

**POKAGON BAND OF POTAWATOMI INDIANS  
TRIBAL COURT CODE  
Pokagon Code No. 10-21- 2002**

**Section 1. Title**

This code shall be known as the Pokagon Band Tribal Court Code.

**Section 2. Courts Established**

The Pokagon Band of Potawatomi Indians (the "Band") hereby establishes the Tribal Court of the Pokagon Band of Potawatomi Indians (the "Tribal Court") and the Court of Appeals of the Pokagon Band of Potawatomi Indians (the "Court of Appeals").

**Section 3. Jurisdiction**

**A. Tribal Court**

1. The Tribal Court shall have general civil and criminal jurisdiction over all causes of action except as may be limited by the Band's Constitution, by applicable federal law, or by existing or hereinafter enacted tribal resolutions or laws. The Tribal Court shall have original jurisdiction, without limitation, over:
  - a. civil claims that arise on or relate to land held in trust for the Band by the United States;
  - b. violations of criminal law of the Pokagon Band by members of the Band and other Native Americans on the Reservation;
  - c. civil claims relating to contracts in which the Band or any of its agencies or instrumentalities is a party, and in which the Tribal Council has unequivocally waived the Band's sovereign immunity from suit;
  - d. tort claims against the Band, or any of its agencies, instrumentalities, officers or employees, but only to the extent provided in the Pokagon Band of Potawatomi Indians Tort Claims Ordinance;
  - e. matters arising under the Indian Child Welfare Act and the Pokagon Band of Potawatomi Indians Restoration Act; and

- f. actions arising under the constitution and laws of the Band.
2. The Tribal Court shall not exercise civil jurisdiction over any action arising from a contract or agreement to which the Band, or an agency or instrumentality of the Band, is a party if such contract contains an express provision prohibiting the exercise of jurisdiction by the Tribal Court, whether such contract was entered into prior to or subsequent to the enactment of this law; provided that the Tribal Court shall have jurisdiction to enforce, according to its terms, an agreement to arbitrate or an arbitration award relating to such a contract that provides for arbitration.
3. The Tribal Court shall have the power to issue any civil or criminal process, writs or other orders necessary and proper to the exercise of its jurisdiction.

## **B. Court of Appeals**

1. The Court of Appeals shall have jurisdiction to hear all appeals arising from Tribal Court decisions or proceedings. Decisions of the Court of Appeals on all matters within its jurisdiction shall be final, and shall not be subject to appeal to the Tribal Council.
2. The Court of Appeals shall have the power to issue any writs or orders necessary and proper to the exercise of its jurisdiction.

## **Section 4. Composition**

### **A. Tribal Court**

The Tribal Court shall consist of a Chief Judge and an Associate Judge, each appointed by majority vote of the Tribal Council at a meeting at which a required quorum, plus one additional council member, is present. Each judge must be at least thirty (30) years of age, and an attorney who is, or has been, licensed to practice law before the courts of a state in the United States, and who has not been disbarred from practicing law in any tribal, federal, or state court, provided, however, that if a person has been disbarred but later reinstated, such a person shall be eligible. The Chief Judge shall preside over all matters filed in the Tribal Court unless unavailable or excused from serving due to a conflict of interest, in which case the Associate Judge shall preside.

## **B. Court of Appeals**

The Court of Appeals shall consist of three (3) judges, each appointed by majority vote of the Tribal Council at a meeting at which a required quorum, plus one additional council member, is present. At least two (2) of those judges shall be attorneys who are, or have been, licensed to practice law before the courts of a state in the United States, and who have not been disbarred from practicing law in any tribal, federal or state court, provided, however, that if a person has been disbarred but later reinstated, such person shall be eligible. The other judge shall be either a registered voter of the Pokagon Band or an attorney who is, or has been, licensed to practice law before the courts of a state in the United States, and who has not been disbarred from practicing law in any tribal, federal or state court, provided, however, that if a person has been disbarred but later reinstated, such person shall be eligible. No Court of Appeals judge may sit simultaneously as a Tribal Court judge. Each Court of Appeals judge shall be at least thirty (30) years of age.

### **Section 5. Initial and Succeeding Terms of Office**

- A. Except as provided in subsection 5(D), the initial term of office for the first Chief Judge appointed following adoption of this code shall be four (4) years and that for the Associate Judge shall be two (2) years. The initial terms of the initial Appellate Judges appointed following adoption of this code shall be one (1) year for one Judge, two (2) years for one Judge and three (3) years for one Judge. The Council shall designate the term for each of the initial judges of the Court of Appeals.
- B. Terms of office for all Judges of the Tribal Court and Court of Appeals, after expiration of the initial terms described in subsection (A) above, shall be four (4) years, subject to renewal.
- C. Judges shall continue in office until their successors are duly appointed and installed in office, or until they have died, resigned, or been removed from office.
- D. In the event that the Tribal Council has appointed any Judge to the Tribal Court prior to the adoption of this code, such Judge shall continue to serve for a one-year term commencing with the adoption of this code.

### **Section 6. Qualifications**

In addition to the qualifications in Section 4 above, no person shall be eligible to serve as a judge if he/she:

- A. Is presently a candidate for or a member of Tribal Council, any Salary Commission of the Band, or the Band's Election Board; or

- B. Is presently an employee of the Band, or any Band enterprise or other entity controlled by or affiliated with the Band, or a member of any other board or commission of the Band or any Band enterprise or other entity controlled by or affiliated with the Band, and does not agree to resign from such position or employment upon appointment as a judge; or
- C. Has not undergone a background check, by a professional, independent agency, which has been reviewed and approved by the Tribal Council.

**Section 7. Practice and Procedure**

- A. The members of the Court of Appeals shall establish general rules for practice, procedure and evidence for the Tribal Court and the Court of Appeals. Such rules shall be maintained as records of the Band.
- B. Prior to adoption of such rules, practice, procedure and evidence in the Tribal Court and the Court of Appeals shall be governed by the rules of practice and evidence in effect in the courts of the State of Michigan, with such variations as the Chief Judge, the Associate Judge, or Court of Appeals may deem appropriate by order in individual cases.
- C. The Tribal Court shall endeavor to issue rulings on motions and trials within 30 calendar days of submission of briefs or completion of hearing, and, upon the filing of a request by a party for findings of fact and conclusions of law, the Tribal Court shall, within 15 days of filing of the request, issue findings of fact and conclusions of law.
- D. The Court of Appeals shall endeavor to issue its decisions and orders within 30 calendar days following the conclusion of any oral argument or submission of final briefs if oral argument is not held.
- E. Notwithstanding any other provision of this Code, there shall be no right to jury in the Tribal Court in any civil matter or for any crime not punishable by imprisonment.
- F. The Tribal Court shall enforce the judgments decrees, orders, warrants, subpoenas, records, and other judicial acts of the courts of Michigan; and such process from the courts of Michigan shall be presumed valid by the Tribal Court unless an objecting party demonstrates that (1) the state court lacked personal or subject-matter jurisdiction, or (2) the judgment, decree, warrant, subpoena, record, or other judicial act of the state court (a) was obtained by fraud, duress, or coercion, (b) was obtained without fair notice or a fair hearing, (c) is repugnant to the public policy of the Band, or (d) is not final under the laws and procedure of the state court. This subsection

(F) shall apply as well to the judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts of the courts of Indiana and other states, provided that the courts of such states, in the view of the Tribal Court, have provided or will provide reciprocal enforcement of Tribal Court judgments, decrees, orders, warrants, subpoenas, records, and other judicial acts. This rule does not apply to judgments or orders that federal law requires by given full faith and credit.

### **Section 8. Substantive Law**

- A. The Tribal Court and the Court of Appeals shall apply the law of the Band, and, to the extent applicable, the law of the United States.
- B. In contract causes of action, where the contract does not specify the governing law, the Tribal Court and the Court of Appeals shall apply the law of the state having the most significant relationship to the matter in dispute in accordance with conflict of laws rules in the State of Michigan.
- C. All decisions of the Tribal Court and the Court of Appeals shall be consistent with prior decisions of the Tribal Court and the Court of Appeals whenever reasonably possible.

### **Section 9. Removal of Judges**

- A. The Tribal Council may call for the removal of any judge of the Tribal Court or Court of Appeals by majority vote of the Tribal Council at a meeting at which a required quorum, plus one additional council member, is present, finding that reasonable cause exists to believe that any of the following reasons for removal exists:
  - 1. Neglect of duty;
  - 2. Misconduct in office;
  - 3. Physical or mental disability which prevents the performance of duties;
  - 4. Commission of any act which resulted in the suspension of the Judge's right to practice law before any, tribal, state or federal court;
  - 5. Conviction of a felony while a judge; or
  - 6. Unethical conduct as defined by any judicial code of conduct adopted by the Court of Appeals or by the American Bar Association.

- B. No more than one judge may be the subject of any removal proceeding at one time.
- C. Upon affirmative vote of a call for removal under subsection A, the Tribal Council may, at its discretion, suspend the judge, with pay, until final disposition of the call for removal as provided in subsection D.
- D. Any call for removal of a Tribal Judge shall be subject to a hearing before the Tribal Council, which shall be subject to the following procedures:
  - 1. Grounds for removal must be set forth with specificity by the Tribal Council, which shall schedule a timely hearing on the charges, and cause the Judge subject to removal to be notified in writing of the specific charges. Notice of the hearing and charges shall be given in person or by registered or certified mail sent at least thirty (30) days prior to the hearing.
  - 2. The Judge subject to removal may appear and be heard at this hearing, with or without the assistance of private legal counsel. Any hearing shall be recorded in a manner allowing judicial review.
  - 3. If the Tribal Council, at the meeting held within 30 days after completion of the hearing at which a required quorum, plus one additional council member, is present, finds that any of the grounds for removal stated in the notice exist, it shall order the Judge removed from office.
  - 4. If the Tribal Council by vote fails to find that any of the grounds for removal stated in the notice exist, or takes no vote on the proposed removal within 30 days of the completion of the hearing, the removal proceeding shall be deemed dismissed.
  - 5. All Tribal Council removal orders shall be in writing, setting forth the facts and conclusions that serve as the basis for the order, and shall be subject to review by the Court of Appeals by petition of the aggrieved Judge filed in the Court of Appeals within ten (10) calendar days of issuance of the Council's order, provided, however, that if the removal order addresses a Judge of the Court of Appeals, the Chief Judge of the Tribal Court shall sit in his or her place for any review of the Tribal Council's removal order. The Court of Appeals may remand the matter to the Tribal Council to remedy any procedural errors found by the Court, but otherwise shall reverse a removal decision only if it is not supported by substantial evidence in the hearing record.

## **Section 10. Judicial Responsibility**

Judges on the Tribal Court and the Court of Appeals shall:

- A. Preserve and protect the Constitution and laws of the Band;
- B. Protect the rights of individual members;
- C. Conduct court with proper decorum;
- D. Give the deference to previous tribal court decisions;
- E. Excuse himself/herself in any matter which presents an actual or apparent conflict-of-interest, and abide by the Court of Appeals' and the American Bar Association's Code of Judicial Conduct; and
- F. In all other respects provide a forum for the fair administration of justice.

## **Section 11. Compensation**

The compensation of each judge shall be set by the Tribal Council. The judges' salaries shall be commensurate with the average salaries of similarly situated judges in similarly situated Bands or Tribes in Western Michigan. The salary of any judge shall not be reduced during his/her service on the Tribal Court or the Court of Appeals.

## **Section 12. Sovereign Immunity**

Jurisdiction of the Tribal Court shall not extend to any action against the Band or its officials unless the sovereign immunity of the Band has been explicitly and unequivocally waived by the Tribal Council, or explicitly and unequivocally waived by an authorized Tribal entity or authority pursuant to an express authorization of the Tribal Council.

## **Section 13. Admission to Practice**

- A. The Tribal Court shall allow attorneys who are admitted to practice law in any state, and who are in good standing with the bars of all states in which they are admitted, to practice before the Tribal Court. Each applicant for admission shall complete and file an application prepared or approved by the Chief Judge. Admission to practice before the Tribal Court shall be deemed admission to practice before the Appellate Court.
- B. The Tribal Court may admit to practice, on such terms and conditions as appear appropriate, a lay advocate who is a member of the Band; provided

that no lay advocate who has been convicted of a felony may practice before the Tribal Court.

#### **Section 14. Clerk**

- A. Tribal Council shall appoint a clerk of the Tribal Court and Court of Appeals to:
1. provide administrative assistance to the Tribal Court and Court of Appeals;
  2. oversee the budget and accounts of the Tribal Court and the Court of Appeals;
  3. administer federal funding and programs that support the Tribal Court and Court of Appeals;
  4. perform such duties as may be designated by the Judges of the Tribal Court and the Court of Appeals; and
  5. subject to the approval of the Chief Judge, hire and supervise additional staff as may be necessary for the proper administration of the Band's judicial system.

#### **Section 15. Fees**

The Chief Judge shall recommend a schedule of filing fees to the Tribal Council.

#### **Section 16. Tribal Court Budget.**

The Chief Judge shall propose an annual budget, covering the Tribal Court and the Court of Appeals, to the Tribal Council no later than August 1 for each upcoming fiscal year.

#### **Section 17. Tribal Court Funding.**

The Tribal Council shall fund the Tribal Court and the Court of Appeals on an annual basis to provide for the Tribal Judiciary's proper functioning and administration.

#### **Section 18. Reports**

The Chief Judge shall, after soliciting comment from the Clerk and the judges of the Court of Appeals, provide a quarterly report to the Tribal Council, describing the functioning of the Tribal Court and the Court of Appeals, including budgetary performance and projections, and setting forth specific recommendations for

improvements. If the quarterly report reflects the need for additional funding, the Tribal Council shall address the appropriation of additional funds to the Tribal Court at its next regular meeting.

**Section 19. Prior Ordinance Repealed.**

Resolution 00-06-26-02 adopted by the Tribal Council on June 26, 2000 is repealed; provided, however, that such repeal shall not affect any determination or exercise of jurisdiction under Resolution 00-06-26-02 during this period of its effectiveness, or the continuing validity or enforceability of any process, writ, or preliminary or final order, judgment or decree issued by the Tribal Court established under the Prior Resolution.

**LEGISLATIVE HISTORY**

*Enacted on June 26, 2000, by Resolution No. 00-06-26-02, January 30, 2001, Res. No. 01-01-30-01, repealed resolution No. 00-06-26-02 and enacted the Pokagon Band tribal court Ordinance; provide, however, that such repeal shall not affect any determination or exercise of jurisdiction under Resolution No. 00-06-26-02 during the period of its effectiveness, or the continuing validity or enforceability of any process, writ, or preliminary or final order, judgment or decree issued by the Tribal Court established under the Prior Resolution, Oct. 21, 2002, Res. No. 02-10-21-03, Section 19, amended to correct typographical error regarding resolution number 00-06-26-01, should have been resolution 00-06-26-02, Oct. 21, 2002, Res. No. 02-10-21-04, amended title of Ordinance to read Code throughout the document, amended Section 4,5,7, to include provisions for an Associate Judge.*