

PROTECTION AGAINST DEFAMATION ACT OF 2006
Ordinance # 06-400-08

Article I. Purpose; Findings

1.01. *Purpose.* It is the purpose of this Act to identify legal responsibility for defamatory statements and the level of damages arising out of those statements.

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 protects the rights of members and those persons under its jurisdiction to the freedom of speech, press, peaceful assembly and petition for redress of grievances, *Article III*; and

c. the right to speak or print statements requires that false statements, defamatory statements, or other statements that harm persons, is connected to the responsibility to be sued for damages resulting from those statements, whether oral or printed; and

d. there have been instances where members have sought redress of grievances regarding defamatory statements for which no forum and no action exists under Tribal law, and that such forum and action is necessary to allow members and those persons under the jurisdiction of the Tribe to have some ability to recover damages.

Article II. Adoption; Amendment; Repeal; Severability

2.01. *Adoption.* This Ordinance is adopted by Tribal Council resolution # 06-1129-800.

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

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 *Repeal.* This Ordinance may be repealed in accordance with the procedures set forth in the Administrative Procedures Act - Ordinances.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. *Public official* means an individual who is elected to Tribal Council, Tribal Court, Ogema, Election Board, or an official sitting on a board, committee or commission of the Tribe, or a representative of the Tribe selected or appointed to act in that manner; an individual who has been elected or appointed. Public official also includes employees of the Tribe who perform supervisory functions, including directors, supervisors, managers, lead personnel, and executive and legislative legal counsels.

3.03. *Defamatory statements* mean statements that are untrue that injure the reputation and diminish the esteem, respect or goodwill a person holds in a community, or his or her particular social or political circle. It is called libel when published to third parties in writing, or any other sight sensory media such as television, radio or internet, whether it is based on a written script or not. It is called slander when published to third

parties orally or by any other hearing media that may allow third parties to perceive through the sense of hearing. Libel and slander are referred to in this ordinance as defamatory statements.

3.04. *Malice* means that the statement was made with the knowledge of its falsity or with serious disregard of whether it was false or true. Serious disregard means the person publishing the statement has doubts about the truth of the statement the person is about to publish.

Article IV.

4.01. *Libel and Slander.*

a. Both libel and slander must be published or made in the presence of third parties who the ability to rely or act upon the information received and understand the information provided as diminishing the reputation of the person to whom they are referring. Both libel and slander can be addressed to private individuals and to public officials.

b. Libel and slander of a public official must be made with malice.

4.02. *Damages Authorized.* Except as provided in this section, in actions based on libel or slander the plaintiff is entitled to recover only for the actual damages which he or she has suffered in respect to his or her property, business, trade, profession, occupation, or feelings.

a. Exemplary and punitive damages shall not be recovered in actions for libel unless the plaintiff, before instituting his or her action, gives notice to the defendant to publish a retraction and allows a reasonable time to do so, and proof of the publication or correction shall be admissible in evidence under a denial on the question of the good faith of the defendant, and in mitigation and reduction of exemplary or punitive damages.

b. For libel based on a radio or television broadcast, the retraction shall be made in the same manner and at the same time of the day as the original libel; for libel based on a publication, the retraction shall be published in the same size type, in the same editions and as far as practicable, in substantially the same position as the original libel; and for other libel, the retraction shall be published or communicated in substantially the same manner as the original libel.

4.03. *Defense.* If the defendant in any action for defamation gives notice in a justification that the statements published were true, this notice will serve as proof of absence of malice. However, it may make the defendant liable for the common law tort of invasion of privacy. In an action for defamation, even though the defendant has pleaded or unsuccessfully attempted to prove a justification he or she may prove mitigating circumstances including the sources of his or her information and the ground for his or her belief was true. Damages shall not be awarded in a defamation action for the publication of a fair and true report of matters of public record, a public and official proceeding, or of a governmental notice, announcement, written or recorded report or record generally available to the public, or act or action of a public body, or for a heading of the report which is a fair and true head note of the report. This privilege shall not apply to a libel which is contained in a matter added by a person concerned in the publication or contained in the report of anything said or done at the time and place of the public and official proceeding or governmental notice, announcement, written or recorded report or record generally available to the public, or act or action of a public body, which was not a part of the public and official proceeding or governmental notice, announcement, written or recorded report or record generally available to the public, or act or action of a public body.

4.04. *Liability of Other Parties.* A person against whom a judgment is recovered for damages arising out of the authorship or publication of a libel is entitled to recover contribution in a civil action from all persons who were originally jointly liable for the libel with the defendant or defendants, whether joined as defendants or not, to the same extent as and with the same effect that joint sureties are liable to contribute to each other in cases where they are sureties on the same contract. If the libel has been published in a newspaper, magazine, or other periodical publication or by a radio or television broadcast, the servants and agents of the publisher or proprietor of the periodical or radio or television station or network, and the news agents and other persons

who have been connected with the libel only by selling or distributing the publication containing the libel and who have not acted maliciously in selling or publishing the libel, shall not be required to contribute and shall not be taken into account in determining the amount that any joint tortfeasor is required to contribute under the provisions of this section. If the author of the libel acted maliciously in composing or securing the printing or the publication of the libel and the printer, publisher, or distributor of the libel acted in good faith and without malice in printing and publishing the libel, the author of the libel is liable in a civil action to that printer, publisher, or distributor for the entire amount of the damages which are recovered against and paid by that printer, publisher, or distributor.

4.05. *Prior Recover - Substantially Same Action.* In actions brought for the recovery of damages for libel in this jurisdiction, it is competent for the defendant or defendants in the action to show in evidence upon the trial of the action that the plaintiff in the action has previously recovered a judgment for damages in an action for libel to the same or substantially the same purport or effect as the libel for the recovery of damages for which the action has been brought, or that the plaintiff in the action has previously brought an action for the libel or has received or agreed to receive compensation for the libel.

4.06. An action for libel or slander shall not be brought based upon a communication involving public officials unless the claim is sustained by clear and convincing proof that the defamatory falsehood was published with knowledge that it was false or with reckless disregard of whether or not it was false.

4.07. *Private Individuals.* An action for libel or slander shall not be brought based upon a communication involving a private individual unless the defamatory falsehood concerns the private individual and was published negligently. Recovery under this provision shall be limited to economic damages including attorney fees.

4.08. *Truth as a Defense.* In all actions for defamatory statements the truth may be given in justification as evidence; and, if it appears that the matter charged as defamatory is true and was published with good motives and for justifiable ends, the civil complaint shall be dismissed.