

**EMPLOYMENT DIVISION OF TRIBAL COURT CODE**  
Ordinance # 08-300-04

**Article I. Purpose; Findings**

1.01. *Purpose.* To establish an Employment Division to create a consolidated body of judicial review, the opportunity to determine the availability of judicial resources, and ultimately the necessary expertise in Tribal employment law.

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

a. the Constitution of the Little River Band of Ottawa Indians delegates to the Tribal Council the responsibility to "...exercise the inherent powers of the Little River Band by establishing laws through the enactment of ordinances and adoption of resolutions not inconsistent with this Constitution:

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

2. to promote, protect and provide for public health, peace, morals, education and general welfare of the Little River Band and its members[.]” *Article IV, Section 7(a).*

b. the Constitution, under Article VI, Section 1, authorizes the Tribal Council to create inferior courts by Ordinance;

c. certain employment actions should have the opportunity to be reviewed by an objective and neutral party because of the seriousness of the effect of the employment action on the individual and on the Tribe;

d. that employees are generally likely to be unrepresented and an informal process by which the court manages the proceedings and questions in an informal matter will serve to obtain the greatest amount of information regarding the grievance matter; and

e. informal processes are non-aggressive processes which tend to reflect the cultural aspects and goals of the Tribe than formal hearing procedures;

f. establishment of an Employment Division will create a consolidated body of judicial review, the opportunity to determine the availability of judicial resources, and ultimately the necessary expertise in Tribal employment law.

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

2.01. *Adoption.* This Ordinance is adopted by Tribal Council resolution # 05-0706-304.

2.02. *Amendment.* This Ordinance may be amended in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances.

a. Resolution #09-0121-\_\_\_\_\_ which removed the provisions allowing for appointment of judicial officers to hear employment-related cases.

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 *Repeal.* This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances.

2.04. *Severability.* If any provision of this Ordinance or its application to any person or circumstance 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.* As used in this Ordinance, except where otherwise specifically provided or the context otherwise requires, the following terms and expressions shall have the following meanings.

3.02. *Conflict of Interest* means –

a. a family relationship with the employee, supervisor, or Human Resource Department representative as defined under nepotism in Tribal employment law or regulation.

b. living within the same household as the employee, supervisor, or Human Resource Department

representative.

c. a business or contract relationship with the employee, supervisor, or Human Resource Department representative.

3.03. *Employee File*. This is the file, or group of files, located in the Human Resource Department which contains employment related actions, including, but not limited to – hiring, promotions, transfers, performance evaluations, disciplinary notices, COLA's, merit increases, benefit information, termination, lay-off, etc.

3.04. *Employment Matter* means a civil action authorized to be filed under Tribal law or regulation, but does not include a grievance matter.

3.05. *Final Decision* means the written decision regarding a grievance for which no further appeals within the Tribal government exists.

3.06. *Grievance Matter* means the appeal of a final decision in a employment case that involves terminations, suspensions, or demotions.

3.07. *Judicial Officer* means a Tribal Court Judge hearing a grievance matter.

a. A Tribal Court Judge in the event of a conflict of interest prevents him or her from hearing a grievance matter, shall retain a neutral outside attorney acceptable to both parties to hear the grievance.

#### **Article IV. Employment Division**

4.01. *Creation of Employment Division*. There is hereby created a division of the Tribal Court titled the "Employment Division" which shall have the authority and responsibility to hear appeals of grievance as authorized in this Ordinance, and employment actions as may be authorized in other ordinances of the Tribe.

4.02. *Judicial Officers*. Grievance matters brought before the Employment Division shall be heard by Tribal Court judges or, in the event of a conflict, a neutral outside attorney acceptable to both parties.

#### **Article V. Hearing Procedures - Grievance Matters**

5.01. *Informal Processes*. Hearings before the Employment Division shall be closed, considered informal, and intended to obtain information related to the grievance matter. The Employment Division shall not require persons to be represented by legal counsel. A hearing called under this Article is for the purposes of the judicial officer obtaining information related to the grievance matter, and may or may not include questions presented by the employee or supervisor. A hearing under this Ordinance is an original hearing. The decision issued by the Employment Division shall be a public document.

5.02. *Filing*. A written grievance matter may be filed only after a final decision has been made regarding the grievance matter. An grievance matter filing must contain the following minimum information, and must be filed within ten days of receipt of the final decision.

a. Name, address, date, and signature of employee.

b. Copy of written disciplinary decision.

c. Name of supervisor, and those persons in the line of authority up to, and including, the Ogema, Tribal Council, or Tribal Court Judge as applicable.

5.03. *Title of Grievance Matter*. Grievance matters shall be titled as "[Name], Employee/Plaintiff v. [Name] Supervisor/Defendant and Little River Band of Ottawa Indians."

5.04. *Notice; Hearing Date*. A Notice of Receipt of Filing and copy of the filing, is mailed to all parties - employee, supervisor, and Human Resource Director - by certified-return receipt requested mail and by regular mail, or by service of the Public Safety Department. The Notice shall identify a hearing date no later than 21 calendar days after filing. The Notice shall identify the following information.

- a. The demand to have all records, except unrelated confidential records, copied and forwarded to the Employment Division no later than 7 calendar days after receipt of Notice. If unrelated confidential records are not forwarded, the Human Resource Department shall indicate that this group of records have been withheld and were not part of the disciplinary decision making process.
  - b. The date, time and location of the hearing, and all parties ordered to attend.
  - c. Identification of the judicial officer.
- 5.05. *Written Statements.* The employee and supervisor may submit a written, signed, statement. The written statement may contain arguments regarding the grievance matter, including facts, law or regulation applied, and other matters pertinent to the grievance matter.
- 5.06. *Hearing Record.* The hearing record includes the following information.
- a. Employee file, excluding unrelated confidential information.
  - b. New information, provided that any new information must not have been known and/or available at the time of the original disciplinary action.
  - c. Written statements submitted by the employee and supervisor.
- 5.07. *Witnesses.* Either the employer or the supervisor may call witnesses. Provided that, the judicial officer may limit the number of witnesses in the interest of avoiding repetitive or unrelated testimony.
- 5.08. *Documents.* Documents, other than the employee file and written statements, must be filed at least five working days prior to the scheduled hearing. Documents must be originals or certified as true and correct copies of originals.
- 5.09. *Prohibited Information.* Employee related information contained in any file maintained by a department or person other than that located in the Human Resource Department shall not be considered part of the employee file and shall not be admissible evidence.
- 5.10. *Hearing Record Review.* The judicial officer shall have available the hearing record packet for review at least two working days prior to the hearing. Hearing records may not be removed from the office and shall be returned at the close of the hearing and deliberations. The hearing record shall be confidential and shall have all copies destroyed except the hearing record identified in section 5.06, and an original decision as identified in section 5.12. The hearing record and hearing decision shall be maintained in a separate confidential file at the conclusion of the hearing.
- 5.11. *Hearing Procedures.* The following structure should be utilized in hearings. Provided that, in the interests of obtaining information or allowing information to be clearly understood, the judicial officer may allow deviations from this hearing procedure.
- a. Introduction of judicial officer and swearing in of the employee, supervisor, Human Resource Department representative and any witnesses. The judicial officer, after calling the hearing to order, ask all parties to introduce themselves for the record, ask all witnesses to identify themselves, and finally identify that the appeal record has been received.
  - b. The judicial officer shall briefly identify the disciplinary action and request all parties to wait outside the hearing room until called. Provided that, an employee may request that he and the supervisor remain present in the hearing room and be allowed to ask questions of the witnesses and of each other. If the employee or supervisor are represented, the representatives shall be included, and shall be authorized to ask questions on behalf of the represented party. The judicial officer shall be required to adhere to a request to remain in the hearing room, and may not exclude the supervisor if the employee is allowed to remain.
  - c. The judicial officer shall call each person individually into the hearing room in the following order.
    - 1. Employee, who shall be asked if he or she wishes to give an opening statement prior to questions.

2. Supervisor, who shall be asked if he or she wishes to give an opening statement prior to questions.
  3. Human Resource Department representative, who shall be asked questions. The Human Resource Department representative shall not be required, and shall not be compelled, to give an opinion regarding the action taken, or the reasons for that action.
  4. Witnesses, who shall be asked questions. If multiple witnesses are listed, the employee witnesses shall be called first, and then the supervisor witnesses shall be called. The employee and supervisor may identify the order in which their witnesses should be called. If a witness appears on both lists, the witness shall be called with both the employee and the supervisor witnesses.
  5. Supervisor, who shall be asked questions, and then shall be asked if he or she wishes to give a closing statement.
  6. Employee, who shall be asked questions, and then shall be asked if he or she wishes to give a closing statement.
- d. The judicial officer shall be allowed to question the employee, supervisor, Human Resource Department representative and witnesses.
  - e. After the final statement is concluded, the judicial officer shall call the supervisor and Human Resource Department representative back into the hearing room and notify them that the hearing has been concluded.
- 5.12. *Decision.* The judicial officer shall issue a written decision which includes the pertinent facts, identification of pertinent documents and applicable law or regulation, and a written determination. The decision shall be mailed certified mail-return receipt requested, and by regular mail, to the employee, supervisor and Human Resource Department. Provided that, the Public Safety Department may be utilized to serve the decision. All decisions shall be placed in the employee's file.
- 5.13. *Appeal.* An Employment Division decision may be appealed to the Appellate Court if notice of appeal is filed within 28 calendar days of issuance of the hearing decision.

## **Article VI. Authority - Matters Heard and Decisions**

- 6.01. *Authority.* The scope of authority of the Employment Division to issue decisions shall be limited as set forth in this Article.
- a. *Grievance Matters.* Only written disciplinary actions regarding demotions, suspensions and termination, may be appealed. Provided that, the Employment Division may review the record for prior progressive disciplinary actions in making a determination regarding the appealed grievance matter.
  - b. *Employment Matters.* All other employment related cases brought under other ordinances of the Tribe and managed in accordance with Tribal Court rules and procedures. Provided that, the Tribal Court may separate grievance matters from employment matters in order to maintain the informality of the grievance matter processes set forth in this ordinance.
- 6.02. *Employment Matter; Orders of Employment Division.* The Employment Division may order only the relief authorized under the specific Tribal law in employment matters.