection and participation of Mnodaawin Circle Participants;
- necessary qualifications for Mnodaawin Facilitators;
- a Code of Conduct for Mnodaawin Facilitators; and
- the means of monitoring compliance with Mnodaawin agreements.

2. preparing descriptive materials for distribution;
3. assisting in the recruitment of facilitators;
4. assisting in efforts to improve the quality of the program (e.g., participating in the formal Quality Improvement process); and
5. gathering feedback from the community and sharing it with Tribal Court and the public.

Additionally, the Advisory Committee consults with the Tribal Court on setting stipends and reimbursement rates payable under the program. Also, it's important for Committee members to know that the Peacemaking Coordinator will provide them with ongoing support and assistance.

The Mnodaawin Advisory Committee is required to meet as often as needed to fulfill its responsibilities. Meeting notices and arrangements are the responsibility of the Peacemaking Coordinator.

Responsibilities of the Peacemaking Coordinator

Under the direction of the Court Administrator and Chief Judge, the Peacemaking Coordinator oversees the day-to-day operation of Mnodaawin. In addition to performing numerous oversight responsibilities, the Coordinator functions as a scribe in the Peacemaking Circles, and regularly participates in community cultural events.

The Mnodaawin Policies and Procedures lay down general responsibilities as well as specific duties for the Coordinator. Most of the prescribed paperwork for the program is processed by the Coordinator, such as notices of meetings and scheduled Circles, intake forms, monthly status updates, and an annual report to the Chief Judge. An important responsibility is educating the community on peacemaking related topics, and recruiting and training Facilitators. Two other responsibilities are quality improvement of Mnodaawin services, and coordinating development of additional peacemaking processes.

Facilitators; Qualifications; Training; Code of Conduct

Facilitators are recruited from the tribal community, with emphasis on elders and young people. Many of the current Facilitators are members of the Mnodaawin Advisory Committee. Qualifications are few, and there are no educational requirements. Because juveniles are the initial target population of the program, criminal background checks are a requirement. Also, facilitators should have the ability to remain neutral.

Training is provided by the program without cost to all interested persons. Facilitator training involves a 40-hour course in mediation skills and circle facilitation, as well as supplemental training sessions for increasing skills and knowledge.

The Peacemaking Coordinator assigns facilitators based on approved guidelines. The stated ideal is co-facilitators, one male and one female, both of whom have completed the

40-hour curriculum. The next best situation would be two co-facilitators of the same gender, both of whom completed the 40-hour curriculum. Lastly, the Coordinator could assign one person (possibly an elder) who has not received the 40-hour training, paired with a person who has. In this last case, the preference is a person of each gender. The Peacemaking Coordinator then assigns two or three additional trained facilitators who would participate as community members without responsibilities to function as facilitators of the circle.

A Code of Conduct for Facilitators established the standard of personal and program related behavior: **walking in a good way**. Added to the Code of Conduct is a process to deal with complaints concerning conduct or non-compliance with confidentiality or any other ground rule of the Circle. The means of reviewing such complaints is a Circle composed of the complainant, the identified Facilitator, supporters of the Facilitator, other Facilitators, and persons with knowledge of the conduct. A positive consensus decision is required in order for a Facilitator to be considered for future Circle assignments.

Mentoring and Monitoring

The Mnodaawin Circle process for juveniles allows for the selection of an adult mentor during the Circle. However, the absence of a willing volunteer and the distance of the juvenile's residence from the Harbor Springs area could be obstacles to this practice.

There are no prescribed standards, but a volunteer mentor would need to pass a background check before being allowed unrestricted access to the juvenile. In addition to customary mentoring tasks, a mentor's responsibilities would include monitoring compliance with the consensus agreement reached in the Circle. With or without a volunteer mentor, monitoring is a task shared by all the Circle Participants. This would include family members of the juvenile. Typically, the Participants are in a good position to observe the juvenile in the community during the term of the Mnodaawin agreement.

The mentor and Circle Participants should report to the Peacemaking Coordinator any non-compliance with the agreement, slippage, or increased risks within the juvenile's environment.

Follow-up Circles are convened on a schedule agreed to in the Mnodaawin circle. The Coordinator is responsible for mailing notices of the planned follow-up Circles. In the event of reports of non-compliance from the mentor or anyone else, the Coordinator could call for an additional follow-up Circle. In an extreme case of repeated non-compliance, the Circle could decide to refer the juvenile back to the court system.

When verification of completion of all the provisions in the consensus agreement is received, a final follow-up Circle with a potluck feast meal is scheduled.

Healing Circles

Healing Circles, one form of talking circles, are available for helping juveniles, parents or guardians, victims, or anyone else involved in Mnodaawin. They are available as a resource independent of the Mnodaawin program and the Tribal Court. However, the Peacemaking Coordinator takes responsibility for calling the Circle together. Unlike a peacemaking circle, a Healing Circle is not concerned with reaching a consensus agreement. The purpose is to assist an individual or a group of people by using the power of the Circle to restore balance.

The Circle is open to everyone who comes to it in a good way, intending to help people. Each Participant brings to the circle his or her own good thoughts, teachings, stories, prayers, and other gifts. There is no limit to the number of separate Healing Circles any person may attend. Some may perceive a personal need for dozens of Healing Circles, while others only 1 or 2.

Healing Circles should not be confused with the follow-up Circles agreed to in a peacemaking circle, although attending Healing Circles could be written into an agreement.

Reporting Abuse and Neglect

All persons participating in Mnodaawin are required to comply with applicable law concerning the reporting of instances of child abuse and neglect.

Stipends and Reimbursements

Stipends and mileage reimbursements are available for up to the assigned Facilitators for each Mnodaawin Circle. The rates for the payments of stipends and mileage reimbursements are set by the Tribal Court in consultation with the Mnodaawin Advisory Committee, and subject to an annual budget determined by the Tribal Court. Mileage and stipend requests are made on a prescribed form and submitted to the Court Administrator through the Peacemaking Coordinator.

Cases Acceptable for Peacemaking

Initially, the program is accepting juvenile situations such as truancy, incorrigibility, runaway, and curfew non-compliance. Other minor violations may be accepted on a case-by-case basis. Mnodaawin is only available when the juvenile acknowledges responsibility for his or her conduct.

Participation in Mnodaawin is entirely voluntary. Rather than agree to try peacemaking, the juvenile and his or her parent/guardian can elect to have the case adjudicated in a court of law.

Juveniles may come to Mnodaawin by order of the Tribal Court, or as a direct referral to the program in the absence of a court order. Direct referrals could come from parents, school counselors, truancy officers, state courts, and other sources. In addition, at his discretion, the tribal prosecutor may recommend the transfer of a case from Tribal Court to Mnodaawin, or divert a case before it reaches the court.

In the event of a court order, within five business days of receiving notice from the Court Clerk, the Peacemaking Coordinator must confirm whether the program can accept the transfer. The Mnodaawin Advisory Committee is authorized to establish a supplemental policy on cases acceptable, and the Peacemaking Coordinator may reject those which do not comply with the policy, including types of cases the Facilitators are unprepared to handle due to an absence of specialized training or experience. The Peacemaking Coordinator may require a psychological assessment as a condition in the determination process. Mainly because there are mixed households of Natives and non-Natives, cases involving non-Native juveniles are acceptable.

The Coordinator is responsible for providing monthly updates to the assigned judge on any case court ordered to Mnodaawin. Written agreements coming out of the peacemaking circle process are submitted to the judge and entered on the record. Once the terms of the agreement have been satisfied, notice is sent to the assigned Judge by the Coordinator. Likewise, the Coordinator must send to the assigned Judge written notice of termination of peacemaking without satisfaction of the full agreement.

Mnodaawin Circle Participants

For a juvenile peacemaking circle, Participants are classified as “necessary” or “optional”. Among the necessary Participants are the juvenile, a parent/guardian, selected supporters and family members of the juvenile and victim, the assigned Facilitators, an Administrative Facilitator (usually the Peacemaking Coordinator), and up to three additional Participants assigned from the pool of trained Facilitators, who would not function as Facilitators. A supporter of the juvenile may be a teacher, a neighbor, or

another significant person in his life. The victim is not required to participate, though he or she will be encouraged to do so. In addition, the optional Participants include other persons affected by the incident, elders, and anyone deemed helpful. A person deemed helpful could be someone with expertise in a problem area related to the juvenile's situation. Most of the necessary and optional Participants are identified during the intake interview. In determining who to invite, the Peacemaking Coordinator will advise against participation by persons whose personal histories suggest they are unlikely to act in a respectful way during the circle, or maintain confidentiality.

Circle Guidelines (Ground Rules)

- Honor the talking piece. The only person allowed to speak is the one holding the talking piece. However, dialogue can take place at the discretion of the Facilitators.
- The talking stick follows the sun [it goes to the left around the circle].
- Speak with respect and from the heart. Allow everyone enough time to contribute their thoughts by not taking too much Circle time when speaking.
- Anyone determined to be under the influence of mood altering chemicals (alcohol or other drugs) will be asked to leave.
- The Circle does not fix blame, so finger pointing and blaming language is inappropriate.
- All decisions in the circle are made by consensus. In the Circle, the definition of consensus agreement includes "I can live with the decision".
- What is said in the Circle stays in the Circle.

Confidentiality and Privilege

It is important for families and juveniles to know that what they say in the circle is privileged communication which would not be subject to discovery in Tribal Court at a later date. This can be significant when, for whatever the reason, a juvenile's case is referred back to the Judge. Furthermore, case records are not open for public review.

The Circle Process

Juvenile Circles will follow the process described below:

Before a Circle, the Peacemaking Coordinator will convene a "team meeting" of assigned Facilitators and anyone deemed necessary for planning the circle.

Prepare the cultural items and the room.

The juvenile will sit near and to the right of the Facilitators.

The room will be smudged before the participants arrive. In addition, smudging will be available to the participants who request it.

Facilitators are responsible for the prayer, or they may offer tobacco to someone else to take care of it.

Opening remarks and Circle guidelines:

- a) Welcoming comments
- b) Prayer
- c) Reason for Circle
- d) Review the guidelines, including confidentiality
- e) Distribute copies of confidentiality form for signatures
- f) Explain process

Speaking Rounds

- #1 Introductions, acceptance of guidelines
- #2 Statements to and by “victim”, or by community members if a “victimless” incident
- #3 Statements to and by the juvenile
- #4 Discuss options for resolution
- #5 A Facilitator summarizes areas of consensus. Go around the circle one last time for concurrence with the peacemaking agreement; write and sign the peacemaking agreement (the circle can briefly recess to allow time for writing the agreement).

Closing [options are at discretion of Facilitator and participants]:

Affirmation

Song

Shake hands

Hug

May incorporate one or more of the Grandfather Teachings or Twenty-one Instructions

Cultural Elements

Cultural elements of Juvenile Peacemaking Circles include the following:

- Gather in a Circle
- A candle as a symbol of the Fire
- The Four Medicines
- Strawberries

- A copper vessel of water
- A talking stick
- Begin with smudging and a prayer
- Food and drink (set out before and during the circle)
- A blanket on the floor (a place for the candle, strawberries, water, and smudging shell)
- At intake or at the closing of the circle, may provide teachings or handouts regarding the Medicine Wheel / Seven Grandfather Teachings and the 21 Instructions.
- At intake or sometime before the initial Circle, juveniles will be advised of the traditions of tobacco offerings.
- Before the Circle, the Coordinator will suggest that female participants consider asking for women's teachings on the circle and moon time from a family member or knowledgeable Odawa woman.

A talking stick, sage, copper pitcher, candle, and a candle holder have been gifted for use with Peacemaking Circles. Other gifts with possible uses include feathers from a Red Tailed Hawk and a hand-drum.

Community Resources

For reference purposes, the Peacemaking Coordinator will maintain a list of community resources that may be utilized to assist individuals and families who access the Peacemaking Program. The list could include the following types of resources:

- Departments of Tribal Government
- Cultural groups
- Traditional Council
- Teachers, warriors, healers and other respected persons
- Possible mentors
- Traditional lodges in the area
- Scheduled cultural events
- Opportunities for community service, including elders in need of assistance

Program Evaluation and Quality Improvement

In the interest of assuring a high degree of community satisfaction and program quality, evaluation of Mnodaawin will be ongoing. Evaluations will consist of the following elements:

- A. With a goal of greater community satisfaction,
 - 1. the Peacemaking Coordinator will routinely distribute “customer satisfaction” questionnaires to circle participants;
 - 2. the Tribal Court may conduct periodic opinion surveys of the community.

- B. With a goal of quality improvement,
 - 1. the Peacemaking Coordinator will organize debriefings with Facilitators after each peacemaking circle;
 - 2. Quality Improvement meetings will be scheduled on a regular basis to identify and discuss problems and solutions. The Peacemaking Coordinator will invite to the meetings the individuals best able to find a solution, even if they are representatives of programs from the Executive Branch. Also, Quality Improvement issues will be brought to meetings of the Mnodaawin Advisory Committee on a regular basis.
 - 3. A training plan will be developed and training opportunities will be provided in response to program plans, as well as certain issues raised in surveys, questionnaires, debriefings, and the Quality Improvement meetings.

Section IV

The Facilitators' Handbook for Juvenile Peacemaking Circles

The peacemaking circle process developed for Mnodaawin is inspired by Odawa traditions and contemporary tribal peacemaking, and influenced by facilitative mediation techniques. Essentially, the process is a talking circle, with a degree of structure not commonly seen in traditional circles. The process has a beginning phase for preparing the space and the participants, a middle phase with at least 5 rounds of talking, and a final phase for closing out the process.

Because the facilitators are expected to perform many tasks during the circle process—and perform them in a preferred order—this handbook was created as a reminder of the recommended steps, with valuable tips to help the process along. For those who have recently completed the forty-hour training curriculum, the Handbook may be indispensable. But experienced facilitators are sure to appreciate it, as well.

Overview of Juvenile Peacemaking Circle Process:

Juvenile Circles will follow the process described below:

Before a Circle, the Peacemaking Coordinator will convene a “team meeting” of assigned Facilitators and anyone deemed necessary for planning the Circle.

Prepare the cultural items and the room.

The juvenile will sit near and to the right of the Facilitators.

The room will be smudged before the participants arrive; in addition, smudging will be available to the individuals who request it.

Prayer is a responsibility for the Facilitators to take care of, or to ask someone else to take care of.

Opening remarks and Circle guidelines:

- g) Welcoming comments
- h) Prayer
- i) Reason for Circle
- j) Review the guidelines, including confidentiality
- k) Distribute copies of confidentiality form for signatures
- l) Explain process

Speaking Rounds

- #1 Introductions, acceptance of guidelines.
- #2 Statements to and by “victim”, or by community members if “victimless” incident.
- #3 Statements to and by the juvenile.
- #4 Discuss options for resolution.
- #5 A Facilitator summarizes areas of consensus; go around the Circle one last time for concurrence with resolution/peacemaking agreement; write and sign the resolution/peacemaking agreement (the Circle can briefly recess to allow time for writing the agreement).

Closing—options are at discretion of Facilitator and participants:

- Affirmation
- Song
- Shake hands
- Hug
- May incorporate Grandfather Teachings or 21 Instructions

Juvenile Peacemaking Circle Guidelines (Ground Rules):

- Honor the talking piece. The only person allowed to speak is the one holding the talking piece. However, dialogue can take place at the discretion of the Facilitators.
- The talking stick follows the sun [it goes to the left around the circle].
- Speak with respect and from the heart. Allow everyone enough time to contribute their thoughts by not taking too much Circle time when speaking.
- Anyone determined to be under the influence of mood altering chemicals (alcohol or other drugs) will be asked to leave.
- The Circle does not fix blame, so finger pointing and blaming language is inappropriate.
- All decisions in the circle are made by consensus. In the Circle, the definition of consensus agreement includes “I can live with the decision.”
- What is said in the Circle stays in the Circle.

Beginning a Juvenile Peacemaking Circle

Team Meeting

Prior to the start of a juvenile peacemaking Circle the Peacemaking Coordinator will convene a team meeting of the assigned Facilitators and anyone deemed necessary by the Coordinator for planning the Circle. For example, the Coordinator may invite a counselor or cultural advisor to discuss available options that could be presented during the Circle process. Another example is discussion of possible exceptions to the Circle Guidelines.

Prepare the Cultural Items

Cultural items will be placed on a blanket in the center of the Circle. Items include a smudging shell, candle, the Four Medicines (tobacco, cedar, sage, and sweet grass), strawberries, and a copper vessel of water.

Food and Beverages

The Facilitators will assure that coffee, cold beverages, and munchies are available before and during the circle.

Seating

The juvenile will sit immediately to the right of the Facilitator.

Smudging

The space will be smudged prior to the arrival of the participants. Individuals have the option of being smudged at the beginning of the Circle.

Prayer

The Facilitators are responsible for a prayer after everyone is seated in the Circle. A Facilitator has the option of offering Tobacco to an Elder or someone else in the Circle.

Welcoming Comments

Facilitators will welcome all the participants and thank them for agreeing to join the Circle. Express recognition that they care enough about the community to make personal sacrifices to be at the Circle.

Reason for Circle

Briefly summarize the incident or conduct for which the Circle will work to find a solution. Mention the objective of making things right—a return to balance/harmony for the victim, community, and juvenile.

Review the Guidelines (Ground Rules)

Read through the list of guidelines. Ask if anyone has concerns or questions. If necessary, dialogue about possible changes.

Distribute Confidentiality Forms

Pass around copies of the confidentiality form for signatures by the participants.

Explain the Process

Provide an overview of the rounds in the process, leading to a written agreement.

Round #1

The Facilitators will pass the talking stick to the left and ask each Participant to introduce himself/herself, and indicate acceptance of the Circle Guidelines (ground rules).

Round #2

In Round #2, if no identifiable victim, send the talking stick around. The Facilitators may ask questions of the Participants to get at these issues:

[As an alternative, Facilitators could substitute the phrase *the conduct of the juvenile* for the term *incident*.]

- What were your thoughts and reactions upon learning of this incident?
- What are your chief concerns?
- How did this incident affect you?
- How did you respond to the juvenile?
- What has happened since learning of the incident?
- How do you feel about it now?

Otherwise, the Facilitators hold the talking stick and ask the victim to tell the story of what happened. The Facilitators could ask questions of the victim that address these points:

- How did you react to the incident when it happened?
- Describe your feelings after this incident.
- Who else was affected: family-friends-neighbors, etc.?
- How did these other people react to hearing about this incident?
- What harm was caused by this incident (physical, emotional, financial)?
- What has happened for you or to you since the incident?
- What are your chief concerns?

When the victim is finished, pass the talking stick around the Circle. Facilitators may ask questions of the supporters and other Participants to get at the same issues listed at the top of the page.

When they are holding the talking stick, participants may direct their own questions at the victim.

Because the juvenile is sitting to the right of the Facilitator, the juvenile will be the last to be handed the talking stick. The Facilitator will ask for the talking stick before the juvenile has a chance to talk. This will give the Facilitator an opportunity to ask additional questions of the victim and other participants before handing it back to the juvenile for the start of Round #3.
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Round #3

In Round #3 the juvenile is asked to tell his or her story. The Facilitators may ask questions of the juvenile that will get at the following issues:

- What happened?
- Why did you do it?
- What were you thinking about at the time?
- How did you feel about the incident/your conduct then?
- How do you feel about it now?
- Who was affected and how were they affected?

After statements by the juvenile, the talking stick is passed around the Circle. The Facilitators may ask questions of the supporters and other Participants to get at these issues:

- What are your chief concerns?
- What were your thoughts and reactions upon learning of this incident/his conduct?
- How did this incident/his conduct affect you?
- How did you respond to the juvenile?
- What has happened since learning of the incident/his conduct?
- How do you feel about it now.

When they are holding the talking stick, Participants may direct their own questions at the juvenile.

When the talking stick arrives back with the Facilitators, they have the option of sending the talking stick around additional times in order to identify and clarify all of the issues. The Facilitators may ask questions that could help in developing a list of issues to consider in Round #4. Example: “We’ve talked a lot about the anger problem and the remorse he feels. We will pass the talking stick around again and ask everyone to talk more about the problems at home that he mentioned.”

At the end of the round, the Facilitators will summarize the issues identified in both Rounds #2 & #3 (i.e. articulate the agenda for discussion in Round #4).

Round #4

Passing the talking stick, the Facilitators ask how the Participants (juvenile included) suggest the issues can be dealt with/the harm can be repaired.

- Explore these:
 - Both dollar restitution and “symbolic” restitution
 - How we can work to prevent this in the future (what can we do to teach the person causing the harm, or what is needed to keep them from repeating the conduct)?
 - Any other issues that need to be addressed (i.e., chemical abuse, school issues, part-time employment needed, etc.)?
- Facilitators take notes on the ideas presented for the agreement
- Facilitators remind everyone of the collective responsibility for monitoring the juvenile’s compliance with the agreement
- Is a mentor for the juvenile desired and available?
- Is a Healing Circle desired for the victim or juvenile?
- Will cultural activities be a part of the agreement?
- Follow-up circles will be scheduled at what frequency?

If needed, continue passing the talking stick until a consensus is evident.

Round #5

In Round #5 the Facilitators summarize the areas of agreement, and everyone signs a written agreement.

- Summarize/read back the responses and ideas and check for consensus

If there is no consensus, ask the participants if they would be willing to meet again. If so, determine the date, and remind them of the confidentiality commitment.
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- Pass the talking stick one more time for concurrence with the agreement. If most Participants concur but a small minority have some reservations, ask those in the minority if they can live with the agreement even if it is not exactly what they desire
- The circle can recess for a few minutes to allow time for a Facilitator to write the agreement on the standard form.
- Pass the agreement around for signatures by the Facilitators, the victim, the juvenile, parents/guardian, and the other Participants/witnesses.
- Make copies of agreement for each party (option is to copy and mail later)

Closing the Peacemaking Circle

Regardless of the outcome (agreement or no agreement), Facilitators should thank all the Participants for their time and efforts.

In order to reinforce the values of the Anishinabe / Waganakising Odawak, the Facilitators have the option of providing a handout on the Grandfather Teachings (Medicine Wheel), or the 21 Instructions.

Facilitators determine the appropriate closing ritual for each Circle. One or more of the following could be employed:

- Affirmations by the Facilitators or by all the participants in the Circle (e.g., “All of our tribal children are equally valuable”; “This young man is on a new path”; “This young woman is trying to live her life in a good way”; “We have done a good thing by gathering together to solve this problem”)
- A song (e.g., honor song or peace song)
- Shaking hands
- Hugs

Section V

Facilitator Training Manual

Little Traverse Bay Bands of Odawa Indians

**Mnodaawin
PEACEMAKING PROGRAM**

**FACILITATOR
TRAINING MANUAL**



**40-Hour Peacemaking and
Facilitative Mediation Course**

This training manual was prepared in October 2006, and revised in June 2007, by David M. Keller, Peacemaking Coordinator, Little Traverse Bay Bands of Odawa Indians. Much of the material on mediation techniques is drawn from the training manual written by Joseph B. Stulberg and Lela Porter Love for the State of Michigan, Michigan Supreme Court, State Court Administrative Office, and edited by JoAnne L. Catlin. Additional credit goes to the staff of Northern Community Mediation, Petoskey, Michigan.

Peacemaking and Facilitative Mediation Training Agenda

[agenda is designed for eight sessions of five hours each]

Day 1

[Gather in a Teaching Circle]

Opening Prayer

Introductions by Trainers

A Round of Introductions by Trainees

Purpose of the Training; Agenda; Housekeeping

MEAL BREAK and VIDEO—Mediation

Discussion [What Was the Mediator Trying to Accomplish? What Were His Tasks?]

Overview of LTBB Peacemaking **p. V-6**

Key Concepts **p. V-7**

Conflict Management Options **p. V-8**

Comparison of Litigation, Mediation, and Native American Peacemaking **p. V-9**

Differences in Justice Paradigms **p. V-10**

Odawa Traditions of Problem Solving and Healing **p. V-11**

Characteristics and Values Shared by Tribal Peacemaking Processes **p. V-13**

LTBB Peacemaking Policy Statement; Program Logo; Principles of Mnodaawin **p. V-14**

Alternative Terms to the Vocabulary of the Anglo Justice System **p. V-16**

Daily Closing Talking Circle

Day 2

Opening Prayer

Success Rates of Mediation and Peacemaking **p. V-17**

What Kinds of Disputes Can Be Worked Out in Mediation? **p. V-18**

Cases Suitable for Peacemaking **V-19**

MEAL BREAK and VIDEO—Garden River First Nation Justice Program

Discussion [Who Participated?]

LTBB Peacemaking Advisory Committee **p. V-19**

LTBB Juvenile Circle Participants **p. V-20**

Traits Mediators Should Possess **p. V-21**

Qualifications of LTBB Facilitators; Stipends; Background Checks; Reporting Abuse **V-22**

Cultural Elements of LTBB Peacemaking Circles **p. V-24**

BADGER Overview **p. V-25**

LTBB Juvenile Peacemaking Circle Overview **p. V-27**

LTBB Peacemaking Circle Guidelines (Ground Rules) **p. V-28**

Daily Closing Talking Circle

Day 3

Opening Prayer

Beginning a Mediation

Participants **p. V-29**

Room Arrangement **p. V-30**

Co-mediation guidelines **p. V-32**

MEAL BREAK and VIDEO—Yukon Sentencing Circles (First ½)

Discussion

Beginning a Mediation (continued)

Elements of an Opening Statement **p. V-33**

Example of Opening Statement **p. V-34**

Beginning a Juvenile Peacemaking Circle **p. V-35**

Team Meeting

Prepare Cultural Items

Food and Beverages

Seating

Smudging

Prayer by Facilitator or by Someone the Facilitator Asks in a Good Way

Welcoming Comments

Reason for Circle

Review the Guidelines (Ground Rules)

Distribute Confidentiality Forms for Signatures

Explain Process to Participants

Exercise: Beginning a Juvenile Peacemaking Circle **p. V-37**

Round #1 of the Peacemaking Circle

Introductions; Acceptance of Guidelines **p. V-39**

Daily Closing Talking Circle

Day 4

Opening Prayer

Standards of Conduct for Mediators **p. V-39**

Statement on Code of Conduct for Facilitators; Complaint Process **p. V-40**

MEAL BREAK and VIDEO—Yukon Sentencing Circles (Second ½)

Discussion

Accumulating Information in Mediation **p. V-42**

Mediator's Role **p. V-45**

Listening **p. V-46**

Communication **p. V-47**

Paraphrasing **p. V-48**

Open-Ended Questions **p. V-49**

“A Questionable Exercise” **p. V-52**

Reframe/Neutral Language **p. V-53**

Reframing Exercise **p. V-54**

Round #2 of the Peacemaking Circle

Statements to and by the Victim, or by Community Members if “Victimless” Situation **P. V-55**

Round #2 Role-Play **p. V-56**

Daily Closing Talking Circle

Day 5

Opening Prayer

LTBB Peacemaking Program Evaluation **p. V-57**

MEAL BREAK and VIDEO—Hollow Water First Nation CHCH (First ½)
Discussion

Developing an Agenda for Mediation **p. V-58**

PIN Pyramid **p. V-60**

Identify the Issues **p. V-61**

Exercise on Identifying Issues **p. V-63**

Round #3 of the Peacemaking Circle

Statement to and by the Juvenile **p. V-64**

Round #3 Role-Play **p. V-65**

Daily Closing Talking Circle

Day 6

Opening Prayer

Community Resources for Peacemaking **p. V-66**

MEAL BREAK and VIDEO—Hollow Water First Nation CHCH (Second ½)
Discussion

Generating Movement in Mediation

Overview of Persuasive Techniques **p. V-67**

Information Base

Negotiating Standards

Individual Behavior

Common Interests

Consequences of Not Reaching an Agreement

Role-Play Exercise on Persuasive Techniques **p. V-69**

Round #4 of the Peacemaking Circle **p. V-70**

Options **p. V-71**

Monitoring **p. V-72**

Round #4 Role-Play **p. V-73**

Daily Closing Talking Circle

Day 7

Opening Prayer

Q & A

MEAL BREAK and VIDEO—Kake Circle Peacemaking
Discussion

Resolving the Dispute in Mediation **p. V-74**

Summarize Agreement Terms

Confirm; Workable?

Write the Agreement

Characteristics: understandable; appealing; precise

Congratulate

Round #5 of the Peacemaking Circle **p. V-75**

Summarize Areas of Consensus

Ask for Concurrence with Plan

Write Plan

Signatures

Agreement Writing Exercise **p. V-76**

Circle Closing

Thanks / Shake Hands / Hug / Affirmation / Song / Teachings **p. V-77**

Role Plays of Full Circle Process **p. V-78**

Daily Closing Talking Circle

Day 8

Opening Prayer

Medicine Wheel Teachings **p. V-82**

21 Instructions **p. V-83**

Q & A

MEAL BREAK

Role Plays of Full Circle Process **p. V-78**

Presentation of Certificates

Daily Closing Talking Circle

Mnodaawin



Peacemaking Program for Juveniles

Little Traverse Bay Bands of Odawa Indians

The Little Traverse Bay Bands of Odawa Indians has developed an alternative to the typical adversarial justice process. This alternative process is currently available only to juveniles, such as situations involving truancy, incorrigibility, and curfew noncompliance.

The program, called *Mnodaawin* (Good Life), uses the traditional talking circle. The Peacemaking Program is a community-based response to problems that may otherwise be resolved in the formal justice system. Peacemaking resolves conflicts using traditional talking circles that are a “new old way” rooted in Odawa culture and values.

Circle Facilitators who are members of the Tribal community help the participants talk about the problem and how to “make things right.” To be a Facilitator a person must complete training in mediation and circle facilitation, and pass a background check.

Peacemaking circles are not for judging or blaming—they are about **real accountability, healing, and restoring harmony** in the community. Because accountability begins with owning your deeds, the circle is not available to juveniles who don’t admit to wrongdoing. Accountability is effectively assured by including in the circle the people affected by the incident.

Utilizing the circle is voluntary for the juvenile and his/her parents or guardian. Participants sitting in a juvenile peacemaking circle usually include the juvenile, the parents, family members, elders, and other community members. If there is an identified victim, he or she has the option to participate, but could be represented in the circle by relatives or supporters. Everyone in the circle has the opportunity to talk without interruption. A talking stick is passed around as many times as needed in order to hear stories about the incident from the juvenile, victim, and the community, and to determine the issues and find ways to restore harmony. Discussion continues until there is a consensus agreement that can be written down and signed by all participants.

An agreement may include commitments by the juvenile to improving grades, performing community service, participating in cultural activities, and, when appropriate, attending counseling and making restitution. Family members and community members could commit to assisting the juvenile and the victim. In every case, the agreement is tailored to individual circumstances. Compliance with the agreement is monitored by staff and in follow-up circles, if needed.

Because Peacemaking is oriented to healing and restoring harmony, and not concerned with determination of guilt or innocence, the vocabulary and process are less formal and less stigmatizing. The Peacemaking Program tries to avoid the use of words such as *proceedings*, *offense*, and *sentence*, in favor of words such as *circle*, *incident*, and *agreement*.

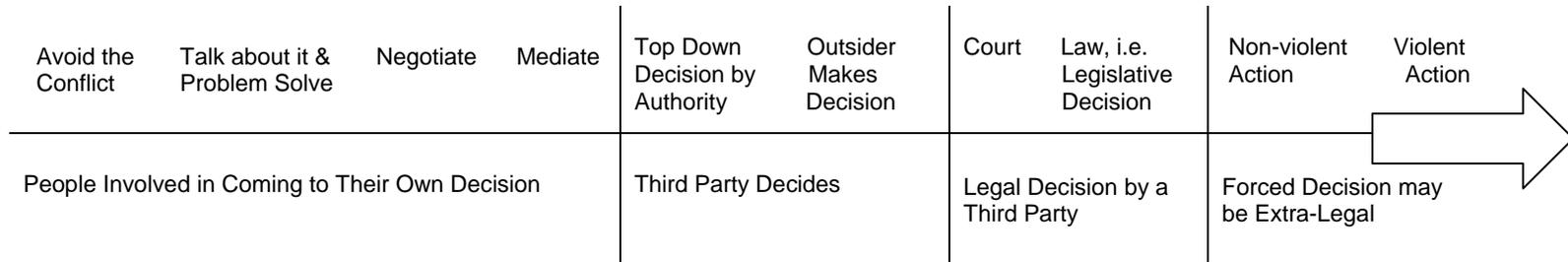
Odawa culture and traditional values are evident throughout the process. The circle opens with a prayer, and smudging with one of the traditional medicines. Teachings may be offered during the circle. The juvenile’s attendance at a traditional gathering could be an element in the consensus agreement.

In order to assure quality, evaluation of the Program is ongoing. Furthermore, a code of conduct for Facilitators, as well as a complaint process, has been developed.

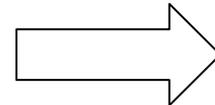
Key Concepts

Arbitration:	A dispute resolution process in which one or more neutral third parties hears the evidence and arguments of each disputant and makes a decision for them.
Conflict:	The natural expressed tension arising from real or perceived differences.
Fears/feelings:	The emotional energy that may motivate parties into conflict. This energy must be either channeled into productive problem solving or its intensity lowered so that parties may engage in a cooperative problem solving process.
Litigation:	The parties sue each other, or bring criminal charges, allowing the court to render a judgment or find a person guilty of a crime.
Mediation:	A neutral third party meets with the disputants to help them reach a mutually acceptable resolution. The mediator does not make the decision.
Need and interests:	May be short or long term stable concerns underlying a position. Needs and interests have to do with basic things: time, money, space, reputation, security. There are usually many ways to satisfy a need or interest. Interest based negotiation allows parties to work together to solve the problem in a way that meets the most important needs of both groups/individuals.
Negotiation:	The parties themselves or their representatives try to resolve the conflict; there is no neutral third party involved.
Positions:	A statement of what a party wants. It represents just one way the party's needs or interests can be met. Positional bargaining usually involves blame and demands. It often offers only the possibilities of a win/lose solution or a compromise of both positions.
Power:	The ability to do or capacity to act; the ability to control others; authority; sway; influences; physical force or energies.
Right:	A just or fair claim to anything whatever; power or privilege that belongs to a person by law, nature, or tradition.
Values:	Deeply held beliefs – religious, ideological, cultural. Values must be understood and taken into account, but cannot be changed by negotiation. Behaviors stemming from values may be the subject of negotiations.

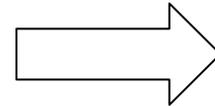
CONFLICT MANAGEMENT OPTIONS



INCREASED COERCION AND LIKELIHOOD OF WIN/LOSE OUTCOME



INCREASED COST IN TIME, ENERGY, MONEY



Comparison of Styles of Conflict Resolution

	<u>Litigation</u>	<u>Mediation</u>	<u>Peacemaking</u>
“Handle”	“Case”	“Case”	“Session”
Space	Formal: Court Designated Space	Informal: Neutral Space, Common Table	Talking Circle
Speakers	Attorneys and Judges	Disputants and Mediator	Peacemakers, Families, Elders
Purpose	Rights Defined	Remedy Agreed Upon	Balance Restored
Process	Highly Structured	Mildly Structured	Open Structure
Content	Facts and Decrees	Viewpoints, Feelings, Needs	Resolving Underlying Problems in Context of Community Norms
Bond	Involuntary, Statutes	Voluntary and Personal	Community and Family
Atmosphere	Public	Private and Confidential	Feeling Safe and Confidential
Decision	External (Judge and Law)	Mutually Agreed	Family Based
Cost	Expensive, Time Consuming	Inexpensive, Timely	Gift to Peacemaker; Whatever Time It Takes
Gain	Rights Defined: May Be “Win/Lose” or “Lose/Lose”	May Remedy Issue (70%)	Brings Back Peace and Harmony to Family
Public Good	May Provide Precedent, or Social Norm	May Empower Individuals	Makes People Responsible and Brings Back Balance to Family

Prepared by Tom Shea, Conflict Resolution Service, Traverse City and Hon. JoAnne Miller, Tribal Court Assoc. Judge, Grand Traverse Band of Ottawa and Chippewa Indians

Differences in Justice Paradigms

<u>American Justice Paradigm</u>	<u>Indigenous Justice Paradigm</u>
Vertical	Holistic
Communication is rehearsed	Communication is fluid
Written statutory law derived from rules and procedure, written record	Oral customary law learned as a way of life by example
Separation of powers	Law and justice are part of a whole
Separation of church and state	Spiritual realm is invoked in ceremonies and prayer
Adversarial and conflict oriented	Builds trusting relationships to promote resolution and healing
Argumentative	Talk and discussion is essential
Isolated behavior, freeze-frame acts	Reviews problem in its entirety; contributing factors are examined
Fragmented approach to process and solutions	Comprehensive problem solving
Time-oriented process	No time limits on the process; long silences and patience are valued
Limits participants in the process and solutions	Inclusive of all affected individuals
Represented by strangers	Representation by extended family members
Focus on individual rights	Focus on victim and communal rights
Punitive and removes offender	Corrective; offenders are accountable and responsible for change
Prescribes penalties by and for the state	Customary sanctions used to restore victim-offender relationship
Right of accused, especially against self-incrimination	Obligation of accused to verbalize accountability
Vindication to society	Reparative obligation to victims and community, apology and forgiveness

This figure represents differences noted by Judge Christine Zuni and others.

Odawa Justice and Peacemaking Traditions

Wenona Singel (*Reviving Odawa Traditional Justice in the Little Traverse Bay Bands Community: Some Preliminary Thoughts for Discussion*)

- During an interview, one Little Traverse member commented that peacemaking should strengthen family life and respect the structure of the clan system.
- ...the project of revitalizing peacemaking must serve multiple purposes. In addition to building effective dispute resolution, tribal members engage in healing the community and vesting the next generation with the knowledge and tools to secure their collective well-being.
- At the Little Traverse Social Services office, interviewees explained that credibility is linked to tradition, since “peacemaking is a practice since creation.”
- One individual linked peacemakers to *oichidam* [ogitchidaag?], or the traditional Ojibwa police.
- ...elders should be candidates for peacemakers.
- ...peacemakers should be parents, and they should be sober. Life experience was at the core of peacemaking qualifications recognized by the group.
- Criteria that were offered to select peacemakers include having an open-minded nature, having a good ear, being a good person, having traditional knowledge, and having strong relationships in the community. Some emphasized that peacemakers do not need (college) degrees to be qualified.
- In some cases, over-formalization of the process may strip peacemaking of fundamental cultural approaches to dispute resolution that value flexibility and relativity.
- ...juvenile justice may be an especially appropriate field for peacemaking’s initial application.

Andrew J Blackbird (*History of the Ottawa and Chippewa Indians of Michigan*)

- He was arrested and committed to the council and tried according to the Indian style; and after a long council, or trial, it was determined the murderer should be banished from the tribe.

J. Clifton, G. Cornell, J. McClurken (*People of the Three Fires: The Ottawa, Potawatomi, and Ojibway of Michigan*)

- In matters of importance, such as ...threats to peaceful relations within the village itself, the village leaders assembled in council to decide on a course of action.
- The first rule in Ottawa society was respect for the individual. No one person could determine the fate of another. Each person was respected because of

individual powers and achievements. Personal actions were the result of personal decisions, but proper behavior benefited all members of the village or family group.

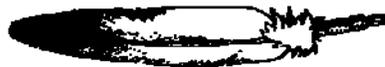
- The second rule was that all members of the group must share their material wealth, labor, and food.
- The exchange of gifts was governed by a set of rules which bound giver and receiver. Each gift required some form of return and extended obligations of reciprocity across family lines to other tribes as well.
- Because each person was so important in producing food shelter, and clothing, the Ottawa system depended on cooperation, not competition.
- Families whose goals conflicted with those of their fellow Ottawa sometimes moved away and formed their own centers of operation.
- Individuals who violated the rules faced exile; in extreme cases, such as murder, those who broke the rules risked execution.
- The family was the most important social and political unit in Ottawa culture. Family relationships were defined by a complex set of rules which when extended to their farthest conceptual limits, linked all people in terms of kinship.

James M. McClurken (*Gah-Baeh-Jhagwah-Buk—The Way It Happened*)

- Most often, *Ogemuk* were male, though on occasion, women also served as leaders.
- As long as an *Ogema* was respected by his people, he was sought to provide guidance in village and personal matters.
- The *Ogemuk* negotiated settlements to disputes and held councils in which all villagers spoke their opinions. Important councils...could take days of oratory and skilled listening to win a consensus of followers.

Common Characteristics and Values in Tribal Peacemaking Processes

- Community members coming together to solve a problem. No one person has all the information or wisdom needed.
- No individual should impose his will on another person.
- Voluntary participation by the key parties (victim and offender, or the parties to a dispute).
- A higher priority is given to restoring and healing, than determining who did what and to whom.
- The behavior is bad, not the person.
- The equality of the circle participants.
- Indirect criticism, and teachings offered in a caring way.
- Belief in personal transformation and healing.
- The importance of prayer and ceremony in the peacemaking process.
- The importance of family and extended family.
- The importance of including elders, for teachings and wisdom.
- Respectfulness demonstrated throughout the process.
- Deep listening by all participants.
- Consensus decision making.



Little Traverse Bay Bands of Odawa Indians Tribal Court

Juvenile Peacemaking Process

Program Name: *Mnodaawin* (Good life)

Peacemaking Policy Statement:

Mnodaawin—Odawa peacemaking—draws upon the community's wisdom, strength, knowledge, and experience to provide a holistic justice forum where the circle comes together to listen, share and teach through each others' stories and perspectives with the aim of healing, restoring relationships, and strengthening the individual, family and community.

Program Logo:



The circular design features floral representations for women (strawberries), men (blueberries), all people (maple leaves), medicine (swamp rose), and peace (Indian pipe flowers). In the center are the tail feathers of the Red-Tailed Hawk and the Sacred Fire held by the hands of Great Spirit.

Principles of Mnodaawin:

Peacemaking Circles for juveniles are a first step to developing an array of processes to serve as alternatives to the adversarial court system.

Talking circles are a cultural and historical means to problem resolution and healing in Waganakising.

Talking circles can be a prevention tool. Talking Circles, including peacemaking Circles, demonstrate positive problem-solving techniques to everyone participating in the Circles.

Community-based Healing Circles are needed in the community. Though independent of Tribal Court, they can support the peacemaking Circles that are centered on disposition.

Peacemaking Circles should be as inclusive as reasonably possible.

The peacemaking process incorporates cultural elements, and fosters exposure to Odawa culture outside of the Circle.

Training in facilitation is essential. Specialized training in topics such as substance abuse, suicide, and domestic violence will be provided to facilitators.

Many community members have not experienced talking circles. The Tribal Court will organize talking circles at certain events it sponsors, and foster the inclusion of talking circles at activities throughout the community.

The ideal is to conduct Circles around the Sacred Fire, and in a traditional lodge.

Whenever reasonable, alternatives will be utilized for the words *offender*, *proceedings*, *sentence* and similar court terminology.

The general rule on confidentiality is as follows: What is said in the Circle stays in the Circle. Furthermore, case records shall not be open to review by the general public.

Alternative Terms to the Vocabulary of the Justice System:

Program staff and Circle Participants are encouraged to avoid typical Anglo justice terminology in favor of alternatives that are less stigmatizing and more culturally appropriate:

Anglo Justice Terms

Hearing; trial; proceedings

Dispute; lawsuit

Sentence; judgment; order

Offender; delinquent; defendant

Offense; crime; misdemeanor

Victim; complainant; plaintiff

Mnodaawin Alternatives

Process; gathering; circle

**Difference; disagreement;
disharmony**

**Peacemaking agreement; making
things right ; resolution**

**Juvenile; young person; just use the
person's name**

Problem; harm done; situation

Just use person's name



Success Rates for Mediation and Peacemaking

Mediation

According to the State Court Administrative Office, Michigan's Community Dispute Resolution Center's realized a resolution rate of 73.0% in 2005. In the same year, the compliance rate with agreements reached in mediation was 91.7%.

Peacemaking

One highly successful example of tribal peacemaking is the Circle Peacemaking program of the Organized Village of Kake, Alaska. During the program's first four years only two adult offenders out of 80 sentenced in the circle rejected a circle's outcome and returned to the state court for sentencing. All of 24 juveniles completed the terms of their sentences. In addition, 68 adults participated in circles without re-offending.

What Kinds of Disputes Can Be Worked Out in Mediation?

A few examples of the many disputes that can be settled using mediation include:

- Neighbor issues
- Landlord/tenant issues
- Small claims cases
- Family disputes
- School issues
- Juvenile cases
- Noise disturbances
- Consumer/merchant disputes
- Property disputes
- Trespassing issues
- Guardianship issues

Cases Acceptable for Juvenile Peacemaking:

Participation in peacemaking Circles is strictly voluntary, and requires the expressed approval of the juvenile and his or her parent or guardian. Furthermore, in order for a case to qualify for peacemaking, the juvenile must accept responsibility for the conduct.

Cases may be referred by judges or prosecutors, or requested by the parties. Cases generally acceptable for juvenile peacemaking Circles will include the following:

- Status offenses (runaway, curfew, truancy, incorrigibility)
- Cases transferred from Tribal Court or diverted by the tribal prosecutor
- Referrals from parents, schools, tribal police, state courts, and other sources

Cases involving non-Native juveniles are acceptable.

In theory, even serious violent crimes could be dealt with in peacemaking. However, the Peacemaking Coordinator will screen out types of cases the Facilitators are not prepared for due to an absence of specialized training or experience.

Mnodaawin Advisory Committee:

Tribal Court will maintain a Mnodaawin Advisory Committee composed of a cross-section of the LTBB community (i.e. elders, traditional leaders, young people, tribal judges, etc.). Appointments to the Committee are approved by the Chief Judge from recommendations of other judges, court staff, and members of the Advisory Committee.

Responsibilities of the Mnodaawin Advisory Committee include

- developing and revising program policies;
- assistance with recruitment of Facilitators;
- participation in Quality Improvement activities and providing community feedback.

Meetings of the Mnodaawin Advisory Committee will be organized by Tribal Court as often as needed in order to fulfill the responsibilities listed above.

Juvenile Peacemaking Circle Participants:

In juvenile peacemaking Circles the participants are classified as either “necessary” or “optional”:

Necessary

The juvenile

Parent / guardian

Supporters & family of juvenile
& victim (invite)

Facilitator (one or more)

Admin. Facilitator/Scribe (usually the coordinator)

Up to 3 additional Participants from a pool of trained facilitators

Optional

Victim (voluntary)

Affected persons (invite)

Elders (invite)

Anyone else deemed helpful (invite)

“*Anyone else deemed helpful*” may include those with expertise in problem areas related to the juvenile’s situation.

The Peacemaking Coordinator is responsible for gathering the information needed for identifying the necessary and optional Participants, and assuring they are notified. The Peacemaking Coordinator will advise against inviting persons whose personal histories suggest they are unlikely to act with respect during the circle, or maintain confidentiality later.

Traits Mediators Should Possess

- Non-judgmental
- Reliable
- Good listener
- Confident
- Articulate
- Skeptical
- Honest
- Impartial
- Empathetic
- Persuasive
- Persevering
- Patient
- Flexible
- Objective
- Sense of humor
- Intelligent
- Imaginative and creative
- Respected in community
- Non-defensive
- Decisive and forceful
- Neutral



Qualifications of Facilitators:

Facilitators will be assigned by the Peacemaking Coordinator. The Facilitators of a juvenile peacemaking Circle will consist of an Administrative Facilitator/scribe and at least one additional Facilitator. The Peacemaking Coordinator will ordinarily act as the Administrative Facilitator/scribe.

In assigning Facilitators, the Peacemaking Coordinator will be guided by the following order of preference:

1. One male and one female Facilitator, both of whom have completed the 40-hour Facilitator training course.
2. Two Facilitators of the same gender who have completed the 40-hour facilitator training course.
3. One Facilitator who has completed the 40-hour facilitator training course and one who has not (one of each gender is preferred). Recognized tribal elders who have not completed the 40-hour training course can be considered.

The Peacemaking Coordinator also is responsible for assigning up to three additional Circle Participants from the pool of trained Facilitators. One option is to recruit a group of three who would agree to participate in all of the Mnodaawin Circles scheduled during a particular month.

An experienced Facilitator from a peacemaking program of another tribe would be an acceptable choice. Reasons for considering a Facilitator from another tribe include conflicts of interest, lack of experience with the type of case, and other reasons.

Facilitators must possess the ability to remain neutral, especially when family members come to the Circle.

Sobriety at the time of the Circle will be an expectation of all participants.

The Coordinator will document the reasons for the choices of assigned Facilitators.



Stipends and Reimbursements:

Dependent upon the availability of funding, the Tribal Court will provide a modest stipend and mileage reimbursements to Facilitators on a per session basis. The amount of the stipend will be determined by Tribal Court at the beginning of the calendar year, but it may be revised at the discretion of the Court. Mileage reimbursement for Facilitator travel to and from a peacemaking session in a personal automobile may be claimed at the approved rate for Tribal Court employees.

Tribal Court may reimbursement mileage for mentor use of personal automobiles while engaged in mentoring related activities.

Background Checks:

Everyone who volunteers to serve as a Facilitator of juvenile peacemaking Circles, and all volunteer mentors with unrestricted access to the juveniles who utilize the program must first undergo a background check. In this regard, Tribal Court will follow the LTBB Tribal Government regulations applicable to employees and volunteers whose duties involve working with juveniles, or unrestricted access to them.

Reporting Abuse and Neglect:

All persons participating in peacemaking Circles will be advised of applicable law relating to reporting instances of child abuse and neglect.

Odawa Juvenile Peacemaking Circle Cultural Elements:

Cultural elements of juvenile peacemaking Circles include the following:

- Gather in a circle
- A candle as a symbol of the Fire
- The Four Medicines
- Strawberries
- A copper vessel of water
- A talking stick
- Begin with smudging and a prayer
- Food and drink (set out before and during the circle)
- A blanket on the floor (a place for the candle, strawberries, water, and smudging shell)
- At intake or at the closing of the circle, may provide teachings or handouts regarding the Medicine Wheel / Seven Grandfather Teachings and the 21 Instructions.
- At intake or sometime before the initial Circle, juveniles will be advised of the traditions of tobacco offerings.
- Before the Circle, the Coordinator will suggest that female Participants consider asking for women's teachings on the circle and moon time from a family member or knowledgeable Odawa woman.

A talking stick, sage, copper pitcher, candle, and a candle holder have been gifted for use with Mnodaawin Circles. Other gifts with possible uses include feathers from a Red Tailed Hawk and a hand-drum.

BADGER: Stages of the Mediation Process

There are six distinct parts to the mediation process which must unfold sequentially to lend order, efficiency, and fairness to the overall proceedings. The mediator's responsibility during each part of the process is summarized as follows:

Beginning the Mediation

- Greet the participants and make them feel at home
- Identify yourself and the participants; find out how each person wishes to be addressed
- Establish an informal, relaxed atmosphere; provide each person with pencil and paper
- Explain the purpose of mediation and determine the willingness and capacity of the parties to participate
- Clarify the ground rules
- Assess the participants readiness to begin

Accumulating Information

- Ask the first party to begin by describing the dispute and any relevant background information you should know
- Listen attentively and take notes if you find it helpful
- Ask questions in a neutral voice; form your questions to get focused, pertinent information on the background and issues
- Maintain the information flow by focusing the participants' narration; check with the participant to make sure you understand what she/he is saying
- Be aware of statements that are repeated during the presentation, as these often hold the key to underlying issues and eventual resolution
- Ask each party to identify the precipitating problem in their dispute
- Look for any underlying fundamental issues which may be at the root of the complaint
- Pay close attention to the behavior and body language of both participants
- Handle emotions and disruptive behavior calmly but authoritatively
- Summarize the first participant's story as objectively as possible; identify the key issues which the first participant's story has brought forth in his/her description of the situation
- Repeat the steps with the second party

Developing the Agenda

- Define the problem by restating and summarizing each participant's statements
- Summarize areas of agreement and disagreement on the issues involved
- Assist the participants in prioritizing the issues and their demands

Generating Options

- Inquire if either party has any suggestions for resolving the conflict
- Restate and summarize each alternative
- Assist the participants in evaluating the fairness and workability of each proposed solution
- Encourage the participants to select the alternatives which they believe to be the most workable
- If needed, restate the alternatives selected to ensure that both parties understand them
- Assist the parties in selecting objective criteria for proposed solutions

Escaping to Caucus

- Steps under "Generating Options" may be done privately with each party

Note: Such private discussions would be rare exceptions in the typically inclusive tribal peacemaking processes.

Resolving the Dispute

- Summarize agreement terms
- Check with each party regarding the workability of the resolution and their confirmation of the terms
- Establish a follow-up procedure with each party for signing the agreement and checking to see if its terms have been carried out
- Emphasize the agree is the result of their cooperative efforts and that they both have a stake in making it work
- Congratulate the participants on their successful resolution of the dispute

Overview of Juvenile Peacemaking Circle Process:

Juvenile peacemaking Circles will follow the process described below:

Before a Circle, the Peacemaking Coordinator will convene a “team meeting” of assigned Facilitators and anyone deemed necessary for planning the Circle.

Prepare the cultural items and the room.

The juvenile will sit near and to the right of the Facilitators.

The room will be smudged before the Participants arrive; in addition, smudging will be available to the individuals who request it.

Prayer is a responsibility for the Facilitators to take care of, or to ask someone else to take care of.

Opening remarks and Circle guidelines:

- m) Welcoming comments
- n) Prayer
- o) Reason for Circle
- p) Review the guidelines, including confidentiality
- q) Distribute copies of confidentiality form for signatures
- r) Explain process

Speaking Rounds

- #1 Introductions, acceptance of guidelines.
- #2 Statements to and by “victim”, or by community members if “victimless” incident.
- #3 Statements to and by the juvenile.
- #4 Discuss options for resolution.
- #5 A Facilitator summarizes areas of consensus; go around the Circle one last time for concurrence with resolution/peacemaking agreement; write and sign the resolution/peacemaking agreement (the Circle can briefly recess to allow time for writing the agreement).

Closing—options are at discretion of Facilitator and Participants:

- Affirmation
- Song
- Shake hands
- Hug
- May incorporate Grandfather Teachings or 21 Instructions

Juvenile Peacemaking Circle Guidelines (Ground Rules):

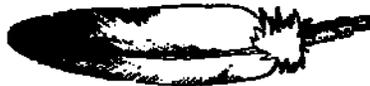
- Honor the talking piece. The only person allowed to speak is the one holding the talking piece. However, dialogue can take place at the discretion of the Facilitators.
- The talking stick follows the sun [it goes to the left around the circle].
- Speak with respect and from the heart. Allow everyone enough time to contribute their thoughts by not taking too much Circle time when speaking.
- Anyone determined to be under the influence of mood altering chemicals (alcohol or other drugs) will be asked to leave.
- The Circle does not fix blame, so finger pointing and blaming language is inappropriate.
- All decisions in the circle are made by consensus. In the Circle, the definition of consensus agreement includes “I can live with the decision”.
- What is said in the Circle stays in the Circle.



Beginning the Mediation

Who Should Participate in the Mediation?

- *Attorneys* are welcome but the mediator will urge the attorney to behave in a problem-solving rather than adversarial manner.
- *Support persons* can be helpful to productive negotiations by providing support and guidance to a party.
- *Interpreters* are essential if one party cannot understand or speak the mediator's language.
- *Witnesses* often adopt an adversarial position and should NOT participate unless or until the mediator feels that witness participation would generate movement.
- *Extraneous participants* only make the mediator's task more difficult and should NOT be included in the sessions.



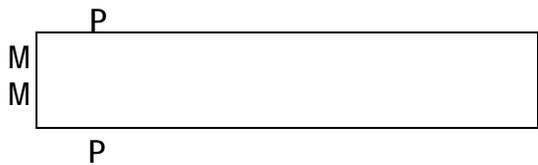
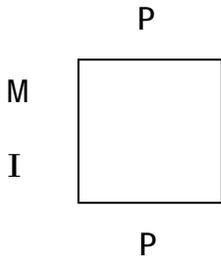
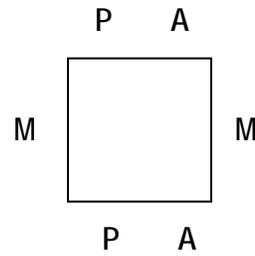
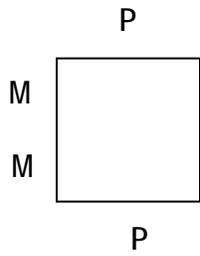
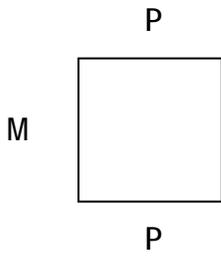
Room Arrangement

Room arrangement and its affect on the mediation process is very subtle, but extremely powerful. A well-planned seating pattern can produce an atmosphere conducive to successful mediation. Physical objects that indicate power have an effect on mediation, too. It is important for things to appear to be equal. Equality of equipment and arrangements set the mood for agreement.

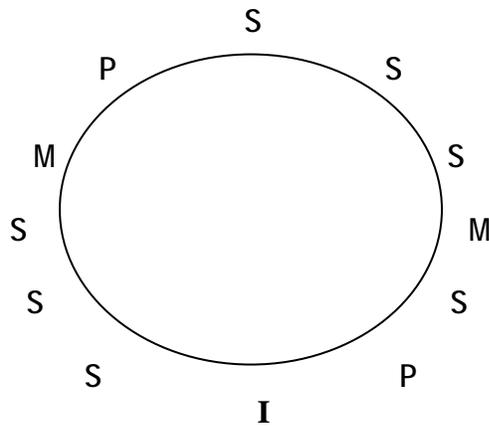
POINTS TO CONSIDER:

1. The number of chairs depends on the number of participants.
2. The mediator should always sit nearest the door with his/her back to the door.
3. The same kind of chair should be provided for each disputant.
4. Each party should be allowed equal space.
5. Disputants should be seated at similar positions around the table.
6. Objects such as purses, canes, or umbrellas are not permitted at the table; all could be used to cause harm.

Arranging the Seating for Mediation



M = mediator
P = party
S = supporter
I = interpreter
A = attorney



Guidelines for Co-Mediation

1. Choose a partner with a similar vision of mediation's goal and compatible strategies for executing the mediator's job.
2. Strategically use the arrangement to maximize opportunities for success.
3. Co-mediators should share leadership roles.
4. Assign specific tasks to each mediator to make the mediation as efficient and productive as possible.
5. Use the opening statement to set the right tone for the co-mediation.
6. Adopt the principle of non-competition among mediators.
7. Remember to consult with your partner before any important decisions.
8. Maintain a unified focus so that common understandings are reached.
9. Use the diversity of the mediation team to maximum advantage.
10. Have a fall-back plan if co-mediation is not working.
11. Be flexible.
12. Debrief after each co-mediation.
13. SUPPORT YOUR PARTNER.

Elements of an Opening Statement

The purpose of the opening statement by the mediator is to (1) set down rules, (2) provide a sense of security and control, and (3) confirm understanding and willingness among disputants.

- Introduce yourself
- State your qualifications
- Check names and addresses
- Praise the participants for their willingness to be there
- Describe the mediator's role:
 - a. Neutrality
 - b. Unwillingness to testify in a court action
 - c. Scope of authority
- Purpose of mediation:
 - a. Achieve a settlement
 - b. Informal discussion
 - c. Confidential
- Process of mediation:
 - a. Begin
 - b. Accumulate
 - c. Develop agenda
 - d. Generate movement
 - e. Escape to caucus
 - f. Resolve
- Establish any additional ground rules
- Consent to mediate and acceptability:
 - a. Mediators
 - b. Process and structure

Sample of a Mediation Opening Statement

Good afternoon. Welcome to the Michigan Mediation Center. My name is Lela Love, and I have been assigned to assist you this afternoon.

I want you both to know that I have never met either of you before, and I know very little about the concerns that brought you here today. I will be relying on you to tell me about your concerns and interests. I am telling you this because it is part of my job to be and remain neutral. I am not a judge; a judge would decide who was right and wrong with respect to conduct that happened in the past. I am here to help you work out how you want the future to be.

Before we proceed, please check that I have your names and addresses recorded correctly. Am I pronouncing your names correctly?

Before you explain to me what brought you here, I want to explain the goals of this process and the procedure we will follow.

My first job is to understand your concerns and to be sure that you understand each other. In order to do that, it is important that each person have the opportunity to speak without being interrupted. I know you will want to make comments about what the other person says, so I have given you a piece of paper and a pencil to make notes. When it is your turn to speak, be assured that you will have a full opportunity to explain your concerns and respond to each other. Can you agree not to interrupt each other and not to interrupt me? Once I understand what brought you here and you understand each other, we will work together to come up with solutions to the concerns you raised. If we are able to reach agreements acceptable to you both that resolve your concerns, we will write up those agreements to make an enforceable contract.

I will be taking some notes as we proceed in order to help me remember all the concerns you raise and the understandings you reach. However, my notes will be destroyed at the end of this session. I am telling you this so you will feel comfortable to speak freely here. This session is private and confidential. That means I am under a duty not to reveal what is said in this room to anyone outside this room. From time to time I do consult with the staff or other mediators about questions I might have regarding your situation, but the staff at the center and other mediators are under the same duty as I am to keep confidential what is said in mediation sessions. The only record of what happened in this session will be the agreement you make to resolve your concerns.

There may come a time when I feel it would be helpful to meet individually with each of you. If that happens, I will explain that process—which is called caucusing—in more detail.

Sessions at the center generally take about an hour, but I am committed to work with you for as long as I feel we are making progress toward resolving your concerns.

Do you have any questions?

Ms. C, since you brought this matter to attention of the center, could you explain why we here.

Beginning a Juvenile Peacemaking Circle

Team Meeting

Prior to the start of a juvenile peacemaking Circle the Peacemaking Coordinator will convene a team meeting of the assigned Facilitators and anyone deemed necessary by the Coordinator for planning the Circle. For example, the Coordinator may invite a counselor or cultural advisor to discuss available options that could be presented during the Circle process. Another example is discussion of possible exceptions to the Circle Guidelines.

Prepare the Cultural Items

Cultural items will be placed on a blanket in the center of the Circle. Items include a smudging shell, candle, the Four Medicines (tobacco, cedar, sage, and sweet grass), strawberries, and a vessel of water.

Food and Beverages

The Facilitators will assure that coffee, cold beverages, and munchies are available before and during the circle.

Seating

The juvenile will sit immediately to the right of the Facilitator.

Smudging

The space will be smudged prior to the arrival of the participants. Individuals have the option of being smudged at the beginning of the Circle.

Prayer

The Facilitators are responsible for a prayer after everyone is seated in the Circle. A Facilitator has the option of offering tobacco to an elder or someone else in the Circle.

Welcoming Comments

Facilitators will welcome all the participants and thank them for agreeing to join the Circle. Express recognition that they care enough about the community to make personal sacrifices to be at the Circle.

Reason for Circle

Briefly summarize the incident or conduct for which the Circle will work to find a solution. Mention the objective of making things right—a return to balance/harmony for the victim, community, and juvenile.

Review the Guidelines (Ground Rules)

Read through the list of guidelines. Ask if anyone has concerns or questions. If necessary, dialogue about possible changes.

Distribute Confidentiality Forms

Pass around copies of the confidentiality form for signatures by the Participants.

Explain the Process

Provide an overview of the rounds in the process, leading to a written agreement.



Exercise: Beginning a Juvenile Peacemaking Circle

This is a group exercise to develop welcoming comments, the reason for the Circle, review of the Circle guidelines, an explanation of the confidentiality forms, and an explanation of the Circle process.

[The trainer could write Participant suggestions on easel pad paper during the exercise]

Round #1

The Facilitators will pass the talking stick to the left and ask each Participant to introduce himself/herself, and indicate acceptance of the Circle Guidelines (ground rules).



Michigan Supreme Court
State Court Administrative Office

Standards of Conduct for Mediators

- (1) **Introduction.** These standards of conduct apply to all persons who act as a mediator pursuant to the dispute resolution programs of the court. They are designed to promote honesty, integrity, and impartiality in providing court-connected dispute resolution services. These standards shall be made a part of all training and educational requirements for court-connected programs, shall be provided to all mediators involved in court-connected programs and shall be available to the public.
- (2) **Self-Determination.** A mediator shall recognize that mediation is based upon the principle of self-determination by the parties. This principle requires that the mediation process rely upon the ability of the parties to reach a voluntary, uncoerced agreement.
- (3) **Impartiality.** A mediator shall conduct the mediation in an impartial manner. The concept of mediator impartiality is central to the mediation process. A mediator shall mediate only those matters in which it is possible to remain impartial and even-handed. If at any time the mediator is unable to conduct the process in an impartial manner, the mediator is obligated to withdraw.
- (4) **Conflict of Interest.**
- (a) A conflict of interest is a dealing or relationship that might create an impression of possible bias or could reasonably be seen as raising a question about impartiality. A mediator shall promptly disclose all actual and potential conflicts of interest reasonably known to the mediator. After disclosure, the mediator shall decline to mediate unless all parties choose to retain the mediator. If all parties agree to mediate after being informed of conflicts, the mediator may proceed with the mediation unless the conflict of interest casts serious doubts on the integrity of the process, in which case the mediator shall decline to proceed.
- (b) The need to protect against conflicts of interest also governs conduct that occurs during and after the mediation. A mediator must avoid the appearance of conflict of interest both during and after the mediation. Without the consent of all parties, a mediator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter under circumstances that would raise legitimate questions about the integrity of the mediation process. A mediator shall not establish a personal or intimate relationship with any of the parties that would raise legitimate questions about the integrity of the mediation process.
- (5) **Confidentiality.** Statements made during the mediation, including statements made in written submissions, may not be used in any other proceedings, including trial. Any communications between the parties or counsel and the mediator relating to a mediation are confidential and shall not be disclosed without the written consent of all parties. This prohibition does not apply to:
- (a) the report of the mediator under subrule MCR 2.411(C)(3) or 3.216(H)(6),
- (b) information reasonably required by court personnel to administer and evaluate the mediation program,
- (c) information necessary for the court to resolve disputes regarding the mediator's fee, or
- (d) information necessary for the court to consider issues raised under MCR 2.410(D)(3) or 3.216(H)(2).
- (6) **Competence.** A mediator shall mediate only when the mediator has the necessary qualifications to satisfy the reasonable expectations of the parties. Mediators assigned by the court are required to have the training and experience specified by court rule.
- (7) **Quality of the Process.** A mediator shall conduct the mediation fairly and diligently. A mediator shall work to ensure a quality process and to encourage mutual respect among the parties. A quality process requires a commitment by the mediator to diligence and procedural fairness. There should be adequate opportunity for each party in the mediation to participate in the discussions. The parties decide when and under what conditions they will reach an agreement or terminate a mediation.
- (8) **Advertising and Solicitation.** A mediator shall be truthful in advertising and solicitation for mediation. Advertising or any other communication with the public concerning services offered or regarding the education training and expertise of the mediator shall be truthful. Mediators shall refrain from promises and guarantees of results.

(9) **Fees.** A mediator shall fully disclose and explain the basis of compensation, fees, and charges to the parties. The parties should be provided sufficient information about fees at the outset of a mediation to determine if they wish to retain the services of a mediator or to object to mediation. Any fees charged by a mediator shall be reasonable, considering, among other things, the mediation services, the type and complexity of the matter, the expertise of the mediator, the time required, and the rates customary to the community.

(10) **Obligations to the Mediation Process.** Mediators have a duty to improve the practice of mediation by helping educate the public about mediation, making mediation accessible to those who would like to use it, correcting abuses, and improving their professional skills and abilities.

[Effective January 4, 2001]

2001 Staff Comment

These Standards of Conduct were proposed by the Michigan Supreme Court Dispute Resolution Task Force in its January, 2000 Recommendations to the Michigan Supreme Court. The Standards derive principally from the Model Standards of Conduct for Mediators developed by delegates of the American Bar Association, Society of Professionals in Dispute Resolution, and American Arbitration Association.

Statement on Code of Conduct for Facilitators; Complaint Process

The Mnodaawin Circle of the Little Traverse Bay Bands of Odawa Indians is a gathering of people who come together to promote healing, and help restore harmony and balance to the community. While the Participants of these gatherings function as equals, the consensus-building process of the Circle relies upon designated Facilitators for guidance. The integrity of the Mnodaawin Circle, and confidence in it, can be seriously jeopardized by improper conduct of a Facilitator, whether within or without the Circle. For this reason, complaints regarding the conduct of the Facilitators could be cause for reviews and consensus decisions by a Circle of community members. The conduct standards for persons designated as Facilitators shall be *walking in a good way*, as well as compliance with guidelines of the Circle, including confidentiality guidelines.

A complaint should be directed to the Peacemaking Coordinator, who will consider the merits of the complaint. The Peacemaking Coordinator may request additional information from the complainant, others with knowledge of the alleged conduct, and from the Facilitator who is the target of the complaint, in order to have sufficient information for making a determination. If the Peacemaking Coordinator determines that the complaint warrants a review, the Peacemaking Coordinator will promptly schedule a Circle for discussion of the complaint. Until the complaint is disposed of, the Facilitator in question will not be given additional Circle assignments, and may be prohibited by the Coordinator from finishing his/her involvement in ongoing peacemaking assignments. In organizing the Circle, the Coordinator will attempt to include as participants not only the Facilitator in question, but supporters of the Facilitator, other Facilitators (at least one will be asked to facilitate the review circle), and the complainant and other persons with knowledge of the alleged improper conduct. In attempting to include supporters of the one who is the target of the complaint, and in attempting to include others with knowledge of the alleged improper conduct, the Coordinator will advise against inviting persons whose personal histories suggest they are unlikely to act with respect during the Circle, or maintain confidentiality later.

The Circle will work toward a consensus decision on how to resolve the complaint. The Facilitator who is the target of the complaint will not be given additional Circle assignments in the absence of a consensus decision by the Circle that includes a specific agreement to allow further Circle assignments.

Accumulating Information

Summary of Skills

1. Examine, practice, and model good listening skills.
These skills include:
 - Listening without disruptive interruptions
 - Avoiding assumptions
 - Productive reframing
2. Examine, practice, and model good questioning skills.
These skills include:
 - Recognizing different types of questions (leading vs. open-ended)
 - Understanding the effect of using different types of questions
3. Examine, practice, and model good note-taking skills.
These skills include:
 - Taking notes in a way that is not disruptive to building rapport with disputants and does not foster an adversarial climate
 - Taking notes that are useful to the mediator: that is, notes that describe the issues in neutral language and capture all agreements the parties make
4. Become sensitized to culture, gender, and other biases which impede productive communication, understanding, and cooperative problem solving.

Listening Skills

1. Use all of your senses to perceive what's going on. Tune in to non-verbal cues such as posture, movement, facial, and hand-arm expressions.
2. Distinguish between surface or stated feelings and underlying feelings you have to dig for.
3. Show acceptance of a person's feelings through your tone of voice and words.
4. Distinguish between the content and the feelings, e.g., "I am sad (feeling) that my dog died (content)". Then reflect back (reflective listening) to the other the

feeling and content of that person's statement. You are paraphrasing what the person says, not "parrotphrasing."

5. Hold non-judgmental attitudes towards a person's feelings.
6. Have sensitivity to a wide variety of feelings and being able to talk about them.
7. Exhibit good attending behavior by eye contact, body language, and overall composure.

Why Listening Works

The other person sets the pace. Not pushing a person faster than he/she wants to go builds trust.

The other person is completely free to be natural. When a person feels accepted for who he/she is, he/she is more likely to be open and honest.

Reflective listening provides a mirror for people to see their attitudes and behaviors.

To actively listen and reflect back to another is to give something valuable. It is hard work; you are proving that you care.

It keeps you out of trouble. When actively listening and reflecting only what that person has said in a neutral way, you cannot do anything to punish or hurt the other person.

Good Questioning Skills

1. Open-ended questions ask for information without directing or leading the speaker in a particular track. Such questions encourage the speaker to relate events in his/her own words, in his/her own way, emphasizing what was important to that person without interference in the natural train of thought. Such questions will assist the mediator in understanding the needs, concerns, and priorities of the speakers.

Examples of Open-Ended Questions

“What are the concerns that brought you here?”
“Could you tell me more about that?”
“Could you explain that further?”
“What else happened?”
“Help me understand...”

2. **Leading Questions** suggest an answer and imply a conclusion on the part of the questioner. Leading questions can cause the speaker to become defensive and alienated, states of being which are not conducive to cooperative problem solving.

Examples of Leading Questions

“Do you really hate the sound of stereos?”
“Don’t you want to live like a good neighbor?”
“Why don’t you want to get along with these folks?”

3. **Productive reframing**, in either question or statement, assists parties to communicate in away that will lead to productive negotiations. Summarizing a concern using neutral language that does not offend either party is useful in helping the parties reorient themselves from a hostile stance to a problem solving mode.

Example of Productive Reframing

Complainant: “Ann’s children are brats who are completely out of control. They leave things right in front of the entrance to the building, which could cause a serious accident. Ann is a terrible parent.”

Mediator: “One of the issues we will address is children’s belongings in public areas of the building. What other concerns do you have?”

The Mediators Role During the Disputants Statements

Statements by disputants are significant because both sides need to share their grievances in each other's presence. This will enable all issues to come out in the open.

The mediator may summarize statements, but never cross examine a party. He/she should attempt to keep both parties focused on the problem. After all issues have been exposed, a joint discussion may be attempted. If this is not feasible, go into caucus.

Be Aware of:

1. The manner in which a disputant communicates
2. The body language of each disputant
3. Each disputant's grasp of reality
4. Any hidden agendas

Try to determine:

1. The position of each disputant
2. Who has the power—either assumed or assigned by each
3. What resources have been used to solve the problem

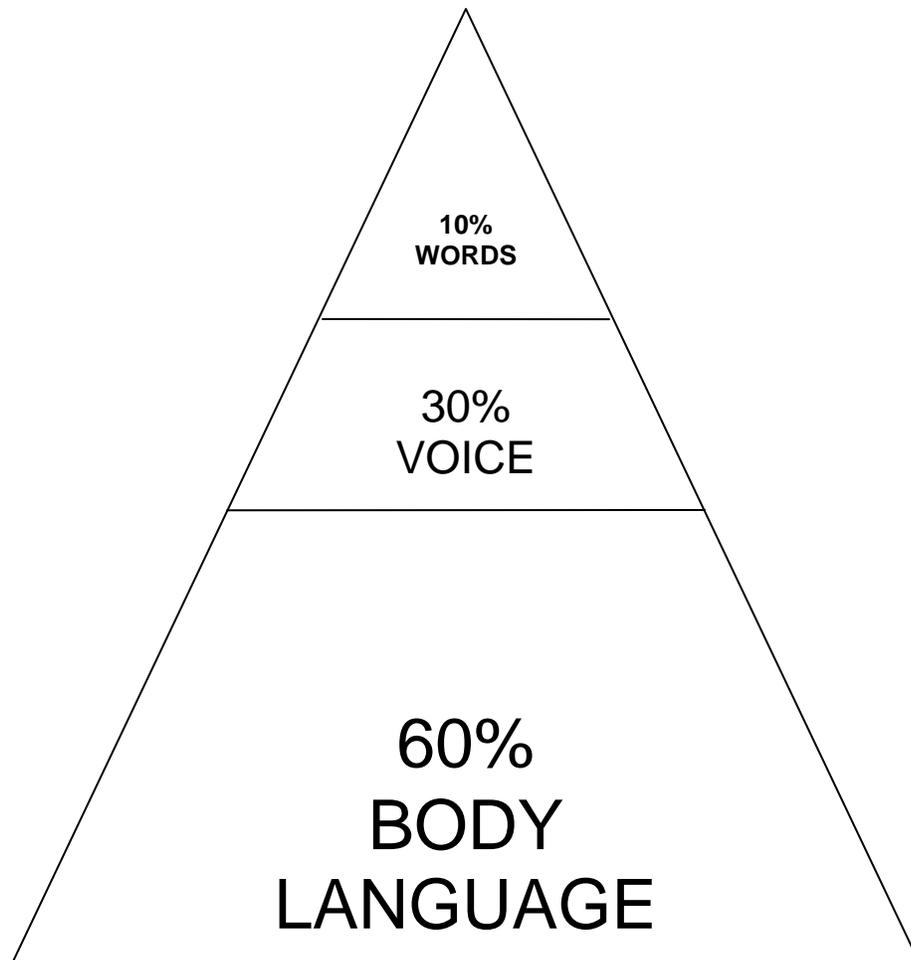
Too Often, Listening Can Be

- Selective**
- Interpretive**
- Labeling**

In conflict, people spend 20% of their time listening, and 80% thinking about solutions. It should be the other way around.

“God gave us two ears and one mouth, so that we should listen twice as much as we speak.”

COMMUNICATION IS:



Paraphrasing

- Definition:** Verbal skill of restating in your own words, what has been said to you
- Purpose:** To communicate that you are listening and understand what is being said. It aids in clarifying the thoughts of the speaker by allowing them to hear their thoughts being voiced in another person's words. Allows the speaker to correct a misunderstood or misspoken detail. It fosters rapport as the speaker realizes that you are actively trying to understand their concerns. Finally, paraphrasing allows the speaker and the listener to sort out the critical components of a conflict.
- When to paraphrase:**
- Paraphrasing should occur immediately after information has been expressed that could be judged as critical or salient to the concern being communicated.
 - When the speaker is highly emotional or speaking confusedly.
- Process of Paraphrasing:**
- Repeat back in your own words a concise version of what you feel are the most important points of the material the speaker has presented to you so far.
 - An effective paraphrase is the summation of the facts *and* emotion of what has been presented by the speaker in a brief and understanding manner.
- Examples:**
- Speaker:
"Everybody's always on my case. My father was always telling telling me to take some initiative and to get a job. So I started working, and now my mom's on my back about going back to school."
- Listener:
"Okay, if I hear you right you're frustrated with what appear to be mixed messages from your parents."
-
- Speaker:
"I've tried everything, and these damn kids just keep breaking into my garage. I don't know what's wrong with parents these days. When I was young my folks would have tanned my hide if they caught wind of this kind of monkey-business."
- Listener:
"It sounds like you're angry that neighborhood parents don't have more control, and keep their kids out of trouble."

Openers for Reflecting Thoughts and Feelings

Paraphrase, summarize, or reflect back the information the speaker has given.

“You seem ...”

“You appear ...”

“You sound ...”

“You look ...”

“I sense ...”

“I hear you saying ...”

“I’m noticing ...”

“I wonder ...”

“I’m curious ...”

“So what you are saying is ..., is that correct?”

“I believe I heard you say ...”

“My understanding of what you just said is ...”

Neutral “Open-Ended” Questions

1. What happened?
2. How do you feel about that?
3. What would you like to see happen?
4. How do want things to change?
5. What do you wish for in this situation?
6. How do you want things to improve?
7. What would you like?
8. How can I help you?
9. How did it go?
10. What can I do for you?
11. How would you like this to be tomorrow?
12. What would be your ideal solution?
13. What would help you?
14. How so?
15. What are your goals?
16. What do you need?
17. What don't you like about this situation?
18. What is a solution that you could live with?
19. What would make you feel secure in this situation?
20. What did/do you see happening?
21. What were your intentions?
22. What would you like to do?
23. What do you value in this relationship/situation?
24. If you could do it again, how would you like it to be?
25. If you were given another chance, how would you like it to be?
26. What is your goal?
27. What did/do you hope to accomplish?
28. Where do you go from here?
29. What is your game plan?
30. What is necessary for you?
31. What are your priorities?
32. What would you consider an ideal situation for you?
33. What are your expectations?
34. How would you have done this if you were (the other party)?
35. What do you hope to gain?
36. What do you really want?
37. What is important to you?
38. How could this be better?
39. What would be good for you?

Indirect/Open-Ended Questions

Definition: A question that encourages the speaker to expand on a subject, while following their own train of thought. Different from direct/closed questions, which can often be answered with a simple “yes” or “no”, or may be perceived as a statement of judgment rather than a question.

When to use:

- When the information being presented is incomplete or unclear
- When a fuller picture of the situation is desired
- To avoid making the speaker feel interrogated or judged

Examples:

Closed Question: *“Did you just do that to get my attention?”*
Indirect/Open-Ended Question: *“Would you tell me more about what you were thinking at the time?”*

Closed Question: *“Can’t you see how you are ruining everything?”*
Indirect/Open-Ended Question: *“I would if you have had any ideas about how you might have done things differently?”*

Closed Question: *“Is that what you want ...is it?”*
Indirect/Open-Ended Question: *“Could you talk to me about what you hope to have come out of this situation?”*

Closed Question: *“Did you hit him?”*
Indirect/Open-Ended Question: *“Please tell me more about what happened then.”*

Closed Question: *“You came in here with a chip on your shoulder, didn’t you?”*
Indirect/Open-Ended Question: *“First, would you back up, and help me understand how you were feeling when you came in here to talk about this situation with me today?”*

A Questionable Exercise

If you really want to find out what is going on with someone, you should experiment with asking open rather closed questions. As a way of practice, mark each of the questions below as C (closed) or O (open). Then look at the ones you marked as C and identify what the questioners purpose was in asking the question. Can you suggest an alternative question or statement to get the same information more effectively?

1. ____ “So when did you decide to sabotage my efforts to get ABC Trucking as new client?”
2. ____ “Did you come here with the intention of settling this case?”
3. ____ “Could you clarify the picture by explaining your thinking?”
4. ____ “Are you insisting that you always return my calls?”
5. ____ “What was your understanding of my directions?”
6. ____ “Did you do what I asked you to do or not?”
7. ____ “The entire department waited for you. Why are you consistently showing up late?”
8. ____ “Would you lend a hand and explain what’s happened here?”
9. ____ “What can the rest of us do to help us get back on track?”
10. ____ “You’re telling two different stories; which one is the truth?”

Neutral Language—Positive Reframing

Definition: Summarizing a concern using language that offends neither party and is useful to reorienting the discussion to a problem solving mode rather than an adversarial one.

When to use:

- When negative statements are putting others on the defensive
- When the tone of the conversation is adversarial
- When the parties need to work together
- To avoid appearing biased by repeating the negative statement

Examples: Negative Statement: *“Quit telling me how to do everything! You must really think I’m Stupid.”*
Positive Reframe: *“It’s difficult for me to learn if I can’t try to figure things out for myself.”*

Negative Statement: *“She is a terrible person. She blabbed all the secrets I told her when we were friends.”*
Positive Reframe: *“I have found in the past, she did not respect my confidences.”*

Negative Statement: *“Our program here has worked perfectly well for a long time. I don’t know why you all feel you can just come in and change things.”*
Positive Reframe: *“As an organization we have functioned well for a long time. It is hard for us to consider change.”*

Negative Statement: *“Don’t come near me. I’m too angry to talk right now.”*
Positive Reframe: *“I am feeling very upset at the moment and need to collect my thoughts.”*

Negative Statement: *“You never listen to me!”*
Positive Reframe: *“I feel that often I am not heard.”*

Exercise: Reframing in Neutral Language

You are a facilitator responding to the following statements. Read the statements and restate them using neutral language identifying the issue to be discussed.

1. The way I see it is your son is a bully who picks on little kids on the playground and after school on the bus.

2. Your problem is you believe everything your daughter tells you. You refuse to see she is pulling your chain.

3. This is all your fault; you make the same dumb mistakes over and over.

4. You are out of control and I don't want you around my family anymore because of your attitude!

5. I can't give you any more chances—you are never going to change! This is a waste of time.

6. The problem lies with the incompetent assistant principal. He doesn't know how to do his job and uses my kid as a scapegoat for everything.

Round #2

In Round #2, if no identifiable victim, send the talking stick around. The Facilitators may ask questions of the participants to get at these issues:

[As an alternative, Facilitators could substitute the phrase *the conduct of the juvenile* for the term *incident*.]

- What were your thoughts and reactions upon learning of this incident?
- What are your chief concerns?
- How did this incident affect you?
- How did you respond to the juvenile?
- What has happened since learning of the incident?
- How do you feel about it now?

Otherwise, the Facilitators hold the talking stick and ask the victim to tell the story of what happened. The Facilitators could ask questions of the victim that address these points:

- How did you react to the incident when it happened?
- Describe your feelings after this incident.
- Who else was affected: family-friends-neighbors, etc.?
- How did these other people react to hearing about this incident?
- What harm was caused by this incident (physical, emotional, financial)?
- What has happened for you or to you since the incident?
- What are your chief concerns?

When the victim is finished, pass the talking stick around the Circle. Facilitators may ask questions of the supporters and other participants to get at the same issues listed at the top of the page. When they are holding the talking stick, participants may direct their own questions at the victim.

Because the juvenile is sitting to the right of the Facilitator, the juvenile will be the last to be handed the talking stick. The Facilitator will ask for the talking stick before the juvenile has a chance to talk. This will give the Facilitator an opportunity to ask additional questions of the victim and other participants before handing it back to the juvenile for the start of Round #3.
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Role-Play of Round #2

Two or more trainees will be asked to volunteer as Facilitators in the role-play. All trainees will participate, with some assuming the roles of the parties described in the scenario. The role-play may skip Round #1 of the process, and act out Round #2 only.



Program Evaluation:

Evaluation of the Mnodaawin program will consist of the following elements:

- C. With a goal of community satisfaction
 - 1. Peacemaking Coordinator will routinely distribute “customer satisfaction” questionnaires to users of the peacemaking process.
 - 2. Tribal Court may conduct periodic opinion surveys of the community.
- D. With a goal of quality improvement
 - 1. Peacemaking Coordinator will organize debriefings with Facilitators after Circles.
 - 2. Quality Improvement meetings will be scheduled on a regular basis to identify and discuss problems and solutions; Quality Improvement also will be discussed at meetings of the Mnodaawin Advisory Committee.
 - 3. A training plan will be developed, and training opportunities will be provided in response to issues raised in surveys, questionnaires, debriefings, and in Quality Improvement meetings.

Developing an Agenda

Three critical tasks must be completed, often in a short time:

- Identify all the issues that might be mediated in a dispute
- Frame the issues in a way that preserves the mediator's neutrality and does not "sting" any party
- Order the issues for discussion to create an agenda most conducive to successful negotiations

"An issue is a matter, practice, or action that enhances, frustrates, alters, or in some way adversely affects some person's interests, goals or needs. To be negotiable, the parties must be capable of resolving the issue with the resources they have."

- Joseph Stulberg

"An issue is a behavior of one party (or something under the control of one party) which frustrates a need of the other (or another) party."

- Lela Love

"From the point of view of a participant in the mediation, an issue is what you (the other party) are doing that drives me crazy."

- Robert Collins

An issue is the topic or subject of discussions.

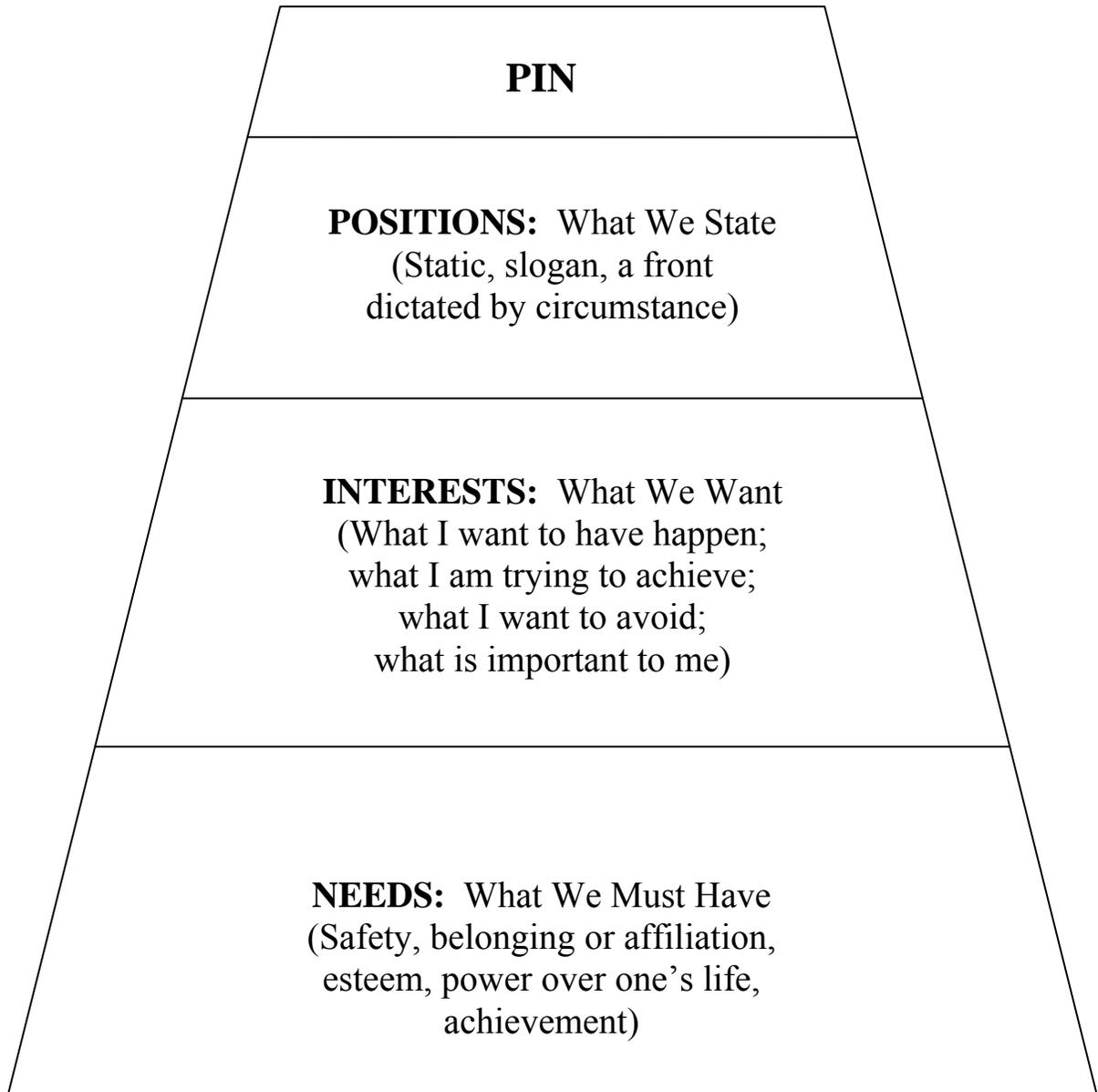
1. The mediator's strategy is to choose an order most likely to resolve all issues.
2. Choosing an "easy" issue first frequently offers the greatest possibility for success.
 - The principle of momentum suggests that success begets success
 - Once parties experience the possibility of agreements, their attitudes will shift towards a problem-solving mode

3. To determine what is an “easy” issue the mediator can:
 - Choose issues of mutual concern
 - Choose issues where the likely remedy is not burdensome
 - Choose issues that are not too emotional for either party
4. The mediator should balance the agenda to make each party feel that his/her issue(s) are being given equal priority.
5. The agenda should be simple, with an internal logic. The mediator might group the issues into categories (e.g., financial issues and behavioral issues). An appealing order generates optimism that the dispute (something the parties frequently view as a horrible mess) is under control.

The mediator can begin this part of the mediation by thanking the parties for explaining their concerns and moving them on to the topics which must be dealt with to resolve the dispute—the issues. The mediator can summarize all the issues, checking with the parties that there are no others, and then say “First let’s talk about ...”

By filling in the blank, the mediator makes a critical decision about the agenda. From a practical point of view, since the mediator has so little time to accomplish these three important tasks, it is critical that he/she has identified the issues in neutral language in his/her notes as the parties are giving their opening presentations. Such notes should not interfere with mediator party rapport, as labeling issues involves very brief notations (e.g., Bills dog; volume of Susie’s television; telephone calls).

CONFLICT IS ALL ABOUT



THE PIN PYRAMID

A rule for conflict resolution is to focus on and talk about needs and interests behind the positions themselves. Generate movement by moving people off of their positions!

Lauderdale & Lauderdale Associates

Identifying the Issues

1. “My roommate always leaves the dishes in the sink and food on the kitchen table. I am disgusted and disappointed by the mess every time I walk into our apartment. She is such a slob. She has to wash the dishes and clean the counters and table when she uses the kitchen.”
 - a. The issue framed in neutral language:
 - “Let’s talk about responsibilities in the kitchen.”
 - “Let’s talk about household responsibilities.”
 - b. The issue is not:
 - *The speaker’s need for cleanliness and order*
(This is a need, not a negotiable issue)
 - *Ann’s washing the dishes and cleaning the counters and table.*
(This is a proposed resolution and one which may not work for these parties)

2. “Whenever Tommy walks by me in the hallway at school, he whistles and makes lewd remarks. It embarrasses me in front of my friends. He treats girls bad. If he doesn’t stop ‘dissing’ me, he’s gonna be real sorry.”
 - a. The issue framed in neutral language:
 - “Let’s talk about the way Tommy communicates to the speaker in the school hallways.”
 - “Let’s talk about hallway interaction.”
 - b. The issue is not:
 - *Tommy’s sexist behavior*
(That would be a judgment made by the mediator which would alienate Tommy).
 - *Treating each other with courtesy and respect*
(A possible resolution, but not a useful suggestion in opening up a topic for discussion)

3. “This landlord is a real sleaze bag. My refrigerator has been broken for 3 weeks and he hasn’t fixed it. He can’t treat me this way. I have little kids that need milk. I can’t afford to eat out. I’m going to get the housing authority to take care of him.”
- a. The issue framed in neutral language:
“Let’s talk about the refrigerator.”
 - b. The issue is not:
 - *The landlord’s duties to his tenant*
(This may be relevant to the outcome of the dispute, but it is not the thing which is frustrating the tenant’s need)
 - *Who broke the refrigerator?*
(This is a judgment regarding fault and will not promote problem-solving)
4. “Sally always leaves her stroller on the porch of the house. It makes our building look cheap. She thinks she is the only one who lives here. I don’t leave my things scattered about public areas of the building.”
- a. The issue framed in neutral language:
“Let’s talk about the stroller.”
 - b. The issue is not:
 - *Keeping personal items out of public areas*
(This is a possible resolution which strongly favors the speaker’s interests)
 - *The speaker wanting the house to look nice.*
(This is a need which is being frustrated by Sally’s actions, but it is not an issue.)



Exercise: Fact Patterns for Identifying Issues

This can be a group or individual exercise in identification of the issues suggested by the following fact patterns.

1. “Don’t you care about the people you serve? Do you realize I have a baby in the house and if you turn off the power, you will be putting an infant at risk. Are you prepared to take that responsibility? Don’t you care about children? Are you such a large organization that you can’t relate to the rest of us. I am really appalled by your arrogance and coldheartedness.”
2. “I can tell you are not customer oriented. Every time I talk to one of your representatives they are rude and give me the runaround. It makes me angry when no one takes me seriously.”
3. “I am here today because the man across the table engages in unscrupulous business practices and I intend to make him pay for what he has done to my business and family. I am going to make sure he can’t damage someone else’s reputation and livelihood.”
4. “I sure made a mistake when I hired Mr. Pipe. He is totally inept as a plumber. He came into my house and supposedly fixed a leaking faucet and when I returned to my my cottage three weeks later I had water everywhere. He is going to pay for all the damage. I have connections in town and he will never work here again.”

Round #3

In Round #3 the juvenile is asked to tell his or her story. The Facilitators may ask questions of the juvenile that will get at the following issues:

- What happened?
- Why did you do it?
- What were you thinking about at the time?
- How did you feel about the incident/your conduct then?
- How do you feel about it now?
- Who was affected and how were they affected?

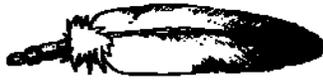
After statements by the juvenile, the talking stick is passed around the Circle. The Facilitators may ask questions of the supporters and other Participants to get at these issues:

- What are your chief concerns?
- What were your thoughts and reactions upon learning of this incident/his conduct?
- How did this incident/his conduct affect you?
- How did you respond to the juvenile?
- What has happened since learning of the incident/his conduct?
- How do you feel about it now.

When they are holding the talking stick, Participants may direct their own questions at the juvenile.

When the talking stick arrives back with the Facilitators, they have the option of sending the talking stick around additional times in order to identify and clarify all of the issues. The Facilitators may ask questions that could help in developing a list of issues to consider in Round #4. Example: “We’ve talked a lot about the anger problem and the remorse he feels. We will pass the talking stick around again and ask everyone to talk more about the problems at home that he mentioned.”

At the end of the round, the Facilitators will summarize the issues identified in both Rounds #2 & #3 (i.e. articulate the agenda for discussion in Round #4).



Role-Play of Round #3

Two or more trainees will be asked to volunteer as Facilitators in the role-play. All trainees will participate, with some assuming the roles of the parties described in the scenario. The role-players may skip Round #1, and focus on Rounds #2 and #3.

Community Resources for Peacemaking:

For reference purposes, the Peacemaking Coordinator will maintain a list of community resources that may be utilized to assist individuals and families who access the Mnodaawin program. The list could include the following types of resources:

- Departments of Tribal Government
- Cultural groups
- Traditional Council
- Teachers, warriors, healers and other respected persons
- Possible mentors
- Traditional lodges in the area
- Scheduled cultural events
- Opportunities for community service, including elders in need of assistance



Generating Movement

First, the mediator should not despair when he/she hears parties advocating decisively clashing settlement proposals. If the parties had already identified acceptable terms, they would not be at mediation. Hence, the mediator's expectation should not be the (wishful) hope that somehow the parties will now propose items that dovetail perfectly.

Second, while acknowledging the first point, the mediator must be flexible enough to appreciate the fact that sometimes parties do come to mediation having worked the matter out between themselves (but feeling obligated to show up for the scheduled "court appearance") or have "cooled down" since the filing of the complaint and come to mediation with a more moderate proposal that the other party finds acceptable. If that happens, the mediator should capitalize upon it quickly and nail it down. There is no virtue in taking two hours to develop a settlement that the parties have presented to the mediator within 10 minutes of their gathering.

Third, while parties can be contentious, there are things that mediators can do or say that might move parties towards agreement.

Fourth, there are no miracles. Movement oftentimes is gradual. A party may indicate a willingness to "reconsider" one matter, but want to move on to discuss something else. The mediator should not have the mistaken perception that the only criteria for success in deploying persuasive techniques is for the party to make dramatic, immediate changes in his/her position.

Fifth, there are no guarantees that deploying any or all of the persuasive techniques within a mediator's repertoire will result in moving the parties to common settlement terms. There will be cases in which parties remain adamant and apart. The mediator's sin is not in failing to get the parties to reach settlement, but in giving up too quickly without having canvassed and deployed the range of persuasive techniques that could be suitably deployed in a given case.

A. Information Base

1. Facts persuade, so develop them.
2. Use absence of facts to create doubts about what happened.
3. Use inconsistent statements to help redefine the problem.
4. Examine how the past practices of the parties in dealing with the issue at hand compares with the proposed method of treatment. If they are inconsistent, probe for a justification.

B. Negotiating Standards

1. Invite the parties to establish priorities among the negotiating issues.

2. Remind the parties about the constraints within which each is acting.
3. Help the parties to develop trade-offs, making certain that the parties propose trade-offs of items of comparable value or that the party who is proposing the trade is relinquishing that which is less valuable to him/her, but more valuable to the other party.
4. Support compromises on those specific issues that lend themselves to quantitative assessments. Compromise does not always mean a 50/50 split.
5. Where possible, encourage solutions whereby each party acquires what it is seeking without the other party having to relinquish a particular demand (integrative solutions).

C. Individual Behavior

1. Compliment people about ideas they have suggested or adjustments they have made which contribute to their progress towards a settlement.
2. Use examples that people understand in order to make your point.
3. Use humor.
4. Use role reversal.
5. Scapegoat yourself: “Help me understand about ...”
6. Develop time constraints.
7. Let silence create discomfort among the parties such that they might pierce it by suggesting movement.
8. Focus on the future, not the past.

D. Common Interests

1. Appeal to generally accepted principles (legal, social, moral, prudential).
2. Highlight elements of interdependence among parties.

E. Invite the Parties to Consider the Consequences of Not Reaching Agreement

1. Examine the impact on each party’s daily life routines/rituals/interactions if the controversy is not settled.
2. Identify the tangible financial costs for refusing to resolve the controversy in mediation and by pursuing it in another form.

Role-Play: Persuasive Techniques

Set out below is basic information about two people involved in a dispute. The role-players are free to add to these facts as long as the new information is consistent with what is provided to you. Given this information, you will engage in a conversation with your counterpart (no mediator). Your goal is to reach an agreement that will be to your satisfaction. While you should try to be realistic in your substantive positions, the exercise will succeed even if no agreement is reached. What is more important to this exercise is that you use your most imaginative and thoughtful strategies, words, and tactics in attempt to persuade the other party to accept settlement terms that you find acceptable as well.

Homeowner

You hired a painter to paint your kitchen and dining rooms. You are not satisfied with the job; in your judgment, both rooms need another coat of paint. You selected this contractor because he represented to you that you could get the effect you were seeking with only one coat of paint. The painter told you that he could put on an additional coat but that would cost an extra \$225.00 (\$45.00 for paint and \$180.00 for labor) and he would not be able to do the job for another week. You are fed up with him. You want the house to look right; you want it done now; and you don't think you should have to pay for it. The contract that you wrote up stated that "time was of the essence" in the performance of the contract; he finished putting on the one coat 2 days before the expired time. You have decided to talk with him one more time to see if you can work this out to your satisfaction. You owe him \$500.00 for the final payment of the contract; you don't want to pay him any of that unless you are sure that the house will look right.

Painter

When you made your estimate for this job, you were in a hurry. You didn't examine carefully the condition of the current paint and wall. You thought that one good coat of primer and one coat of decent paint would make the place look nice. Besides, the homeowner kept asking: "did it really need two coats? We're on a very tight budget." You told him that "two would look nicer, one would be okay. Well, it really does need another coat. You are willing to do the job, but you have to be compensated for it. You won't even discuss additional painting until you are paid the \$500.00 that is due to you as the final installment payment for the job. Since you have started another job, the only time you could devote to putting a second coat on these walls would be to come in one week from Sunday—if it needed more time than that (and it might need another one-half day), you'd have to come in on some night the following week.

Round #4

Passing the talking stick, the Facilitators ask how the Participants (juvenile included) suggest the issues can be dealt with/the harm can be repaired.

- Explore these:
 - Both dollar restitution and “symbolic” restitution
 - How we can work to prevent this in the future (what can we do to teach the person causing the harm, or what is needed to keep them from repeating the conduct)?
 - Any other issues that need to be addressed (i.e., chemical abuse, school issues, part-time employment needed, etc.)?
- Facilitators take notes on the ideas presented for the agreement
- Facilitators remind everyone of the collective responsibility for monitoring the juvenile’s compliance with the agreement
- Is a mentor for the juvenile desired and available?
- Is a Healing Circle desired for the victim or juvenile?
- Will cultural activities be a part of the agreement?
- Follow-up Circles will be scheduled at what frequency?

If needed, continue passing the talking stick until a consensus is evident.



Options for the Agreement

In every situation there are numerous ways a juvenile can make reparation to the victim and community. Before the day of the peacemaking Circle it may be helpful for the Coordinator to encourage individuals who will be participating to think about the various options that could be part of an agreement. The categories include:

- Financial payment to victim
- Work for the victim
- Work for the charity chosen by the victim
- Work for the community or Tribal Government
- An apology spoken or written
- Participation in cultural activities; offer tobacco to an elder for traditional teachings
- Educational opportunities or participation in programming (e.g. substance abuse counseling and anger management classes)
- Anything else they can think of that feels fair to all participants - encourage creativity
- Combinations of the above

Note: Be aware of the restrictions of child labor laws and the limitations of service programs in helping individuals brainstorm about possible options for the agreement.

Peacemaking Monitoring System:

Agreements signed at the conclusion of a Circle will be forwarded to Tribal Court for a Judge's signature, and become a final order of the Court.

The Mnodaawin Circle may convene follow-up Circles on a schedule (e.g. monthly, bi-monthly, etc.) agreed to and written into a Mnodaawin agreement, and as needed in the event of slippage or a report of non-compliance. The agreement may be modified at the follow-up Circles.

During the initial and any follow-up Circle, the participants could determine that the Circle process is not effective for a particular juvenile, and refer the juvenile back to Tribal Court or the appropriate referral source.

The Peacemaking Coordinator is responsible for tracking deadlines written into the Peacemaking agreement, collecting verification forms, notifying the Circle of reports of non-compliance, and preparing necessary reports to be forwarded to the referral sources and others.

Monitoring is individualized, though the norm is choosing a non-professional mentor from the Circle in combination with monitoring by everyone else in the Circle, including family members of the juvenile. Deviations from the norm would be decided by the Circle. Two possible reasons for deviating would include

- a) difficulty finding a qualified or willing volunteer to serve as a mentor; and
- b) the juvenile resides outside the immediate area

There are standardized forms for verifying certain types of community service, summarizing progress, and reporting to referring agencies.

A Talking (Healing) Circle may be available as a community resource operating independent of Tribal Court. Though the Talking (Healing) Circle's purpose would be healing and support, not monitoring, instances of non-compliance with the peacemaking agreement may be disclosed during the Circle. If non-compliance is first disclosed during a Talking (Healing) Circle, the Circle Participants would keep the disclosure confidential. However, Participants could encourage the juvenile to self-report. Some individuals may participate in Talking (Healing) Circles and peacemaking Circles for the same juvenile. They would be expected not to discuss in the peacemaking Circle any confidential disclosures of non-compliance heard at the Talking (Healing) Circle.



Role-Play of Round #4

Two or more trainees will be asked to volunteer as Facilitators in the role-play. All trainees will participate, with some assuming the roles of the parties described in the scenario. The role-play may skip Round #1 of the process, and act out Rounds #2 through Round #4.

Resolving the Dispute

Before Writing the Agreement

1. Orally summarize in order to confirm the terms of the agreement.
2. Is it workable (e.g., relying on regular mail as opposed to registered)?

The Agreement Should Be Understandable

1. Use the parties' own words where appropriate
2. Use plain English. Do not use "legalese".
3. Carefully edit the agreement.
4. Use the present tense.
5. Use separate, numbered paragraphs for each party's individual obligations.
6. Avoid pronouns and abbreviations, as they can result in confusion.

The Agreement Should Be Appealing

1. Use the parties' full names, correctly spelled, with correct titles (e.g., Ms., Mrs., Miss).
2. Put aspirational goals and/or positive commitments first.
3. Put mutual obligations first.
4. Put less burdensome obligations first.
5. Balance the agreement.
6. Use nonjudgmental language and do not include admissions of wrongdoing.
7. Avoid unauthorized additions and omissions.
8. View the agreement as a draft until it is signed.

The Agreement Should Be Precise

1. Be clear regarding methods of performance. Favor verifiable methods (e.g., certified mail, money orders).
2. Be specific regarding payment terms.
3. Avoid evaluative terms and vague words (e.g., Mary agrees to turn her stereo down to a reasonable level).

While Writing the Agreement

While one mediator is writing the agreement, the other mediator may want to engage the disputants in neutral positive conversation to maintain a collaborative and controlled atmosphere. Mentioning local events and activities of a non-controversial nature, perhaps even the weather, can help parties remain receptive to their newly crafted agreement and continuing positive discussions on any issues which arise from reading the draft agreement.

Congratulate the Parties!!!

Round #5

In Round #5 the Facilitators summarize the areas of agreement, and everyone signs a written agreement.

- Summarize/read back the responses and ideas, and check for consensus.

If there is no consensus, ask the Participants if they would be willing to meet again. If so, determine the date, and remind them of the confidentiality commitment.

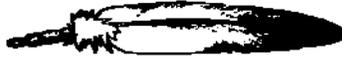
- Pass the talking stick one more time for concurrence with the agreement. If most Participants concur but a small minority have some reservations, ask those in the minority if they can live with the agreement even if it is not exactly what they desire
- The Circle can recess for a few minutes to allow time for a Facilitator to write the agreement on the standard form.
- Pass the agreement around for signatures by the Facilitators, the victim, the juvenile, parents/guardian, and the other Participants/witnesses.
- Make copies of agreement for each party (option is to copy and mail later)

Exercise: Agreement Writing

This is a group exercise to draft an agreement based on the successful circle described below.

Description:

The peacemaking Circle was attended by Thomas, a juvenile, Isabelle Thunder, his mother, Mary Cloud, his grandmother, elder Jim Pipestone, neighbors Larry and Cathy Buffalo, and five concerned community members. After an argument with his mother, Thomas had broken all the windows at the garage of Larry and Cathy. In the peacemaking circle, Thomas apologized to the Buffalos, agreed to pay damages of \$300.00 by the end of December, get a job to earn the money to pay the damages, help elder Jim Pipestone gather willow and stones for a lodge ceremony next weekend, and attend culture camp in the spring. The grandmother agreed to drive Thomas to work if he needs transportation. The mother agreed to attend parenting classes the next time they are offered at the Tribal Health Center.



Closing the Peacemaking Circle

Regardless of the outcome (agreement or no agreement), Facilitators should thank all the Participants for their time and efforts.

In order to reinforce the values of the Anishinabe / Waganakising Odawak, the Facilitators have the option of providing a handout on the Grandfather Teachings (Medicine Wheel), or the 21 Instructions.

Facilitators determine the appropriate closing ritual for each Circle. One or more of the following could be employed:

- Affirmations by the Facilitators or by all the Participants in the Circle (e.g., “All of our tribal children are equally valuable”; “This young man is on a new path”; “This young woman is trying to live her life in a good way”; “We have done a good thing by gathering together to solve this problem”)
- A song (e.g., honor song or peace song)
- Shaking hands
- Hugs

Role-Plays of Full Peacemaking Circle Process

Each trainee will have the opportunity to role-play being one of the Facilitators in a given scenario. Up to three trainees can co-facilitate. Other trainees will assume roles of the victim, juvenile, etc.



Role-Play Scenario: A Young Shoplifter

The tribal peacemaking program, has received a referral from Juvenile Probation in Emmet County. Julia Topinabee, 13, had been arrested with a much older friend attempting to sell approximately \$400 worth of clothing at a local resale store. The clothes still had price tags on them and were from stores in downtown Petoskey. At their arrest, both girls admitted guilt. Both had previously shoplifted from local stores, though Julia hadn't been caught.

Julia and her mother, Shawnee, agreed to participate in a peacemaking circle. Most of the store managers declined to take part in the circle. But Tom Gotchya, the area loss prevention manager for the J. D. Dimes Store, is very interested in the circle. He is a parent, and is concerned by the fact that Julia is so young.

Julia seems to have no interests outside of listening to Hip Hop music, watching DVDs, and "hanging out" with friends in downtown. She acknowledges she did something wrong, but doesn't fully appreciate the effects on the stores, her mother, or the tribal community. Shawnee, a single mom, has a part-time evening job in the casino restaurant, and begs from her aunties to provide Julia with spending money for CDs, the DVDs Julia wants to rent, and fast food.

Role-Play Scenario: Burglary on Poplar Street

They live on Poplar Street where a few other Indian families reside. They have been next door neighbors and friends, and their parents all attended Holy Childhood boarding school. Now, a rift divides them cutting off all communication and leaving feelings of anger, sadness, and vulnerability.

Josh Cloutier, 15, son of **Tammy** and **Tommy Cloutier**, is a troubled teenager who frequently uses alcohol. When both households were at Mass on Saturday evening, Josh burglarized the home of **Linda Lapointe** and her disabled son, Chuck. He took a bottle of whiskey, a laptop computer, and a ceramic statue of Dale Earnhart. Linda is very angry about the incident, feels betrayed, violated, and wonders why it happened. She threatened a lawsuit right after the incident. She feels a little guilty about calling the police, but she wants retribution. There has been no direct communication between the households for two months in part because the police advised Linda not to talk to the Cloutiers. With the agreement of all the parties, the prosecutor diverted the case to peacemaking.

The Cloutiers are extremely embarrassed by Josh's behavior. Though he is constantly in trouble at school and home, Josh has never been picked up by the police. They put a lock on their liquor cabinet a few weeks ago. In their interview before the circle they stressed that the families had a long and close relationship. Following the incident Tammy and Tommy grounded Josh for the next two years, but he regularly is sneaking out of the house late at night.

Role-Play Scenario: Trouble in the Park

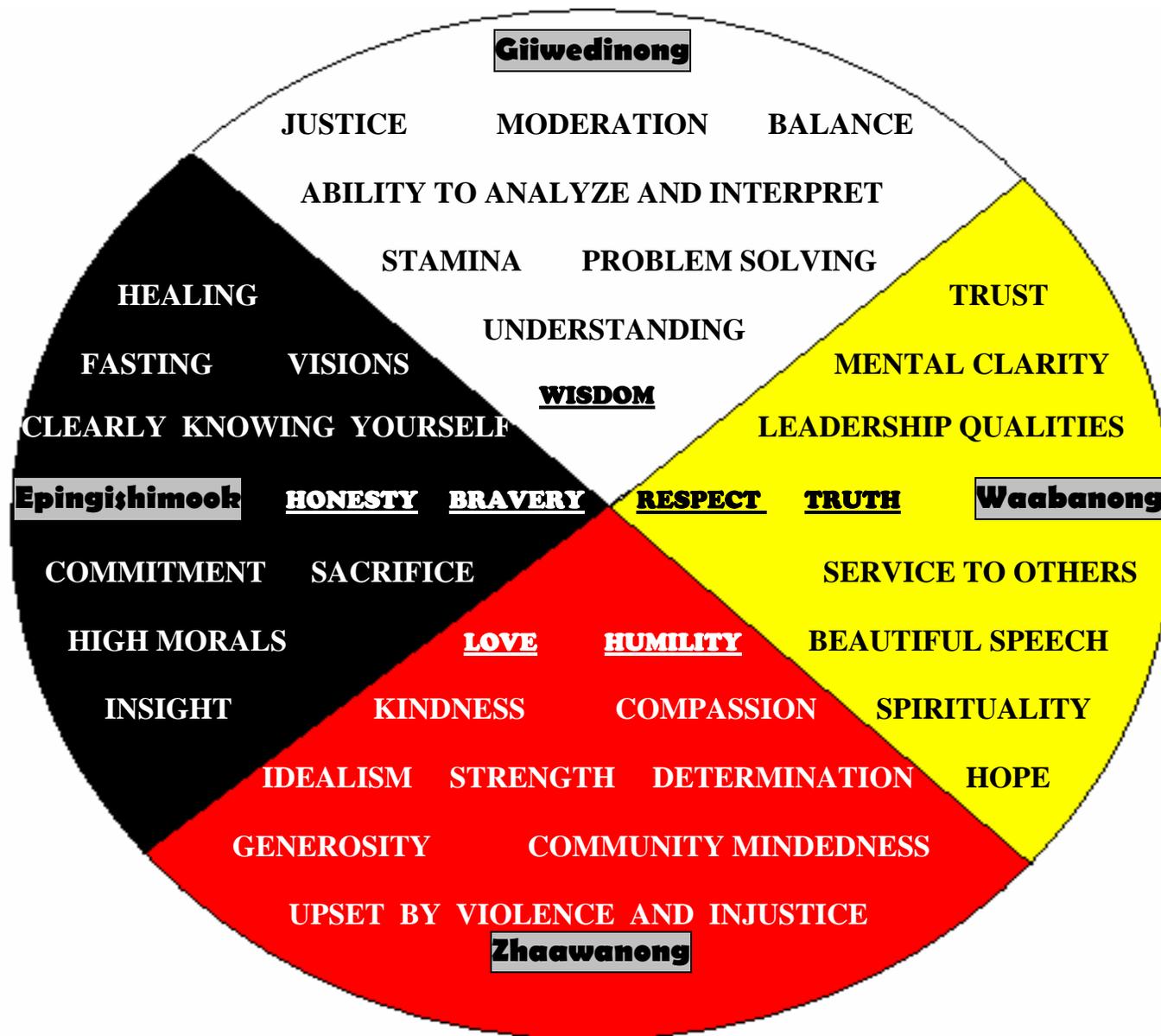
Liz Beaver, a freshman at Harbor Springs H. S. was walking through the park in Harbor Springs when she became involved in a confrontation with two boys who were driving by in a car. The boys shouted at her and displayed what looked like a gun. Liz was terrified and ran home. Her parents notified city police. The boys, both enrolled in LTBB, were identified as **Butch Cassidy** and **Sundance Kidd**. The case was referred to Tribal Court for peacemaking.

Mr. and Mrs. Beaver were outraged that such a crime would go to peacemaking. They consented to peacemaking but only on the condition that Liz would not have to see or be in the same room as the boys.

Liz and her family had only recently moved back to Harbor Springs from an inner-city neighborhood of Detroit. Her father had accepted a job with Tribal Government. The park was near their rented home, and nowhere were there any signs of infringement to anyone's safety.

The park incident was a shock to the Beaver family, the **mothers of the boys**, and, once the word got out, the entire community. Since the incident, the park had not been used.

During an interview before the circle, Butch and Sundance admitted to waving a pellet gun out the window of the car. They didn't intend to traumatize Liz, and were devastated by the problems their "prank" caused. They had never been in any serious trouble with the authorities prior to the incident. Also, during an interview before the Circle, Liz decided she wanted to speak directly to the boys in the peacemaking Circle.



The Twenty-One Instructions of the Ottawa and Chippewa Indians

1st. Thou shalt fear the Great Creator, who is the over ruler of all things.

2d. Thou shalt not commit any crime, either by night or by day, or in a covered place: for the Great Spirit is looking upon thee always, and thy crime shall be manifested in time, thou knowest not when, which shall be to thy disgrace and shame.

3d. Look up to the skies often, by day and by night, and see the sun, moon and stars which shineth in the firmament, and think that the Great Spirit is looking upon thee continually.

4th. Thou shalt not mimic or mock the thunders of the cloud, for they were specially created to water the earth and to keep down all the evil monsters that are under the earth, which would eat up and devour the inhabitants of the earth if they were set at liberty.

5th. Thou shalt not mimic or mock any mountains or rivers, or any prominent formation of the earth, for it is the habitation of some deity or spirit of the earth, and thy life shall be continually in hazard if thou shouldst provoke the anger of these deities.

6th. Honor thy father and thy mother, that thy days may be long upon the land.

7th. Honor the gray-head persons, that thy head may also be like unto theirs.

8th. Thou shalt not mimic or ridicule the cripple, the lame, or deformed, for thou shall be crippled thyself like unto them if them shouldst provoke the Great Spirit.

9th. Hold thy peace, and answer not back, when thy father or thy mother or any aged person should chastise thee for thy wrong.

10th. Thou shalt never tell a falsehood to thy parents, nor to thy neighbors, but be always upright in thy words and in thy dealings with thy neighbors.

11th. Thou shalt not steal anything from thy neighbor, nor covet anything that is his.

12th. Thou shalt always feed the hungry and the stranger.

13th. Thou shalt keep away from licentiousness and all other lascivious habits, nor utter indecent language before thy neighbor and the stranger.

14th. Thou shalt not commit murder while thou art in dispute with thy neighbor, unless it be whilst on the warpath.

15th. Thou shalt chastise thy children with the rod whilst they are in thy power.

16th. Thou shalt disfigure thy face with charcoals, and fast at least ten days or more of each year, whilst thou are yet young, or before thou reachest twenty, that thou mayest dream of thy future destiny.

17th. Thou shalt immerse thy body into the lake or river at least ten days in succession in the early part of the spring of the year, that thy body may be strong and swift of foot to chase the game and on the warpath.

18th. At certain times with thy wife or thy daughters, thou shalt clean out thy fireplaces and make thyself a new fire with thy fire-sticks for the sake of thyself and for the sake of thy children's health.

19th. Thou shalt not eat with thy wife and daughters at such time, of food cooked on a new fire, but they shall be provided with a separate kettle and cook their victuals therein with an old fire and out of their wigwam, until the time is passed, then thou shalt eat with them.

20th. Thou shalt not be lazy, nor be a vagabond of the earth, to be hated by all men.

21st. Thou shalt be brave, and not fear any death.

If thou shouldst observe all these commandments, when thou diest thy spirit shall go straightway to that happy land where all the good spirits are, and shall there continually dance with the beating of the drum of Tchi-baw-yaw-booz, the head spirit in the spirit land. But if thou shouldst not observe them, thy spirit shall be a vagabond of the earth always, and go hungry, and will never be able to find this road, "Tchi-bay-kon," in which all the good spirits travel.



Appendix A

Little Traverse Bay Bands of Odawa Indians Tribal Court Mnodaawin Court Rule, Policies and Procedures

Rule XXIX Mnodaawin

A party to a case before the Tribal Court may request to transfer the case to Mnodaawin (Odawa peacemaking). The requesting party must present evidence to the Court that (a) all parties involved in the dispute voluntarily consent to participate in Mnodaawin and be bound by any agreement reached in Mnodaawin, and (b) the Mnodaawin program has affirmed that it can accept transfer of the case. Any party before the Tribal Court may request a transfer to Mnodaawin at any time.

Mnodaawin Policies and Procedures

Section 1. Use of Mnodaawin.

All civil cases are subject to these policies and procedures unless otherwise provided by statute or court rule. For the purposes of these policies and procedures, Mnodaawin means Good Life, and it is a form of Odawa peacemaking that draws upon the community's wisdom, strength, knowledge and experience to provide a holistic justice forum. Mnodaawin uses talking circles to bring individuals together to listen, share and teach through the telling of each person's stories and perspectives. The aims of Mnodaawin include healing and restoring relationships and strengthening individuals, families and the community. Mnodaawin may be used to resolve disputes in the place of court adjudication. When Mnodaawin is used to resolve disputes that are transferred from the Tribal Court, it shall operate in accordance with the policies and procedures described below.

Section 2. Mnodaawin Independence.

Although Mnodaawin will exist as a program of the Tribal Court and shall be subject to Tribal Court decisions concerning budgets and Advisory Committee appointments, it is the policy of the Tribal Court that the daily business of Mnodaawin be administered independent of the Tribal Court's interference. Thus, to the maximum extent possible consistent with these policies and procedures, the Tribal Court will not control or interfere with the activities of the Mnodaawin Advisory Committee, the Peacemaking Coordinator, Mnodaawin Facilitators, or Mnodaawin Circle Participants.

Section 3. Mnodaawin Administration.

- (a) Mnodaawin shall exist as a program funded by the Tribal Court. The stipends and reimbursement rates payable under the Mnodaawin program shall be determined by the Tribal Court in consultation with the Mnodaawin Advisory Committee. All expenses associated with Mnodaawin program administration, including stipends, reimbursements and costs for training, resources and any other activities, shall be payable subject to an annual budget to be determined by the Tribal Court.
- (b) Supplementary Mnodaawin Policies and Procedures. Additional policies and procedures of Mnodaawin may be developed by the Mnodaawin Advisory Committee, provided that they are consistent with the policies and procedures set forth in this document. They may address matters such as the following:
- the program's policy statement,
 - the operative principles of Mnodaawin,
 - the types of cases for which Mnodaawin may be appropriate,
 - an explanation of the cultural elements of Mnodaawin,
 - rules regarding confidentiality,
 - the training requirements for Mnodaawin Facilitators,
 - the process used by Mnodaawin,
 - the ground rules that shall apply to all Mnodaawin Circles,
 - policies for the Advisory Committee consistent with these policies and procedures,
 - policies for the Peacemaking Coordinator consistent with these policies and procedures,
 - policies for the selection and participation of Mnodaawin Circle Participants,
 - identification of the necessary qualifications for Mnodaawin Facilitators,
 - development of a Code of Conduct for all Mnodaawin Facilitators, and
 - establishment of a means of monitoring compliance with Mnodaawin agreements.
- (c) Advisory Committee. The Tribal Court shall maintain a Mnodaawin Advisory Committee composed of a cross-section of the LTBB community, including elders, traditional leaders, young people, members of the tribal judiciary and others. Responsibilities of the Mnodaawin Advisory Committee shall include the following:
- (1) developing Mnodaawin policies and procedures and reviewing and revising them whenever appropriate;
 - (2) preparing written materials describing Mnodaawin policies and procedures for dissemination to the public and to parties in Tribal Court cases;
 - (3) assisting the Peacemaking Coordinator with the recruitment of facilitators;
 - (4) working toward improving the quality of the Mnodaawin program; and
 - (5) collecting feedback from the community and making the feedback available for the Tribal Court and the public.

- (d) **Advisory Committee Appointments.** The Chief Judge of the Tribal Court shall have authority to make appointments to the Advisory Committee based on recommendations from other members of the tribal judiciary, court staff, and other members of the Advisory Committee. The number of persons appointed to the Advisory Committee shall be determined at the discretion of the Chief Judge of the Tribal Court after a consultation with the existing Advisory Committee members and a review of the Tribal Court's resources.
- (e) **Advisory Committee Meetings.** Subject to the Tribal Court's ability to pay the stipends, mileage reimbursements, and other costs of Mnodaawin program administration, the Advisory Committee shall meet as often as needed in order to fulfill the responsibilities identified above.
- (f) **Peacemaking Coordinator.** The Peacemaking Coordinator and the Court Administrator shall communicate regularly regarding Mnodaawin activities. The Peacemaking Coordinator shall be responsible for helping parties initiate Mnodaawin by providing them with information about Mnodaawin processes and by coordinating the identification and selection of a Mnodaawin Facilitator and Mnodaawin Circle Participants and the scheduling of Mnodaawin Circle meetings. The Peacemaking Coordinator shall also be responsible for providing notice to Circle Participants, the Facilitator, and the Advisory Committee of meetings, and it shall collect information from Circle Participants, the Facilitator, and Advisory Committee members as necessary for the payment of any stipends and mileage reimbursement payable by the Tribal Court. The Peacemaking Coordinator will also be responsible for complying with any policies or rules established by the Advisory Committee concerning the management of Mnodaawin, and the Coordinator shall assist the Advisory Committee with complying with its responsibilities as described above. The Peacemaking Coordinator shall also be responsible for submitting Mnodaawin agreements to the Tribal Court and assisting the Mnodaawin Circle Facilitator and Circle Participants with determining the means of monitoring compliance with a Mnodaawin agreement.

Section 4. Transfer of Cases to Mnodaawin.

At any time, after consultation with and agreement by the parties, the Court may order that a case be transferred to Mnodaawin. The Court may also order that a case be transferred to Mnodaawin upon the written recommendation of the tribal prosecutor.

Section 5. Order for Mnodaawin.

- (a) An order transferring a case to Mnodaawin shall
 - (1) identify the Peacemaking Coordinator and require that the parties contact the Coordinator to initiate Mnodaawin;
 - (2) provide time limits for initiation of Mnodaawin; and
 - (3) make provision for the payment of a stipend and mileage reimbursements to Mnodaawin facilitators.
- (b) The Court Clerk shall provide the Peacemaking Coordinator with a copy of the order, and the Peacemaking Coordinator shall confirm within five (5) business

days whether the Mnodaawin program can accept the transfer of the case by submitting a written statement to the Clerk of the Court. Regardless of whether the transfer of the case is accepted or rejected, the Clerk of the Court shall serve all of the parties to the case with the Peacemaking Coordinator's written statement and shall add the statement to the record of the case. If the case is rejected, the Judge assigned to the case shall continue to adjudicate the case in accordance with these policies and procedures. If the case is accepted, the case shall be considered stayed pending the parties' participation in Mnodaawin and the entry of a Mnodaawin agreement.

Section 6. Supervision of Cases Transferred to Mnodaawin.

All cases that are transferred to Mnodaawin shall be supervised by the Peacemaking Coordinator. The Coordinator shall be responsible for communicating with the Facilitator and for providing the Judge assigned to a case with monthly status updates of transferred cases. Such updates shall not violate the confidentiality policy of Mnodaawin, but shall merely indicate whether the parties are continuing to participate in Mnodaawin or whether Mnodaawin has been terminated for a case.

Section 7. Entry of a Mnodaawin Agreement.

Once the parties to a case transferred to Mnodaawin have reached an agreement on the steps necessary for healing by the parties and restoration of the parties' relationship to each other and to the community, the steps shall be expressed in a written Mnodaawin agreement. The Mnodaawin agreement shall be submitted by the Mnodaawin Facilitator or Peacemaking Coordinator to the Judge assigned to the case, and the Judge shall enter the agreement and note that satisfaction of the agreement's terms is pending.

Section 8. Entry of a Notice of Satisfaction of a Mnodaawin Agreement.

Upon satisfaction of the agreement's terms, the Peacemaking Coordinator shall provide a written notice of satisfaction of the Mnodaawin agreement to the Judge assigned to the case. Upon receipt of the notice, the Judge shall enter the notice as an order of the Court and the order shall have the same effect as though it were a final judgment of the case.

Section 9. Termination of Mnodaawin without Satisfaction of a Mnodaawin Agreement.

In the event that Mnodaawin has terminated without the parties' consent to a Mnodaawin agreement or without the satisfaction of a Mnodaawin agreement, the Facilitator or Peacemaking Coordinator shall provide a written notice of such termination to the Judge assigned to the case. The Judge shall then lift the stay on the case and recommence proceedings in accordance with these policies and procedures.

Section 10. Confidentiality and Privilege.

Mnodaawin shall be subject to all rules concerning confidentiality established by the Mnodaawin Advisory Committee. Any statements considered confidential by the Advisory Committee's policies shall also be privileged communications that shall not be subject to discovery and that shall not be capable of waiver.

Section 11. Annual Report.

Twelve months from the date that these policies and procedures are approved by the tribal judiciary and on each subsequent anniversary of this date, the Peacemaking Coordinator shall provide a report to the Chief Justice detailing the number of cases transferred to Mnodaawin and the outcome of those cases. In addition, the report shall include the Peacemaking Coordinator's overall evaluation of Mnodaawin and any recommendations the Peacemaking Coordinator has for improvements or changes to it.

Appendix B

Supplementary Policies and Procedures

Contents

Table of Contents	B-1
Program Name	B-2
Peacemaking Policy Statement	B-2
Program Logo	B-2
Principles of Mnodaawin	B-3
Alternative Terms	B-4
Cases Acceptable for Juvenile Peacemaking	B-5
Mnodaawin Advisory Committee	B-6
Juvenile Peacemaking Circle Participants	B-6
Qualifications of Facilitators	B-7
Stipends and Reimbursements	B-8
Background Checks	B-8
Reporting Abuse and Neglect	B-8
Statement on a Code of Conduct for Facilitators.....	B-9
Odawa Juvenile Peacemaking Cultural Elements	B-10
Overview of Juvenile Peacemaking Circle Process	B-11
Juvenile Peacemaking Circle Guidelines (Ground Rules)	B-12
Peacemaking Monitoring System	B-13
Program Evaluation	B-14
Community Resources for Peacemaking	B-15

Program Name: *Mnodaawin* (Good life)

Peacemaking Policy Statement:

Mnodaawin—Ojawa peacemaking—draws upon the community's wisdom, strength, knowledge, and experience to provide a holistic justice forum where the circle comes together to listen, share and teach through each others' stories and perspectives with the aim of healing, restoring relationships, and strengthening the individual, family and community.

Program Logo:



The circular design features floral representations for women (strawberries), men (blueberries), all people (maple leaves), medicine (swamp rose), and peace (Indian pipe flowers). In the center are the tail feathers of the Red-Tailed Hawk and the Sacred Fire held by the hands of Great Spirit.

Principles of Mnodaawin:

Peacemaking Circles for juveniles are a first step to developing an array of processes to serve as alternatives to the adversarial court system.

Talking circles are a cultural and historical means to problem resolution and healing in Waganakising.

Talking circles can be a prevention tool. Talking circles, including peacemaking Circles, demonstrate positive problem-solving techniques to everyone participating in the Circles.

Community-based Healing Circles are needed in the community. Though independent of Tribal Court, they can support the peacemaking Circles that are centered on disposition.

Peacemaking Circles should be as inclusive as reasonably possible.

The peacemaking process incorporates cultural elements, and fosters exposure to Odawa culture outside of the Circle.

Training in facilitation is essential. Specialized training in topics such as substance abuse, suicide, and domestic violence will be provided to facilitators.

Many community members have not experienced Talking circles. Tribal Court will organize Talking circles at certain events it sponsors, and foster the inclusion of talking circles at activities throughout the community.

The ideal is to conduct Circles around the Sacred Fire, and in a traditional lodge.

Whenever reasonable, alternatives will be utilized for the words *offender*, *delinquent*, *sentence* and similar court terminology.

The general rule on confidentiality is as follows: What is said in the Circle stays in the Circle. Furthermore, case records shall not be open to review by the general public.

Alternative Terms to the Vocabulary of the Justice System:

Program staff and Circle Participants are encouraged to avoid typical Anglo justice terminology in favor of alternatives that are less stigmatizing and more culturally appropriate:

Anglo Justice Terms

Hearing; trial; proceedings

Dispute; lawsuit

Sentence; judgment; order

Offender; delinquent; defendant

Offense; crime; misdemeanor

Victim; complainant; plaintiff

Mnodaawin Alternatives

Process; gathering; circle

**Difference; disagreement;
disharmony**

**Peacemaking agreement; agreement;
making things right; resolution**

**Juvenile; young person; just use the
person's name**

Problem; harm done; situation

Just use the person's name

Cases Acceptable for Juvenile Peacemaking:

Participation in peacemaking Circles is strictly voluntary, and requires the expressed approval of the juvenile and his or her parent or guardian. Furthermore, in order for a case to qualify for peacemaking, the juvenile must accept responsibility for the conduct.

Cases may be referred by judges or prosecutors, or requested by the parties. Cases generally acceptable for juvenile Peacemaking Circles will include the following:

- Status offenses (runaway, curfew, truancy, incorrigibility)
- Cases transferred from Tribal Court or diverted by the tribal prosecutor
- Referrals from parents, schools, tribal police, state courts, and other sources

Case involving non-Native juveniles are acceptable.

In theory, even serious violent crimes could be dealt with in peacemaking. However, the Peacemaking Coordinator will screen out types of cases the facilitators are not prepared for due to an absence of specialized training or experience.

Mnodaawin Advisory Committee:

Tribal Court will maintain a Mnodaawin Advisory Committee composed of a cross-section of the LTBB community (i.e. elders, traditional leaders, young people, tribal judges, etc.). Appointments to the Committee are approved by the Chief Judge from recommendations of other judges, court staff, and members of the Advisory Committee.

Responsibilities of the Mnodaawin Advisory Committee include

- developing and revising program policies;
- assistance with recruitment of Facilitators;
- participation in Quality Improvement activities and providing community feedback.

Meetings of the Mnodaawin Advisory Committee will be organized by Tribal Court as often as needed in order to fulfill the responsibilities listed above.

Juvenile Peacemaking Circle Participants:

In juvenile peacemaking Circles the Participants are classified as either “necessary” or “optional”:

Necessary

The juvenile
Parent / guardian
Supporters & family of juvenile
& victim (invite)
Facilitator (one or more)
Admin. Facilitator/Scribe (usually the coordinator)
Up to 3 additional Participants from a pool of trained facilitators

Optional

Victim (voluntary)
Affected persons (invite)
Elders (invite)
Anyone else deemed helpful (invite)

“Anyone else deemed helpful” may include those with expertise in problem areas related to the juvenile’s situation.

The Peacemaking Coordinator is responsible for gathering the information needed for identifying the necessary and optional Participants, and assuring they are notified. The Peacemaking Coordinator will advise against inviting persons whose personal histories

suggest they are unlikely to act with respect during the circle, or maintain confidentiality later.

Qualifications of Facilitators:

Facilitators will be assigned by the Peacemaking Coordinator. The Facilitators of a juvenile peacemaking Circle will consist of an Administrative Facilitator/scribe and at least one additional Facilitator. The Peacemaking Coordinator will ordinarily act as the Administrative Facilitator/scribe.

In assigning Facilitators, the Peacemaking Coordinator will be guided by the following order of preference:

4. One male and one female Facilitator, both of whom have completed the 40-hour facilitator training course.
5. Two Facilitators of the same gender who have completed the 40-hour facilitator training course.
6. One Facilitator who has completed the 40-hour facilitator training course and one who has not (one of each gender is preferred). Recognized tribal elders who have not completed the 40-hour training course can be considered.

The Peacemaking Coordinator also is responsible for assigning up to three additional Circle Participants from the pool of trained Facilitators. One option is to recruit a group of three who would agree to participate in all of the peacemaking Circles scheduled during a particular month.

An experienced Facilitator from a peacemaking program of another tribe would be an acceptable choice. Reasons for considering a Facilitator from another tribe include conflicts of interest, lack of experience with the type of case, and other reasons.

Facilitators must possess the ability to remain neutral, especially when family members come to the Circle.

Sobriety at the time of the Circle will be an expectation of all Participants.

The Coordinator will document the reasons for the choices of assigned Facilitators.

Stipends and Reimbursements:

Dependent on the availability of funding, Tribal Court will provide a modest stipend and mileage reimbursements to Facilitators on a per session basis. The amount of the stipend will be determined by Tribal Court at the beginning of the calendar year, but may be revised at the discretion of the Court. Mileage reimbursement for Facilitator travel to and from a peacemaking session in a personal automobile may be claimed at the approved rate for Tribal Court employees.

Tribal Court may reimbursement mileage for mentor use of personal automobiles while engaged in mentoring related activities.

Background Checks:

Everyone who volunteers to serve as a Facilitator of juvenile peacemaking Circles, and all volunteer mentors with unrestricted access to the juveniles who utilize the program must first undergo a background check. In this regard, Tribal Court will follow the LTBB Tribal Government regulations applicable to employees and volunteers whose duties involve working with juveniles, or unrestricted access to them.

Reporting Abuse and Neglect:

All persons participating in peacemaking Circles will be advised of applicable law relating to reporting instances of child abuse and neglect.

Statement on Code of Conduct for Facilitators; Complaint Process:

The Mnodaawin Circle of the Little Traverse Bay Bands of Odawa Indians is a gathering of people who come together to promote healing, and help restore harmony and balance to the community. While the participants of these gatherings function as equals, the consensus-building process of the Circle relies upon designated Facilitators for guidance. The integrity of the peacemaking Circle, and confidence in it, can be seriously jeopardized by improper conduct of a Facilitator, whether within or without the Circle. For this reason, complaints regarding the conduct of the Facilitators could be cause for reviews and consensus decisions by a Circle of community members. The conduct standards for persons designated as Facilitators shall be *walking in a good way*, as well as compliance with guidelines of the Circle, including confidentiality guidelines.

A complaint should be directed to the Peacemaking Coordinator, who will consider the merits of the complaint. The Peacemaking Coordinator may request additional information from the complainant, others with knowledge of the alleged conduct, and from the Facilitator who is the target of the complaint, in order to have sufficient information for making a determination. If the Peacemaking Coordinator determines that the complaint warrants a review, the Peacemaking Coordinator will promptly schedule a Circle for discussion of the complaint. Until the complaint is disposed of, the Facilitator in question will not be given additional Circle assignments, and may be prohibited by the Coordinator from finishing his/her involvement in ongoing peacemaking assignments. In organizing the Circle, the Coordinator will attempt to include as Participants not only the Facilitator in question, but supporters of the Facilitator, other Facilitators (at least one will be asked to facilitate the review circle), and the complainant and other persons with knowledge of the alleged improper conduct. In attempting to include supporters of the one who is the target of the complaint, and in attempting to include others with knowledge of the alleged improper conduct, the Coordinator will advise against inviting persons whose personal histories suggest they are unlikely to act with respect during the Circle, or maintain confidentiality later.

The Circle will work toward a consensus decision on how to resolve the complaint. The Facilitator who is the target of the complaint will not be given additional Circle assignments in the absence of a consensus decision by the Circle that includes a specific agreement to allow further Circle assignments.

Odawa Juvenile Peacemaking Cultural Elements:

Cultural elements of Juvenile Peacemaking Circles include the following:

- Gather in a circle
- A candle as a symbol of the Fire
- The Four Medicines
- Strawberries
- A copper vessel of water
- A talking stick
- Begin with smudging and a prayer
- Food and drink (set out before and during the circle)
- A blanket on the floor (a place for the Four Medicines, candle, strawberries, water, and smudging shell)
- At intake or at the closing of the circle, may provide teachings or handouts regarding the Medicine Wheel / Seven Grandfather Teachings and the 21 Instructions.
- At intake or sometime before the initial Circle, juveniles will be advised of the traditions of tobacco offerings.
- Before the Circle, the Coordinator will suggest that female Participants consider asking for women's teachings on the circle and moon time from a family member or knowledgeable Odawa woman.

A talking stick, sage, copper pitcher, and a candle holder have been gifted for use with Mnodaawin Circles. Other gifts with possible uses include feathers from a Red Tailed Hawk and a hand drum.

Overview of Juvenile Peacemaking Circle Process:

Juvenile peacemaking Circles will follow the process described below:

Before a Circle, the Peacemaking Coordinator will convene a “team meeting” of assigned Facilitators and anyone deemed necessary for planning the Circle.

Prepare the cultural items and the room.

The juvenile will sit near and to the right of the Facilitators.

The room will be smudged before the Participants arrive; in addition, smudging will be available to the individuals who request it.

Prayer is a responsibility for the Facilitators to take care of, or to ask someone else to take care of.

Opening remarks and Circle guidelines:

- s) Welcoming comments
- t) Prayer
- u) Reason for Circle
- v) Review the guidelines, including confidentiality
- w) Distribute copies of confidentiality form for signatures
- x) Explain process

Speaking Rounds

- #1 Introductions, acceptance of guidelines.
- #2 Statements to and by “victim”, or by community members if “victimless” incident.
- #3 Statements to and by the juvenile.
- #4 Discuss options for resolution.
- #5 A Facilitator summarizes areas of consensus; go around the Circle one last time for concurrence with resolution/peacemaking agreement; write and sign the resolution/peacemaking agreement (the Circle can briefly recess to allow time for writing the agreement).

Closing—options are at discretion of Facilitator and Participants:

- Affirmation
- Song
- Shake hands

Hug
May incorporate Grandfather Teachings or 21 Instructions

Juvenile Peacemaking Circle Guidelines (Ground Rules):

- Honor the talking piece. The only person allowed to speak is the one holding the talking piece. However, dialogue can take place at the discretion of the Facilitators.
- The talking stick follows the sun [it goes to the left around the circle].
- Speak with respect and from the heart. Allow everyone enough time to contribute their thoughts by not taking too much Circle time when speaking.
- Anyone determined to be under the influence of mood altering chemicals (alcohol or other drugs) will be asked to leave.
- The Circle does not fix blame, so finger pointing and blaming language is inappropriate.
- All decisions in the circle are made by consensus. In the Circle, the definition of consensus agreement includes “I can live with the decision”.
- What is said in the Circle stays in the Circle.

Peacemaking Monitoring System:

Agreements signed at the conclusion of a Circles will be forwarded to Tribal Court for a Judge's signature, and become a final order of the Court.

The Mnodaawin Circle may convene follow-up circles on a schedule (e.g. monthly, bi-monthly, etc.) agreed to and written into a peacemaking Agreement, and as needed in the event of slippage or a report of non-compliance. The agreement may be modified at the follow-up Circles.

During the initial and any follow-up Circle, the Participants could determine that the Circle process is not effective for a particular juvenile, and refer the juvenile back to Tribal Court or appropriate initial referral source.

The Peacemaking Coordinator is responsible for tracking deadlines written into the peacemaking agreement, collecting verification forms, notifying the Circle of reports of non-compliance, and preparing necessary reports to be forwarded to the referral sources and others.

Monitoring is individualized, though the norm for monitoring is choosing a non-professional mentor from the Circle in combination with monitoring by everyone else in the Circle, including family members of the juvenile. Deviations from the norm would be decided by the Circle. Two possible reasons for deviating would include

- a) difficulty finding a qualified or willing volunteer to serve as a mentor; and
- b) the juvenile resides outside the immediate area

There are standardized forms for verifying certain types of community service, summarizing progress, and reporting to referring agencies.

A Talking (Healing) Circle may be available as a community resource operating independent of Tribal Court. Though the Talking (Healing) Circle's purpose would be healing and support, not monitoring, instances of non-compliance with the peacemaking agreement may be disclosed during the Circle. If non-compliance is first disclosed during a Talking (Healing) Circle, the Circle Participants would keep the disclosure confidential. However, Participants could encourage the juvenile to self-report. Some individuals may participate in Talking (Healing) Circles and peacemaking Circles for the same juvenile. They would be expected not to discuss in the peacemaking Circle any confidential disclosures of non-compliance heard at the Talking (Healing) Circle.

Program Evaluation:

Evaluation of the Mnodaawin program will consist of the following elements:

- E. With a goal of community satisfaction
 - 1. Peacemaking Coordinator will routinely distribute “customer satisfaction” questionnaires to users of the peacemaking process.
 - 2. Tribal Court may conduct periodic opinion surveys of the community.
- F. With a goal of quality improvement
 - 1. Peacemaking Coordinator will organize debriefings with Facilitators after Circles.
 - 2. Quality Improvement meetings will be scheduled on a regular basis to identify and discuss problems and solutions; Quality Improvement also will be discussed at meetings of the Mnodaawin Advisory Committee.
 - 3. A training plan will be developed, and training opportunities will be provided in response to issues raised in surveys, questionnaires, debriefings, and in Quality Improvement meetings.

Community Resources for Peacemaking:

For reference purposes, the Peacemaking Coordinator will maintain a list of community resources that may be utilized to assist individuals and families who access the Mnodaawin program. The list could include the following types of resources:

- Departments of Tribal Government
- Cultural groups
- Traditional Council
- Teachers, warriors, healers and other respected persons
- Possible mentors
- Traditional lodges in the area
- Scheduled cultural events
- Opportunities for community service, including elders in need of assistance

Appendix C

Forms

Juvenile Interview/Intake	C-2
Release of Confidential Information	C-5
Juvenile Health/Medical Information.	C-6
Confidentiality Agreement	C-8
Juvenile Peacemaking Agreement	C-9
Juvenile Peacemaking Progress Report	C-11
Community Service Verification	C-12
Juvenile Peacemaking Agreement Follow-Up	C-13
Conclusion of Peacemaking Process	C-14
Peacemaking Participant Questionnaire	C-15
Information Needed to Conduct Background Check	C-16
Facilitator Biography	C-17
Volunteer Commitment	C-19
Peacemaking Training Manual Receipt	C-21
Mileage Reimbursement; Stipend Payment	(to be developed)
Acceptance/Rejection Notice	(to be developed)
Termination Notice	(to be developed)
Healing Circles Log	(to be developed)



Peacemaking Program
Little Traverse Bay Bands of Odawa Indians Tribal Court

7500 Odawa Circle
Harbor Springs, MI 49740
Phone (231) 242-1464 or (231) 242-1462
Fax (231) 242-1470

Juvenile Interview / Intake Form

Client No. _____

Date: _____

Juvenile Name: _____

DOB: _____ Age: _____ Gender: _____

Parent/Guardian Name(s): _____

Parent/Guardian Address (street, city, state, zip): _____

Parent/Guardian Phone: (_____) _____

Parents' Relationship (separated, divorced, never in long term relationship): _____

How Case Was Referred: _____

Reason for Referral: _____

Other Persons Who Could Participate in Peacemaking Circle (include contact information):

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____

Summary of how the juvenile would like to see the situation resolved: _____

Names of family members:

Relationship:

Juvenile's Race _____
Enrolled? _____

Tribe: _____

School Status (enrolled; expelled; suspended; etc.): _____ Grade: _____
School Name: _____ Full- or Part-Time: _____

Type of Employment: _____

Risk Factors:

- school issues peer relationships antisocial behavior family functioning
 alcohol use drug use teenage parent

Frequency of alcohol use: _____

Frequency of drug use: _____

Drugs of choice: _____

Additional background information (could include juvenile justice, MH/SA treatment, spiritual, cultural, economic, sexual, etc.): _____

Juvenile's personal strengths: _____

- Discussed Peacemaking process
- Discussed Peacemaking Guidelines
- Discussed not inviting people whose histories suggest they are unlikely to act respectfully or maintain confidentiality
- Discussed approaching family member or knowledgeable Odawa women for women's teachings
- Discussed tradition of offering tobacco
- Discussed post-circle mentoring, monitoring, and follow-up circles
- Discussed final circle and potluck feast
- Discussed legal obligation to report child abuse and neglect
- Presented information on Medicine Wheel/Grandfather Teachings
- Provided resource directory
- Discussed availability and spiritual nature of healing talking circles



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RELEASE OF CONFIDENTIAL INFORMATION

Juvenile Name: _____ Date: _____

Client Number: _____

I do hereby authorize the release of any and all MEDICAL, PSYCHIATRIC, and PSCHOLOGICAL evaluation reports and/or records for use in the LTBB Odawa Tribal Court Peacemaking Program.

I do hereby authorize the release of any and all ADULT CRIMINAL and JUVENILE reports and/or records for use in the LTBB Odawa Tribal Court Peacemaking Program.

I do hereby authorize the release of any and all FINANCIAL reports and/or records for use in the LTBB Odawa Tribal Court Peacemaking Program.

I do hereby authorize the release of any and all SCHOOL reports and/or records for use in the LTBB Odawa Tribal Court Peacemaking Program.

I do hereby authorize the release of any and all ALCOHOL and/or SUBSTANCE ABUSE counseling and treatment records and/or reports for use in the LTBB Odawa Tribal Court Peacemaking Program.

I do hereby authorize the release of any and all MENTAL HEALTH reports and/or records for use in the LTBB Odawa Tribal Court Peacemaking Program.

Date

Juvenile's Signature

Date

Parent/Guardian Signature

Date

Parent/Guardian Signature

Date

Peacemaking Coordinator Signature



Peacemaking Program
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Fax (231) 242-1470

JUVENILE HEALTH / MEDICAL INFORMATION

Juvenile's Name: _____ Date: _____

Client No. _____ Phone No.: _____

Address: _____

In Case of Emergency Contact: _____
Phone No: _____

Are you registered with LTBB's Contract Health? YES ___ NO ___
If NO, the name of your health provider? _____
Address: _____

Phone: _____

The following information is needed to assure that LTBB Odawa Tribal Court can quickly meet any special health needs of your child. Please fill in as completely as possible, using the reverse side of the form if necessary.

Has your child ever had any serious illnesses or injuries? YES ___ NO ___
If YES, please explain: _____

Is your child presently under medical treatment or taking medication regularly? YES ___ NO ___
If YES, please explain: _____

Does your child wear glasses or contacts or have a vision problem? YES ___ NO ___
If YES, please explain: _____

Does your child have a hearing problem? YES ___ NO ___ If YES, please explain:

Does your child have problems with food or special diet requirements? YES _____ NO _____
If YES, please explain: _____

Does your child have allergies or reactions to any medications? YES _____ NO _____ If YES,
please explain: _____

Does your child have any special health needs or problems that cause restriction of physical
activity? YES _____ NO _____ If YES, please explain: _____

Please describe any other health considerations for your child: _____

_____ Date

_____ Parent/Guardian Signature



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Confidentiality Agreement

“What is said in the circle stays in the circle.” Communications relating to the subject matter of the resolution made during the peacemaking process by a party, facilitator, or other participant shall be a confidential communication. THE ONLY EXCEPTION to this confidentiality policy is in cases of suspected child abuse and neglect. Facilitators will report to the proper authorities cases where there is reasonable cause to suspect child abuse and neglect. Aside from the written agreement reached and signed by the parties, the work product and case file is confidential and not subject to disclosure in a judicial or administrative proceeding.

I, the undersigned, have read and understand the confidentiality provisions regarding peacemaking sessions.

Date: _____

PLEASE PRINT NAME: _____

Signature: _____



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Fax (231) 242-1470

Juvenile Peacemaking Progress Report Form

Client No. _____

Juvenile's Name: _____

Date of Follow-Up Circle: _____

Summary of compliance and reports of non-compliance since last report: _____

Summary of changes in juvenile's school status, health, living arrangements, etc.: _____

Juvenile's response to reports of non-compliance: _____

Date

Peacemaking Coordinator Signature



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 Fax (231) 242-1470

PEACEMAKING PARTICIPANT QUESTIONNAIRE

1.	Did the Peacemaking Circle address the main issues of the problem that the Circle was expected to deal with?	<input type="checkbox"/> YES <input type="checkbox"/> NO
2.	Are you disappointed with any provision written into the signed agreement?	<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> DOES NOT APPLY
<i>If YES, please explain:</i>		
3.	Do you feel that other people should have been involved in the Circle?	<input type="checkbox"/> YES <input type="checkbox"/> NO
<i>If YES, please explain:</i>		
4.	Do you feel that one or more of the Circle participants shouldn't have been involved in the Circle?	<input type="checkbox"/> YES <input type="checkbox"/> NO
<i>If YES, please explain:</i>		
5.	Were you unhappy with the inclusion or exclusion of any cultural traditions in the Peacemaking Circle?	<input type="checkbox"/> YES <input type="checkbox"/> NO
<i>If YES, please explain:</i>		
6.	What did you like best about the Peacemaking process?	
7.	Is there anything that you believe should have been done differently?	



Peacemaking Program
Little Traverse Bay Bands of Odawa Indians Tribal Court

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Harbor Springs, MI 49740
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Facilitator Biography

Please provide biographical information regarding your education, training, experience, interests and activities, and any additional information you wish to share relevant to volunteering to facilitate Peacemaking Circles. A personal resume with similar information may be substituted.

Name: _____
Street Address: _____
City, State, Zip: _____
Home Phone: _____ Work Phone: _____
Cell Phone: _____

Education and Training

Highest Formal Education: _____

Training, Licenses, and Certifications: _____

Significant Work Experience

1. Employer Name: _____
Position: _____
From (month/year): _____ to (month/year) _____

2. Employer Name: _____
Position: _____
From (month/year): _____ to (month/year) _____

3. Employer Name: _____
Position: _____
From (month/year): _____ to (month/year) _____

4. Employer Name: _____
Position: _____
From (month/year): _____ to (month/year) _____



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Page 1 of 2

Volunteer Commitment

Volunteers with the Peacemaking Program of the Little Traverse Bay Bands of Odawa Indians Tribal Court serve as Facilitators of Circles, members of the Advisory Committee, and in other roles supporting the Program. They may participate in formal or informal activities where they are exposed to oral and written sensitive information, such as statements made in a Peacemaking Circle, juvenile records, litigation information, and Court employee personnel data. It is the policy of Tribal Court not to reveal such sensitive information to unauthorized persons unless or until it becomes a matter of public record. Even when such information becomes public, volunteers should exercise a great deal of discretion in order to prevent a negative reflection on the Program and Tribal Court.

Additionally, Tribal Court has adopted the attached Code of Conduct and Complaint Process applicable to volunteer Facilitators. The conduct standard for persons serving as Facilitators is *walking in a good way*, and compliance with the Circle Guidelines including the guideline on confidentiality of statements made in the Circle.

By signing this form, the volunteer acknowledges Tribal Court's policy on maintaining the confidentiality of sensitive information, as well as the Peacemaking Program's Code of Conduct and Complaint Process; and the volunteer agrees to comply with the applicable Tribal Court policy and/or Code of Conduct for Facilitators.

Volunteer's Name (please print): _____

Signature: _____

Date: _____

Code of Conduct for Facilitators; Complaint Process:

The Peacemaking Circle of the Little Traverse Bay Bands of Odawa Indians is a gathering of people who come together to promote healing and help restore harmony and balance to the community. While the participants of these gatherings function as equals, the consensus-building process of the Circle relies upon designated Facilitators for guidance. The integrity of the Peacemaking Circle, and confidence in it, can be seriously jeopardized by improper conduct of a Facilitator, whether within or without the Peacemaking Circle. For this reason, complaints regarding the conduct of the Facilitators could be cause for review and consensus decisions by a Circle of community members. The conduct standards for persons designated as Facilitators shall be *walking in a good way*, as well as compliance with guidelines of the Circle, including confidentiality guidelines.

A complaint should be directed to the Peacemaking Coordinator, who will consider the merits of the complaint. In order to have sufficient information for making a determination the Peacemaking Coordinator may request additional information from the complainant, others with knowledge of the alleged conduct, and from the Facilitator who is the target of the complaint. If the Peacemaking Coordinator determines that the complaint warrants a review, the Peacemaking Coordinator will promptly schedule a Circle for discussion of the complaint. Until the complaint is disposed of, the Facilitator in question will not be given additional Circle assignments and may be prohibited by the Coordinator from finishing his/her involvement in ongoing Peacemaking assignments. In organizing the Circle, the Coordinator will attempt to include as participants not only the Facilitator in question, but supporters of the Facilitator, other Facilitators (at least one will be asked to facilitate the review circle), and the complainant and other persons with knowledge of the alleged improper conduct. In attempting to include supporters of the one who is the target of the complaint, and in attempting to include others with knowledge of the alleged improper conduct, the Coordinator will advise against inviting persons whose personal histories suggest they are unlikely to act with respect during the Circle or maintain confidentiality later.

The Circle will work toward a consensus decision on how to resolve the complaint. The Facilitator who is the target of the complaint will not be given additional Circle assignments in the absence of a consensus decision by the Circle that includes a specific agreement to allow further Circle assignments.



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Peacemaking Training Manual Receipt Form

Receipt of a copy of the Peacemaking Program's Training Manual is acknowledged by the signature below.

Name (please print): _____

Signature: _____

Date: _____