

## TRIBAL COURTS ORDINANCE

Ordinance # 12-300-01

### **Article I. Purpose; Findings.**

1.01. *Purpose.* Pursuant to the authority vested in the Little River Band of Ottawa Indians by its Constitution and particularly by Article VI of the Constitution of the Little River Band of Ottawa Indians, and in furtherance of the Tribal Council's authority to provide for the health, safety, morals, and welfare of the Tribe, the Tribal Council of the Little River Band of Ottawa Indians hereby establishes the Tribal Judiciary, and enacts this ordinance which shall establish the purposes, powers, and duties of the Tribal Courts.

1.02. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians finds that:

a. Article IV, Section 7 of the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to exercise the inherent powers of the Tribe by establishing laws through the enactment of ordinances and adoption of resolutions to:

1. govern the conduct of members of the Little River Band and other persons within its jurisdiction;

2. promote, protect and provide for public health, peace, morals, education and general welfare of the Tribe and its members; and

3. approve appointments to the Tribal Courts, regulatory commissions and heads of subordinate organizations created by ordinance.

b. Article VI of the Constitution of the Little River Band of Ottawa Indians establishes a Tribal Judiciary, in which all judicial powers of the Tribe are vested, which consists of a Tribal Court, a Court of Appeals, and such inferior courts as the Tribal Council may from time to time ordain and establish.

### **Article II. Adoption; Amendment; Repeal**

2.01. *Adoption.* This ordinance is adopted by Tribal Council Resolution #12-0125-014, which repealed Ordinance #97-300-01 and replaced it with this Ordinance Number 12-300-01.

2.02. *Amendment.* This ordinance may be amended by the Tribal Council in accordance with the Constitution and the Administrative Procedures Act – Ordinance.

2.03. *Repeal.* This ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act – Ordinance.

2.04. *Short Title.* This ordinance may be cited to as the Tribal Court Ordinance.

2.05. *Severability Clause.* If any provision of this ordinance or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this ordinance which can be given effect without the invalid provision or application, and to this end the provisions of this ordinance are severable.

### **Article III – Definitions.**

3.01. *General Definitions.* For purposes of this Ordinance, certain terms are defined in this Article. The word “shall” is always mandatory and not merely advisory.

with the Tribe’s Constitution, the sovereign powers of the Tribe, and federal law.

3.02. *“Membership-Based Jurisdiction” means the inherent jurisdiction* the Little River Band of Ottawa Indians shall exercise over its members with regard to any matter (regardless of the location of the actions giving rise to that matter) implicating or affecting internal Tribal relations, or the

Tribe's powers of self-government, or the health, safety, morals or welfare of the Tribe or its members. This membership-based jurisdiction shall be exercised to the fullest extent consistent with this Constitution, the sovereign powers of the Tribe, and federal law.

3.03. "*Ordinance*" means a law adopted by the Tribal Council intended to give general direction over a subject matter or jurisdiction. An ordinance may contain specific direction where necessary.

3.04. "*Person*" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency or instrumentality, or any legal or commercial entity.

3.05. "*Territorial Jurisdiction.*" The territorial jurisdiction of the Little River Band of Ottawa Indians shall encompass all lands which are now or hereinafter owned by or reserved for the Tribe or for Tribal members, including but not limited to the Manistee Reservation in Manistee County (Michigan), and Custer and Eden Townships in Mason County (Michigan), or are held in trust for the Tribe or any member of the Tribe by the United States of America. The Tribe's territorial jurisdiction shall be exercised to the fullest extent consistent with this Constitution, the sovereign powers of the Tribe, and federal law.

3.06. "Tribe" means the Little River Band of Ottawa Indians.

#### **Article IV. Composition of the Tribal Court System.**

4.01. *Tribal Court.* The Tribal Court shall be a court of general jurisdiction and shall consist of one (1) chief judge and one (1) associate judge who shall meet as often as circumstances require. The Tribal Council may also establish such lower courts or tribunals of limited jurisdiction as the Tribal Council deems necessary from time to time. Except as provided by any Tribal Ordinance establishing lower courts and tribunals, the Tribal Court shall have general superintending control over all such lower courts and tribunals.

4.02. *Court of Appeals.* The Tribal Court of Appeals shall consist of three (3) judges. At least one (1) of the three (3) judges shall be an Elder (age 55 years or older) in the Tribe, and at least one (1) of the three (3) judges shall be an attorney licensed to practice before the courts of a state in the United States.

#### **Article V. Organization and Operation of the Tribal Court System.**

5.01. *Duties and Powers of the Chief Judge.* The person elected by the Tribal Membership to serve as Chief Judge of the Tribal Court shall serve as the presiding officer of the Tribal Court. In that capacity, the Chief Judge shall:

1. Initiate policies concerning the Tribal Court's internal operations and external matters affecting the Tribal Court's position;
2. Meet regularly with the Associate Judge and all Judges of lower courts and tribunals;
3. Counsel and assist the Associate Judge in the performance of his/her duties;
4. Supervise caseload management and monitor the disposition of judicial work of the Tribal Court and Tribal Court personnel;
5. Represent the Tribal Judiciary in its relations with other courts, other agencies, the Tribal Council, the bar, the general public and in ceremonial functions; and

6. Perform any act or duty or enter any order necessarily incidental to carrying out the purposes of this section.

5.02. *Judicial Conferences.* At least once a year and at such other times as the Chief Judge finds necessary, the Judges of the Tribal Courts, including the Court of Appeals, shall meet to consider proposals to adopt or amend the rules of the court, improve the administration of justice, including the operations of the court, and to review court finances, including preparation of budget proposals and financial reporting.

#### **Article VI. Jurisdiction of the Tribal Courts.**

6.01. *Jurisdiction of the Tribal Courts.* The jurisdiction and judicial powers of the Little River Band of Ottawa Indians shall extend to all cases and matters in law and equity arising under the Tribal Constitution or under the laws and ordinances of, or applicable to, the Little River Band of Ottawa Indians, and falling within the territorial or membership-based jurisdiction of the Tribe as those terms are defined in this Ordinance. The Tribal Courts' jurisdiction shall be exercised to the fullest extent consistent with the Tribe's Constitution, the sovereign powers of the Tribe, and federal law.

6.02. *Original Jurisdiction.* The Tribal Court shall have original jurisdiction to hear and determine all civil and criminal claims and remedies arising within the territorial or membership-based jurisdiction of the Tribe, as those terms are defined in this Ordinance, except where original jurisdiction or exclusive jurisdiction is given by Ordinance to some other court or tribunal or where the Tribal Courts are denied jurisdiction by the Constitution.

6.03. *Appellate Jurisdiction of the Tribal Court.* The Tribal Court shall have appellate jurisdiction to hear appeals from decisions of administrative tribunals, tribal agencies, commissions or other subordinate organizations except where the Tribal Court is denied such appellate jurisdiction by the Constitution or Ordinances of the Tribe.

6.04 *Appellate Jurisdiction of the Tribal Court of Appeals.* Except where appellate jurisdiction is given by Ordinance to some other court or tribunal or where the Court of Appeals is denied appellate jurisdiction by the Constitution or Ordinances of the Tribe, the Tribal Court of Appeals shall have appellate jurisdiction to hear appeals from orders or decrees, or final judgments, of the Tribal Court. The terms and conditions of such appeals, including the circumstances under which there will exist appeals as of right, shall be specified in the Rules of Appellate Procedure.

6.06. *Effectuation of Jurisdiction.* The Tribal Court and the Tribal Court of Appeals shall have jurisdiction and power to make any order proper to fully effectuate their jurisdiction and judgments.

#### **Article VII. Powers of the Tribal Courts.**

7.01. The judicial powers of the Little River Band of Ottawa Indians Tribal Court and Tribal Court of Appeals shall include, but not be limited to, the following:

1. To adjudicate all civil and criminal matters arising within the territorial or membership-based jurisdiction of the Tribe, as those terms are defined in this Ordinance;
2. To review ordinances and resolutions of the Tribal Council or General Membership to insure they are consistent with the Tribal Constitution and to invalidate those ordinances and resolutions which are determined to be inconsistent with the Tribal Constitution;

3. To hear disputes based on ordinances and laws of the Tribe for purpose of determining innocence or guilt where trial by jury has been waived;
4. To assign fines and penalties as allowed for violations of Tribal law in accordance with Tribal and Federal Law;
5. To grant search warrants to enforcement officers when just cause is shown;
6. To grant warrants, writs, injunctions and orders not inconsistent with the Tribal Constitution;
7. To establish, by general rules, the practice and procedures for all courts of the Little River Band of Ottawa Indians;
8. To prepare and present to the Tribal Ogema and Tribal Council a budget requesting an appropriation of funds to permit the Tribal Courts to employ personnel or to retain by contract such independent contractors, professional services and whatever other services may be necessary to carry out the dictates of this Ordinance and all Ordinances creating lower courts of limited jurisdiction;
9. To swear in Tribal Council members, the Tribal Ogema and other elected or appointed officials by administering the oath of office.; and
10. To preside over suits for declaratory or injunctive relief as provided for and in accordance with Article XI of the Constitution.

**Article VIII. Action by the Tribal Courts; Record of Proceedings; Tribal Court Rules.**

8.01. *Decisions and Orders.* Decisions or Orders of the Tribal Courts shall be in writing, with a concise statement of the facts and reasons for the decisions; and shall be signed by the Judge issuing the opinion. Decisions or Orders of the Court of Appeals shall be signed by all participating Judges.

Any Judge dissenting from a decision shall give the reasons for the dissent in writing which is signed by such Judge. All Orders, decisions and dissents issued by the Tribal Courts shall be filed in office of the Tribal Court Clerk, and a record of all decisions and dissents shall be maintained by the Court Clerk.

8.02. *Form of Writs and Process.* All writs and process issuing from the Tribal Courts shall be styled: "In the Name of the Little River Band of Ottawa Indians,". The seal of the Tribal Court affixed to, or impressed upon, any writ or process in any action in any proceeding or action shall be conclusive evidence that the writ or process was issued by the Tribal Court in all cases where such writ or process may be lawfully issued.

8.03. *Record of All Proceedings Required.* The Tribal Courts shall be courts of record and a record of all official proceedings in the Tribal Courts shall be made and maintained by and filed in the Office of the Tribal Court Clerk.

8.04. *Tribal Court Rules.* The Tribal Court shall have in place adequate rules to govern proceedings and shall publish those rules on an annual basis. Notice of all approved rules shall be provided to the Tribal Ogema within ten (10) days of approval by the Tribal Judiciary for publication to the Membership.

**Article IX. Substantive Law.**

9.01. In all cases the Courts of the Little River Band of Ottawa Indians shall apply the laws, regulations, or policies of the Little River Band of Ottawa Indians, or any applicable laws or regulations of the United States.

9.02. Any matters not covered by the laws or regulations of the Little River Band of Ottawa, or by applicable federal laws or regulations, may be decided by the Courts according to the laws of the State of Michigan.

**Article X. Procedure in the Tribal Courts.**

10.01. *Procedural Rules Applied.* The procedure to be followed in civil and criminal cases filed in the Tribal Courts shall be the Michigan Rules of Criminal Procedure and Michigan Rules of Civil Procedure, except insofar as such procedures are superseded by Rules of Procedure enacted by the Tribal Courts.

10.02. The Tribal Court's authority to promulgate and amend general rules governing practice and procedure in the Tribal Courts shall include, but not be limited to, the authority to:

- (1) Prescribe the forms of all process to be issued by the Courts,
- (2) Prescribe the practices and procedures in the Tribal Courts concerning:
  - (i) Methods of review,
  - (ii) Special verdicts,
  - (iii) Granting of new trials,
  - (iv) Taxation of costs,
  - (v) Notice of special motions and other proceedings,
  - (vi) The staying of proceedings,
  - (vii) Hearing of motions,
  - (viii) Discovery procedures, and
  - (ix) Rules of Evidence.

**Article XI. Rules of Evidence.**

11.01. The Tribal Courts shall be bound by the Michigan Rules of Evidence, except insofar as such rules are superseded by Rules of Evidence enacted by the Tribal Court.

**Article XII. Judicial Independence.**

12.01. The Tribal Courts shall be independent from the legislative and executive functions of the tribal government and no person exercising powers of the legislative or executive functions of government shall exercise powers properly belonging to the judicial branch of government. Rulings of the Tribal Courts cannot be appealed to any other jurisdiction unless such appeal is specifically provided for or permitted by Federal law.

**Article XIII. Elected Members of Judiciary; Compensation; Oath of Office.**

13.01. *Election.* Except as otherwise provided for in Article XIV of this Ordinance, all members of the Little River Band Tribal Judiciary shall be elected by the Tribal Membership in accordance with

the Constitution of the Little River Band of Ottawa Indians.

13.02. *Compensation.* The Tribal Council shall have the power to establish the level of compensation for each Judge; provided that the compensation due to each individual Judge shall not be diminished during the term of his/her office.

13.03. *Swearing in Judges.* Tribal Judges shall be sworn in by the *Speaker* Chairperson of the Tribal Council.

#### **Article XIV. Vacancy; Appointment.**

14.01. *Vacancy.* A vacancy in any judicial position resulting from a Judge's death, resignation, removal, or recall shall be filled in the same manner as set forth in Article X, Section 4, of the Tribe's Constitution. The term of office for any Tribal Judge appointed under this Section shall be for the remainder of the vacant term.

#### **Article XV. Qualifications for Appointment.**

15.01. In addition to the qualifications described in Article IV, an individual must meet the following additional qualifications in order to be eligible for appointment as a Judge of any Tribal Court:

1. *Member of the Tribe.* Any member of the Tribe may serve as a Tribal Judge provided he/she is twenty-five (25) years of age or older, is not a member of the Tribal Council or running for a seat on the Tribal Council, and has not been convicted of any crime of dishonesty or moral turpitude, nor been convicted of a felony under Tribal or State law, within the seven (7) year period immediately preceding the date of the election or, in the event of a vacancy under Article XIV, his or her appointment.

2. *Non-Member Qualifications.* A non-member of the Tribe may be appointed to or elected to serve as a Tribal judge if such individual possesses a law degree and has practiced in Federal Indian law or as a tribal judge, and has not been convicted of any crime involving dishonesty or moral turpitude, nor been convicted of a felony under Federal Tribal or State law within the seven (7) year period immediately preceding the date of the election or, in the event of a vacancy under Article XIV, his or her appointment.

3. *Licensed Attorneys in Certain Cases.* In connection with the establishment of a lower court or division of the Tribal Court system, the Tribal Council may provide by ordinance that an individual serving as Tribal Judge in that court or division must, in addition to meeting the qualifications required under subsection (1) or (2) of this Article XV, be an attorney licensed to practice in the courts of a state of the United States.

#### **Article XVI. Term of Office.**

16.01. Except as provided for in Article XIV of this Ordinance which provides for appointment to a vacancy in the judiciary, the term of office for all Tribal Judges shall be six (6) years.

16.02. Tribal Judges will continue in office until a successor is sworn in by the Tribal Council Speaker.

16.03. There shall be no prohibition against continuous service.

**Article XVII. Resignation or Removal.**

17.01. *Resignation.* A Tribal Judge may resign his/her office at any time. Resignation is immediate upon a Judge submitting written notice to the Tribal Council of his/her resignation.

17.02. *Reasons for Removal of Tribal Judge.* A Tribal Judge may only be removed by a vote of seven (7) of the nine (9) Council Members following a recommendation of removal by a majority of the remaining Tribal Judges for the following reasons:

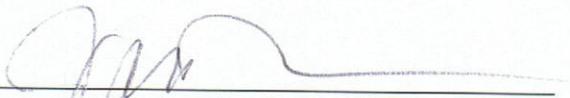
1. Unethical conduct, as defined by the Michigan Indian Judicial Association Model Code of Tribal Judicial Conduct;
2. Gross misconduct or malfeasance in office that is clearly prejudicial to the administration of justice;
3. Ineligibility, under Article XV of this Ordinance to serve as a member of the Tribal Court;
4. Inability to fulfill the duties of the office due to mental or physical disability, to the extent that they are incapable of exercising judgment about or attending to the business of the Tribe. Such determination shall be based upon or supported by competent medical evidence or opinion.

17.03. *Procedure for Removal of Tribal Judge.* If a member of the Tribal Judiciary obtains information which indicates that grounds exist for removal of another Judge, the member shall provide written notice of the charge and specify the facts supporting such charge to all Tribal Judges, including the accused. The Judge so charged shall be notified in advance and provided an opportunity to answer the charges at a public hearing of all members of the Tribal Court held for that purpose. Such hearing shall be noticed at least ten (10) days prior to the hearing at which the Judge's referral for removal is to be considered. If a majority of the remaining Judges of the Tribal Court vote to refer the Judge to the Tribal Council for removal, the grounds for removal shall be set forth with specificity and the Tribal Judge shall be suspended from office until the Tribal Council acts on the referral at a public meeting of the Tribal Council held to consider that referral. At least ten (10) days before the meeting of the Tribal Council at which the vote for removal will be taken, the affected Judge shall be provided with a written notice of that meeting, which notice shall specify the nature of the charges being considered and the facts allegedly supporting such charges. Before any vote for removal is taken, the affected Judge shall be provided with a reasonable opportunity to answer the charges at the Tribal Council meeting. If the Tribal Council, by affirmative vote of seven (7) of the nine (9) Council members, finds that grounds for removal as stated by the Tribal Court exist, the Tribal Council shall remove the Judge from office. If the Tribal Council finds that the grounds for removal do not exist, the suspended Judge shall be fully reinstated to the Tribal Court.

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**CERTIFICATION**

I, Janine Sam, Tribal Council Recorder, do hereby certify that this is a true and correct copy of the Tribal Court Ordinance adopted by the Tribal Council on January 25, 2012.



Janine Sam  
Tribal Council Recorder

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