

Little River Band of Ottawa Indians

**Unified Legal Department Act of 2015
Ordinance No. 15-100-08a**

Article I. Purpose; Findings

1. *Purpose.* The purpose of this Ordinance is to establish a single, unified legal department for the provision of in-house legal services to the Tribe and all branches, commissions, departments, officers, and employees of the Tribe, including both the Tribal Council and the Ogema.
2. *Findings.* The Tribal Council of the Little River Band of Ottawa Indians, in consultation with the Tribe's Ogema, finds that:
 - a. The Tribe's Constitution authorizes the Tribal Council 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 the Constitution.
 - b. The Tribe's government is multifaceted and complex, consisting of three independent constitutional branches and numerous commissions, departments, businesses, officers, and employees.
 - c. In-house legal counsel, which includes oversight of and reduces the overall need for outside counsel employed by the Tribe, is an essential service for all branches, commissions, departments, businesses, officers, and employees of the Tribe.
 - d. The sole client of all attorneys employed in-house by the Tribe through the Unified Legal Department should be the Tribe itself ~~rather than any individual branch of Tribal government or any individual commission, department, officer, or employee of the Tribe.~~
 - e. The Tribe's Constitution authorizes the Tribal Council to employ legal counsel on behalf of the Tribe, and to authorize and appropriate funds for that purpose.

Article II. Adoption; Amendment; Repeal; Severability

1. *Adoption and Effective Date.* This Ordinance was adopted by Resolution No. 15-0422-129 of the Tribal Council, and is effective immediately.
 - a. Resolution #16-0323-088, adopting amendment to eliminate the provision requiring admittance to the Michigan State Bar within six (6) months of hiring.
 - b. Resolution #19-0206-033, adopting amendments to clarify scope of services, internal legal dispute, and advisory opinions.

- c. Resolution #22-_____ , adopting amendments
 - d. to exclude the Tribal Council's Legislative In-House Counsel and the Ogema's Counsel from the definition of Attorney for the purposes of Unified Legal Department.
2. *Amendment.* This Ordinance may be amended in accordance with the procedures set forth in the Administrative Procedures Act, Ordinance #04-100-07.
 3. *Repeal.* This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act, Ordinance #04-100-07.
 4. *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 provisions or application, and to this end the provisions of this Ordinance are severable.

Article III. Definitions

1. *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. The words "shall", "must" and "will" are mandatory and not merely advisory nor discretionary.
2. *Attorney or Lawyer* means a person hired as an employee by the Tribe to provide in-house legal services to the Tribal Government through an employment relationship. It does not include the Tribal Council's Legislative Attorney, the Ogema's Attorney, the Office of the Prosecuting Attorney,-a person employed by the Tribe for the position of Members' Legal Assistance, nor any attorney hired as a consultant or independent contractor.
3. *Intra-Tribal Litigation* means any litigation, in any court, in which (1) more than one individual branch, commission, department, board, business, officer or employee of the Tribe are parties; and (2) the interests of those Tribal parties are directly or material adverse, except for actions filed by Tribal employees or former employees under the Employment Code. It does not include removal proceedings initiated by the Tribal government against an elected or appointed official, board member, committee member or commissioner.
4. *Outside Counsel* means an attorney or a law firm that is retained or engaged to provide legal services to the Tribe within a specialized area or to provide for a specific legal need.
5. *Tribe or Tribal* means the Little River Band of Ottawa Indians as a whole or pertaining to the Little River Band of Ottawa Indians as a whole. The words "Tribe" or "Tribal" shall not be construed to mean any individual member(s) of the Tribe or any single branch or other individual subsidiary of the Tribe or the Tribal government.

Article IV. Unified Legal Department

1. *Establishment of Unified Legal Department; Abolishment of Other In-House Attorney Positions; Transition of Existing In-House Attorneys to Unified Legal Department. There is hereby created a single, unified Legal Department (hereinafter, "Legal Department") for purposes of providing the Tribe with in-house legal services.*
 - a. All existing in-house Tribal attorney positions and departments, including the Legislative Legal Department, Chief Legislative Counsel, Associate Counsel, General Counsel, and Executive Services Attorney are abolished. Notwithstanding this provision, the offices of Membership Services Attorney and Tribal Prosecuting Attorney are not abolished by this Ordinance. The Membership Services Attorney, the Tribal Council's Attorney, the Ogema's Attorney, and Tribal Prosecuting Attorney shall not at this time be a part of the Legal Department created by this Ordinance, and shall instead remain independent offices subject to existing laws and regulations of the Tribe.
 - b. The existing contract of any attorney currently employed by the Tribe in a position abolished by this Ordinance may be renegotiated, with the attorney's agreement, to reflect the requirements of this Ordinance. Any contract renegotiated under this provision shall be executed no later than thirty days after the effective date of this Ordinance. If an attorney currently employed by the Tribe agrees to renegotiate a contract under this provision, Section 4.01(b) of this Ordinance shall not be construed as creating a vacancy with respect to that attorney's position of employment or as causing an interruption in the term of that employee's employment with the Tribe.
2. *Mission Statement.* The primary goal of the Legal Department created by this Ordinance is to provide high quality legal services to the Tribe. A secondary goal is to assist in resolving disputes over legal issues within and between individual branches of Tribal government and individual commissions, departments, officers, and employees of the Tribe in an efficient manner and with a minimum of conflict wherever possible.
3. *Composition of Unified Legal Department Staff.* The Legal Department shall consist of a Tribal Managing Attorney, Senior Tribal Attorneys, Tribal Staff Attorneys, and Legal Assistants, as needed.
4. *Hiring, Supervision, and Termination of Attorneys.*
 - a. Attorney vacancies within the Legal Department shall be posted as soon as possible. Tribal Council shall authorize job descriptions as soon as practicable after adoption of this Ordinance.
 - b. Applicants for vacant Legal Department attorney positions shall first be interviewed by a committee consisting of the Ogema or designee of the Ogema; the Tribal Council Speaker or designee of the Speaker; and the Tribal Managing Attorney or designee of the Tribal Managing Attorney. If the position to be filled is that of the Tribal Managing Attorney, the third member of the interview committee shall be an existing Legal Department attorney selected and mutually agreed upon by the Ogema and Tribal

Council Speaker. The Tribal Managing Attorney or other Legal Department attorney participating as a member of the interview committee shall not have a vote in any hiring decision, but shall participate in all interviews and committee deliberations. A contract for attorney employment shall not be negotiated or drafted until the Ogema and Tribal Council Speaker agree on the selection of a candidate for any opening.

- c. The salary and other conditions of employment for all Legal Department attorneys shall be established in contracts of employment negotiated by the Ogema and subsequently approved by resolution of the Tribal Council, and attorneys shall additionally be subject to general employment policies in place at the time of hire and as amended from time to time by the Tribal Council. Contracts for all Legal Department attorneys shall be for periods of four years, with the exception that contracts for the first four Legal Department attorneys hired under this this Ordinance may have staggered expiration dates as the Ogema and Tribal Council deem appropriate.
- d. The Tribal Managing Attorney shall possess and exercise day-to-day supervisory authority over all other attorneys in the Department. This supervisory authority shall include responsibility for assigning subject matter areas, coordinating individual assignments, conducting Legal Department staff meetings, reviewing high-priority work product where necessary, providing periodic informal performance reviews, directing and supervising non-attorney department staff and authorizing budgetary expenditures for the department. Consistent with Sections 4.04(e) and 4.07(e), however, it is not the intent of this Ordinance that the Tribal Managing Attorney be deemed to have ultimate authority over and responsibility for all work product of all Legal Department attorneys.
- e. All responsibility for formal performance reviews and discipline shall be with a committee consisting of the Tribal Council Speaker, Ogema, and Tribal Managing Attorney, unless the Legal Department attorney subject to performance review or discipline is the Tribal Managing Attorney, in which case the committee shall be the Tribal Ogema ,the Tribal Council Speaker and the Human Resources Director. For purposes of performance reviews and formal discipline, this performance and discipline committee shall be entitled to take official action, and shall only take official action, where the Tribal Council Speaker and Ogema are in agreement as to the nature and propriety of that action, whether or not the Tribal Managing Attorney is also in agreement.
- f. The Tribal Managing Attorney shall have seniority over all other Legal Department attorneys in terms of salary and benefits, as established by the Tribal Council, and shall be hired on the basis of experience and expertise in tribal law and federal Indian law; managerial or other supervisory experience in a tribal legal department, law firm, or legal services organization; and any other factors considered relevant by the Ogema and Tribal Council, in their discretion.
- g. Senior Tribal Attorneys shall have seniority over Tribal Staff Attorneys in terms of

salary and benefits, as established by the Tribal Council, and shall be hired on the basis of experience and expertise in tribal law and federal Indian law, and, where appropriate, on the basis of familiarity with the legal needs of the Tribe.

- h. The responsibilities of the Tribal Managing Attorney and Senior Tribal Attorneys shall include the provision of mentoring to Tribal Staff Attorneys, as requested and within the limits of time and workload.
- 1. Except as provided elsewhere in this Ordinance, all Legal Department Attorneys, including the Tribal Managing Attorney, shall be employed on an at-will basis. However, the contract of a Legal Department attorney shall not be terminated before its expiration without an affirmative majority vote of the Tribal Council and the Ogema's formal approval of that vote, except as provided in Section 4.06(a).

1.5. *Tribe as Client.*

- a. The job description and contract for each Legal Department attorney shall specifically state that each attorney's sole client is the Tribe as a whole and not any individual branch of the Tribe's government or any individual commission, department, business, officer, or employee of the Tribe. The job description and contract shall further state that although requests for legal services may be made by individual branches, commissions, departments, businesses, officers, or employees, all such parties are merely representatives of the Tribe, and therefore representatives of the attorney's true client.
- b. This provision applies equally to all aspects of each Legal Department attorney's employment with the Tribe, including the professional responsibility and ethical obligations of each attorney.

1.6. *Licensing and Professional Responsibility.*

- a. When hiring licensed attorneys, the Unified Legal Department, Human Resource Department, the Ogema, and the Speaker shall endeavor to hire attorneys with Michigan Bar licenses. However, a Michigan Bar license is not a prerequisite for employment. The Tribe may require an attorney to become admitted to the Michigan State Bar via a condition of their contract.
- b. Each Legal Department attorney shall at all times be a member in good standing with each Bar, of which, they are an admitted member, and the Tribal Court. No exception will be made to this requirement. Failure to maintain this standing shall be grounds for immediate termination of employment by notice from the Tribal Ogema or the Tribal Council, Section 4.04(i) notwithstanding.
- c. Each attorney employed by the Legal Department shall individually be responsible for compliance with the Michigan Rules of Professional Conduct, including MRPC 5.1 through 5.3, and the Little River Band of Ottawa Indians Tribal Court Rules regarding

the professional conduct of attorneys. A Legal Department attorney shall not be subject to employment discipline or contract termination for any action or inaction that, on the basis of the attorney's reasonable, good faith determination, is required for compliance with these rules.

1.7. *Scope of Legal Services; Assignments.*

- a. The Legal Department shall be responsible for all in-house legal services provided to the Tribe, including but not limited to legal advice and counsel; ordinance, regulation, and policy drafting; formal legal opinions regarding the legality of government action or other legal topics; contract review; oversight of all outside counsel retained by the Tribe; and representation of the Tribe in state, federal, or Tribal Court litigation (including filing of *amicus curiae* briefs on behalf of the Tribe). The scope of representation by attorneys in the Unified Legal Department shall be for civil matters only; only the identified Tribal Prosecuting Attorney shall represent the Tribe in criminal matters. The Legal Department may assist the Election Board with the creation and amendment of regulations, rules and procedures, but shall not advise on election disputes, challenges, or litigation.
- b. Each attorney within the Legal Department shall be assigned to one or more subject matter areas (e.g., Natural Resources, Enterprise and Gaming, etc.) depending on interest, experience, and the Tribe's need. The Tribe shall not be precluded from changing an attorney's subject matter area(s) if the Tribe's needs change. Subject matter areas shall not be created or assigned for the sole purpose of serving the legal needs of an individual branch or official of the Tribe. More than one attorney may be assigned to a subject matter area depending on need.
- c. All requests for legal services shall be made directly to the Tribal Managing Attorney assigned to the relevant subject matter area, if applicable. Where the requesting party is unsure of the proper attorney for a given request, the requesting party may first consult with the Tribal Managing Attorney, who shall identify or assign a proper attorney for the request.

When the Legal Department requests to file an *amicus curiae* brief on behalf of the Tribe in Tribal Court, and one or more of the parties involved in the relevant litigation are branches of the Tribal Government, the request must be approved by the Tribal Ogema and two-thirds of the Tribal Council.

- d. Requests for legal services shall be made directly to the Legal Department only by the Tribal Ogema, Tribal Council Speaker or Tribal Council Recorder.
- e. Once assigned, responsibility for the completion, timeliness, and quality of legal services shall rest solely with the attorney to whom a given task is assigned, provided that (1) the work of all Legal Department attorneys is subject to supervision consistent with the provisions of Section 4.04; (2) all Legal Department attorneys shall be entitled

to seek advice and counsel from other Legal Department attorneys; and (3) that the Tribal Managing Attorney and Senior Tribal Attorneys may provide mentoring to Tribal Staff Attorneys upon request.

Article V. Internal Legal Disputes

1. *Second Opinions.*

- a. Where a party who seeks legal advice or a legal opinion from the Legal Department disagrees with the advice or opinion given, that party may request a second opinion on the relevant issue from the Department.
- b. When two parties are in disagreement, either party shall be entitled to a second opinion.
- c. Where a second opinion is requested, and both the Tribal Ogema and Tribal Council agree to the request, the Tribal Managing Attorney shall assign the question to a Legal Department attorney other than the attorney who gave the original advice or rendered the original opinion. Where the Tribal Council and Tribal Ogema disagree about whether or not a second opinion should be requested, the Legal Department shall procure outside counsel to provide the second opinion.
- d. If the second opinion agrees with the first opinion, the two shall be considered the opinion of the Legal Department. While the Legal Department will rely on the second opinion for future arguments on behalf of the Tribe, the opinion will in no way bind the Tribal Judiciary or any other parties.
- e. At any time after issuing its second opinion, the Legal Department may consider changing its opinion when presented with new or novel legal theories or evidence, changes in relevant case law, or changes in relevant policy, procedure, or regulation.

2. *Advisory Opinions.*

- a. Where two or more entities of the Tribe's government disagree about a legal matter, and either party disagrees with the second opinion under Section 5.01 of this Ordinance, one or more of the disagreeing parties may seek an advisory opinion from the Tribal Judiciary regarding the disputed issue or question.
- b. Requests for advisory opinions shall be submitted directly to the Tribal Judiciary, and shall include a basic statement of the pertinent facts and issues, and an index of controlling and relevant authority. The Legal Department attorney assigned by the Tribal Managing Attorney shall have the opportunity to respond with an explanation of its second opinion and shall submit any further information upon request by the Tribal Judiciary.
- c. The Tribal Judiciary shall review the basic statement of pertinent facts and issues, and

an index of controlling and relevant authority submitted by the disagreeing party and the Legal Department, and determine, in its sole discretion, whether or not to issue an advisory opinion.

- d. A request for an advisory opinion regarding the validity or interpretation of an ordinance, statute, regulation, rule, or policy shall not be submitted to the Tribal Judiciary prior to formal finalization and issuance of the ordinance, statute, rule, or policy in question.
 - e. All requests for advisory opinions shall be submitted directly to the Tribal Judiciary.
 - f. The Tribal Judiciary shall promulgate rules for the submission of requests for advisory opinions, as well as any procedures or standards for accepting, declining, considering, and issuing advisory opinions consistent with the Tribe's Constitution. If the Tribal Judiciary believes that the advisory opinion may create a conflict of interest or perception of bias, it may assign the advisory opinion to a visiting judge.
- 2.
- a. The Tribal Council hereby waives the immunity of itself and the Tribal Ogema to the Tribal Judiciary, to the full extent of the Tribal Council's constitutional power to do so, to accept, decline, consider, and issue advisory opinions according to rules that the Tribal Judiciary promulgates. However, the Tribal Judiciary shall not accept, consider, or issue an advisory opinion regarding the validity or interpretation of an ordinance, statute, regulation, rule, or policy prior to formal finalization and issuance of the ordinance, statute, rule, or policy in question.
- 2.
- 3.
4. Advisory opinions are expressly limited to the facts and theories posited in the statement provided to the Tribal Judiciary. They are not applicable outside of the scope of those narrow facts and theories.
- 5.
6. Advisory opinions issued by the Tribal Judiciary shall bind all parties involved for a period of at least one year or until subsequent case law, legal doctrine, or legislation requires reconsideration of the advisory opinion. Thereafter, advisory opinions shall constitute persuasive authority in the Tribal Courts, in the Legal Department, and as between other parties. Advisory opinions may not be appealed.
- 7.
8. 1. Nothing in this section should be construed as limiting a person's access to Tribal Judiciary in the event that they have a ripe dispute that may include legal analyses encompassed by those in an advisory opinion.

Article VI. Outside Counsel; Intra-Tribal Litigation; Litigation Task Force

1. *Outside Counsel.* Contracts for all outside counsel shall be negotiated by the Ogema and approved by the Tribal Council. Contracts, letters of engagement or retainer agreements for legal services of any kind for the Tribe shall be administered through the Unified Legal

Department. The administering attorney shall be a point of internal contact for outside counsel and shall have the opportunity to participate in all communications and to discuss the direction of outside counsel's project with the appropriate elected officials or other office. The Unified Legal Department will receive work product and verify invoices received to process for payment.

- a. This subsection shall not operate to prevent outside counsel from fulfilling their obligation to keep elected officials reasonably informed about the status of their legal work.

2. *Intra-Tribal Litigation.*

- a. No Legal Department attorney shall represent any branch, commission, department, officer, or employee of the Tribe in any litigation involving another branch, commission, department, officer, or employee of the Tribe. This prohibition does not prohibit Legal Department attorneys from representing the Tribe in:
 1. Employment matters, including litigation, initiated by present or former employees of the Tribe; or
 2. Other matters, including litigation, initiated by present or former employees or officers of the Tribe, to the extent the matter is outside the scope of the initiating party's employment or official duties; or
 3. Matters initiated against the Tribe, or against any branch, commission, department, officer, or employee of the Tribe, by members of the Tribe who are not directly employed by the Tribe and who do not otherwise occupy a position within the Tribal Government; or
 4. Matters of civil enforcement initiated by the Tribe against employees on matters to the extent that the civil enforcement is unrelated to the employee's job performance.
- b. Any intra-tribal litigation, other than the types of matters described in Section 6.02(a)(1)-(3), must be approved by the Litigation Task Force before it may be commenced.
- c. Parties seeking to commence intra-tribal litigation must first exhaust available alternative remedies under this Ordinance, including requests for opinions and second opinions from the Legal Department and requests for advisory opinions from the Tribal Judiciary. Outside counsel may not be hired for purposes of intra-tribal litigation until the exhaustion requirement of this paragraph is satisfied.

3. *Litigation Task Force.*

- a. The Litigation Task Force shall be comprised of the Tribal Council Speaker or a Unified Legal Department A
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Adopted by Resolution #15-0422-129
Amended by Resolution #19-0206-033

Council Member designated by the Speaker, the Tribal Ogema or designee of the Ogema, and the Tribal Managing Attorney or designee of the Managing Attorney.

- b. The Litigation Task Force shall assign one or more Legal Department attorney to attempt initial dismissal or resolution for each case filed against or on behalf of the Tribe or its entities in Tribal Court. Outside counsel may be retained or assigned after initial attempts at dismissal or resolution.
- c. Outside counsel may be retained prior to initial attempts by the Legal Department to dismiss or resolve the case in instances where technical expertise and experience in a particular area of law or litigation is required as deemed necessary by the Litigation Task Force.
- d. The Litigation Task Force shall receive and coordinate all communications from and directives to outside counsel retained by the Tribe to prepare for or pursue litigation. The Litigation Task Force may, but is not required to, coordinate and manage complex transactional matters handled by outside counsel.
- e. The Litigation Task Force shall be responsible for apprising Tribal Government officials and other interested persons of the status of litigation and for giving internal directives regarding the course of any litigation, whether or not the litigation has been assigned to outside counsel or to the Legal Department.
- f. The Litigation Task Force shall communicate directives from the Tribal Council and the Ogema to outside counsel and to any relevant Legal Department attorney to direct the course of litigation.
- g. The Litigation Task Force shall send all outside counsel a communication apprising the outside counsel of how their communications should be sent to the Tribe.
- h. The Litigation Task Force shall meet, at a minimum, on a bi-monthly basis to review the status of all litigation and to provide a report on the same to the Tribal Council and the Ogema.

Article VII. Notice of Existing Clients and Potential Conflicts; Prohibiting Outside Employment and Pro Bono Services

1. *Notice of Existing Clients Required Prior to Employment.* Legal Department attorneys are employed on a full time basis to represent the Tribe, and, prior to employment in the Legal Department, all attorneys shall provide notice to the Tribal Council and Tribal Ogema of (a) all ongoing outside legal activities, both paid and volunteer, if any; and (b) any existing or former client whose interests may be adverse to the Tribe's interests. Except with specific authorization from the Tribal Council Speaker and Ogema, Legal Department attorneys must withdraw from representing existing clients upon beginning employment with the Tribe. Within a reasonable period after any Legal Department attorney's contract

start date, the attorney shall be responsible for bringing his or her outside legal activities into compliance with all provisions of this Article.

2. *Prohibition on Outside Legal Employment and Pro Bono Services.* Legal Department attorneys shall have the Tribe as a single client, and shall not provide outside legal services to any other client. Pro bono services, unless specifically required by the State Bar of Michigan, are also prohibited as conflicting with the broad array of services provided by, and interests and activities of, the Tribe. Notwithstanding the general prohibitions of this section, Legal Department attorneys may, with pre-authorization by the Tribal Council and Ogema, serve on boards, commissions, or committees of the Tribe, or engage in bar association activities and leadership, to the extent such service does not conflict with the attorney's employment in the Legal Department.
 - a. This subsection shall not operate to prohibit Legal Department attorneys from engaging in business ventures or other outside employment that does not conflict with ethical obligations to the Tribe, reflect negatively on the Tribe, or impair the attorney's ability to perform his or her duties to the Tribe.