

**RULES OF JUDICIAL BOARD
REGARDING
INVESTIGATION AND DISCIPLINE OF JUDGES, COURT PERSONNEL AND
ELECTED OFFICIALS**

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RULE 1. Application General.

These rules apply to all judges, elected officials and court personnel of the Turtle Mountain Band of Chippewa Indians.

RULE 2. Application of Code or Judicial Conduct.

The Code of Judicial Conduct redefines the standard of conduct which should be observed, together with the laws of the Tribe and of the United States, by all judges, elected officials and court personnel of this tribe as of its effective date. (Amendment date needed)

RULE 3. Interested Party.

A judge, elected official or court personnel who is a member of the Judicial Board may not participate as such in any proceedings involving his or her own discipline, censure, removal or retirement.

RULE 4. Confidentiality of Proceedings.

- (a) All proceedings of the Judicial Board prior to the formal hearings held pursuant to Rules 10 and 11 of these rules shall be closed. Formal hearings held pursuant to rules 10 and 11 are open.
- (b) All papers, files and records of the Judicial Board made part of the record of a formal hearing held pursuant to Rules 10 and 11 of these rules, shall be public records open and accessible for inspection during reasonable office hours.
- (c) If a judge is publicly charged in proceedings before the Judicial Board resulting in substantial unfairness to him or her, the Judicial Board may, at the request of the judge, elected official or personnel involved, issue a short statement of clarification or correction.

If a judge, elected official or court personnel is publicly associated with having engaged in reprehensible conduct or having committed a violation of the Code of Judicial Conduct, and after a preliminary investigation or a formal hearing it is determined there is no basis for further proceedings or for a recommendation of discipline, the Judicial Board may issue a short explanatory statement.

If a formal hearing has been ordered in a proceeding in which the subject matter is generally known to the public, in which there is broad public interest, and in which confidence in the administration of justice is threatened due to lack of information concerning the status of the proceeding and requirements of due process, the Judicial Board may issue one or more short announcements confirming the hearing, clarifying the procedural aspects, and defending the right of a judge, elected official or court personnel to a fair hearing.

- (d) Every witness in every proceeding hereunder shall testify under oath. If the Judicial Board finds cause to believe that any witness under oath has willfully and intentionally testified falsely, the Judicial Board may direct the Chairman or one of its members or agents to report such findings and the details leading thereto, including any transcript thereof, to the Tribal Prosecutor for action on a charge of

perjury as he or she deems necessary of advisable. In any subsequent prosecution for perjury based thereon, the proceedings before the Judicial Board or Impeachment Judge relevant thereto shall lose their confidentiality under this rule.

All notices, papers and pleadings delivered or mailed to a judge pursuant to these rules shall be enclosed in a securely-sealed envelope marked "confidential," except in cases where personal service is required.

RULE 5. Preliminary Investigation.

- (a) The Judicial Board, upon receiving a written statement of complaint, not obviously unfounded or frivolous, alleging facts indicating that censure, removal, retirement, suspension, or other disciplinary action should be considered, shall make a preliminary investigation to determine whether formal proceedings should be instituted and a hearing held. The Judicial Board on its own motion and without receiving a written statement of complaint may make inquiry and a preliminary investigation with respect to whether an employee, elected official or a judge is guilty of misconduct in office or is physically or mentally disabled.
- (b) The judge, elected official or employee who is the subject of an investigation shall be notified of the investigation, the nature of the charge, and the name of the person making the written statement of complaint or that the investigation is on the Judicial Board's own motion, and shall be afforded reasonable opportunity in the course of the preliminary investigation to present such matters as he or she may choose. The notice shall be given by personal service or by prepaid certified or registered mail addressed to the party at his or her chambers or at his or her last known address.
- (c) If the preliminary investigation does not disclose sufficient cause to warrant institution of formal proceedings, the Judicial Board may:
 - (1) terminate its investigation and the judge, elected official or employee and the complainant shall be so notified; or
 - (2) privately censure the judge, employee or elected official.

RULE 6. Response by Judge, Elected Official or Employee.

A judge, elected official or employee within the time prescribed by the Judicial Board shall respond to the merits of a letter from the Judicial Board sent either before or during a preliminary investigation.

RULE 7. Notice of Formal Proceedings.

- (A) After the preliminary investigation has been completed, if the Judicial Board concludes that formal proceedings should be instituted, the Judicial Board shall issue a written notice to the judge, elected official, or employee advising him or her of the institution of formal proceedings to inquire into the charges against him or

her.

- (B) The notice shall be served personally upon the judge, elected official or employee by a person designated by the Judicial Board, but if it appears to the Judicial Board upon affidavit that, after reasonable effort for a period of 10 days, personal service could not be made, service may be made upon the party by certified or registered mail with copies of the notice addressed to the party at his or her chambers, office or at his or her last known address.

(C) The notice shall specify in ordinary and concise language the charges against the judge, elected official or employee and the alleged facts upon which those charges are based, and shall advise the party of his or her right to file a written answer to the charges against him or her within 20 days after service of the notice upon him or her.

RULE 8. Answer.

Within 20 days after service of the notice of formal proceedings, the judge, elected official or employee may file with the secretary of the Judicial Board a responsive answer. The notice of formal proceedings and answer shall constitute the pleadings and no further pleadings shall be filed, except amendments, and no motion challenging the adequacy of the pleadings shall be allowed.

RULE 9. Setting for Hearing Before Judicial Board.

Upon the filing of answer or upon expiration of the time for its filing, the Judicial Board shall order a hearing to be held before an Impeachment Judge or the Judicial Board concerning the censure, removal, retirement, suspension, or other disciplinary action against the judge, elected official or employee. The Impeachment Judge, or other appropriate authority shall set a time and a place for hearing and shall give notice of the hearing by mail to the judge, elected official or employee at least 30 days before the date set.

RULE 10. Hearing.

- (a) At the time and place set for hearing, the Impeachment Judge shall proceed with the hearing, whether or not the judge has filed an answer or appears at the hearing.

An attorney appointed by the Judicial Board shall present the case in support of the charges in the notice of formal proceedings.

- (b) The failure of the judge, elected official or employee to answer or to appear at the hearing may not be taken as evidence of the truth of the facts alleged to constitute grounds for censure, removal, retirement, suspension, or other disciplinary action. The failure of the judge, elected official, or employee to testify in his or her own behalf or to submit to any medical examination requested by the Judicial Board may be considered by the Impeachment Judge, or other appropriate authority, unless it appears that the failure was due to circumstances beyond his or her control.

- (c) The proceedings at the hearing shall be recorded by either a qualified court reporter or an electronic recording device.

RULE 11. Evidence.

At a hearing before the Impeachment Judge or other appropriate authority, the admissibility of evidence shall be determined, insofar as circumstances permit, in accordance with the Tribal Rules of Civil Procedure, and oral evidence shall be taken only on oath or affirmation.

RULE 12. Procedural Rights of Judge.

- (a) In proceedings involving his or her censure, removal, retirement, suspension, or other disciplinary action, a judge, elected official, or employee has the right, and shall be afforded reasonable opportunity, to defend against the charges by the introduction of evidence, to be represented by counsel, and to examine and cross-examine witnesses. He or she also has the right to the issuance of subpoenas for attendance of witnesses to testify or produce books, papers, documents, or tangible things.
- (b) If the Judicial Board orders the testimony transcribed, a copy thereof shall be made available to the judge or other appropriate authority. If the Judicial Board does not transcribe the testimony, the judge or other appropriate authority shall have the right without any order or approval to order his or her own transcript at his or her own expense.
- (c) If the judge, elected official or employee is adjudged insane or incompetent, or if it appears to the Impeachment Judge or other appropriate authority at any time during the proceedings that the Judge, elected official, or employee is not competent to act for himself or herself, the Impeachment Judge, or other appropriate authority shall appoint a guardian ad litem, preference shall be given, whenever possible, to members of the judge's, elected official's or employee's immediate family. The guardian or guardian ad litem may claim and exercise any right and privilege and make any defense for the judge, elected official or employee with the same force and effect as if claimed, exercised, or made by the Judge, elected official or employee, if competent, and whenever these rules provide for serving or giving notice or sending any matter to the judge, elected official, or employee, the notice or matter shall be served, given, or sent to the guardian or guardian ad litem.

RULE 13. Subpoenas and Depositions.

The Judicial Board and the judge shall have the power of subpoena and power to order the deposition of a person as provided by the Tribal Rules of Civil Procedure.

RULE 14. Amendments to Notice of Answer.

The Impeachment Judge or other appropriate authority, at any time before the

conclusion of the hearing, may allow or require amendments to the notice of formal proceedings and may allow amendments to the answer. The notice may be amended to conform to proof or set forth additional facts, whether occurring before or after the commencement of the hearing. If an amendment is made, the judge, elected official or employee shall be given reasonable time both to answer the amendment and to prepare and present his or her defense against the matters charged thereby.

RULE 15. Hearing Additional Evidence.

The Impeachment Judge or other appropriate authority may order a hearing for the taking of additional evidence at any time while the matter is pending. The order shall set the time and place of hearing and shall indicate the matters on which the evidence is to be taken. A copy of such order shall be sent by mail to the judge, elected official or employee at least 30 days prior to the date of hearing.

RULE 16. Impeachment Judge and Other Appropriate Authority.

If the Impeachment Judge or Other Appropriate Authority finds good cause, based upon clear and convincing evidence, he or she may censure, retire, suspend, impeach, or otherwise discipline the judge, elected official or employee.

RULE 17. Impeachment Judge Or Appropriate Authority Action.

If the Impeachment Judge or other appropriate authority shall keep a record of all proceedings concerning a judge, elected official or employee. The Impeachment Judge's determination shall be entered in the record and notice thereof shall be mailed to the Judge, elected official or employee. In all proceedings resulting in a censure, removal, retirement, suspension, or other disciplinary action, the Impeachment Judge or other appropriate authority shall make written findings of fact, conclusions of law, order for judgment and judgement with respect to the issues of fact and law in the proceedings.

RULE 18. Review by Tribal Court of Appeals.

A petition to the Tribal Court of Appeals to modify or reject the order of the Impeachment Judge or other appropriate authority for censure, removal, retirement, suspension, impeachment, or other disciplinary action against a judge, elected official or employee may be filed within 30 days after the filing with the Clerk of Tribal Court of a certified copy of the order of the Impeachment Judge or other appropriate authority. The petition shall be verified, be based on the record, specify the grounds relied on, and be accompanied by the judge's brief and proof of service on the secretary of the Judicial Board. At least 30 days before the return day the Judicial Board shall serve upon the judge, elected official or employee and file with the Clerk of Tribal Court a responsive brief. Within 15 days after service of the Judicial Board's brief the judge, elected official or employee may file with the Clerk of Tribal Court a reply brief which shall be served on the secretary of the Judicial Board.

RULE 19. Decision by Tribal Court of Appeals.

The Tribal Court of Appeals shall review the record of the proceedings on the law and the facts and shall file a written opinion and judgment directing censure, removal, retirement, suspension, impeachment, or other disciplinary action or dismissal of the complaint as it finds just and proper, or the court may accept, reject or modify, in whole or in part, the order of the Impeachment Judge or other appropriate authority. If no petition to appeal is filed by the judge, elected official or employee, the order of the Impeachment Judge or other appropriate authority shall be final.

RULE 20. Discipline, Suspension, Retirement, or Removal by Consent.

Upon consent of the judge, an order of censure, removal, retirement, suspension, impeachment or other disciplinary action may be entered by the Impeachment Judge or other appropriate authority at any stage of the proceedings under these rules.

RULE 21. Remedies Not Exclusive.

These rules do not replace or supersede any criminal penalties provided by law.

RULE 22. Suspension of Judge, Elected Official or Employee Pending Final Determination.

If the Judicial Board deems there is probable cause to believe that it is in the best interests of the Tribe to suspend a judge, elected official or employee while an investigation and/or disciplinary action is pending, it may suspend the accused judge, elected official or employee with pay. If the disciplinary action results in removal of the judge, elected official or employee from office, he or she shall be ordered by the Judicial Board to reimburse the Tribe for all pay and benefits received during the period of suspension.

RULE 23. Filing Fee.

All complaints to the Judicial Board must be verified under penalty of perjury and be accompanied by a \$50.00 filing fee to the Judicial Board.

RULE 24. Duration of Impeachment Sanction.

No judge of the Turtle Mountain Judicial Branch of Government, once impeached, shall ever be eligible to hold the office of "Judge of the Tribal Court" again.

(No judge of the Turtle Mountain Judicial Branch of Government, once impeached, shall be eligible to hold office of "Judge of the Tribal Court" for the remainder of the term in which the judge was originally elected or appointed. Nothing within this rule shall preclude any impeached judge from seeking and holding the office of "Judge of the Tribal Court" at the next general election following the end of the term from which they were impeached).

RULE 25. Requirement of Written Court Orders.

All formal civil causes of action held before the tribal court shall be concluded with a written order that includes “findings of fact and conclusions of law” and said written order shall be available to the parties within a reasonable amount of time following the conclusion of the hearing.

RULE 26. Limitation on Ex-Parte Orders.

The tribal court shall never accept ex-parte orders requested by one of the party litigants unless such request is submitted by a official tribal entity and is an emergency. (For example: Police Department or Child Welfare Investigator’s removal of children). The Tribal Court shall always make sure both parties are present for the fair administration of justice.

RULE 27. Limitation on use of Conviction Records.

To encourage the fair administration of justice in criminal proceedings, all judges shall not have access, view or consider prior conviction records, (wrap sheets) from police or other official entities until a determination of guilt or innocence has been rendered. Prior conviction records can be used by judges during the sentencing phase of criminal trial proceedings.

RULE 28. Misuse of Office or Authority.

To encourage the fair administration of justice and eliminate official obstruction of justice, all judges, elected officials and employee’s of the Judicial Branch of Government are prohibited from misusing their official positions by engaging in practices such as but not limited to: purposefully failing to schedule hearings, delaying proceedings or causes of actions that are submitted to the court; causing unnecessary delay in the timely advancement of any filed cause of action; using intimidation or hostile attitude to discourage the filing of cases, and discussing filed cases in public areas or with disregard that the public may overhear discussion of filed cases. **Violation of this section by a member of the court staff shall be classified as a “Major Offense” as identified in the Turtle Mountain Tribal Personnel Policy Manual, and a offense that is fully sanctionable pursuant to the Judicial Code of Conduct and procedurally processed in accord with the Rules of Judicial Board regarding the Investigation and Discipline of Judges.**

RULE 29. Limitation on Restraining Orders In Domestic Cases.

To encourage the fair administration of justice in domestic civil proceedings, the court shall refrain from the routine issuance of Vise Versa Restraining Orders but shall only issue said restraining order upon written petition presented before the court. The tribal court shall issue Ex Parte Orders in emergencies only.

RULE 30. Mandatory Drug Testing of employees, judges and Judicial Board.

To encourage the fair administration of justice, eliminate the potential of inappropriate and illegal behavior, enhance the confidence of the tribal community in the Judicial Branch of Government and further the Drug Free Workplace Act of 1988, a policy of mandatory drug testing shall be implemented as a condition of continued employment and/or retention of public office within the Judicial Branch of Government. All judges, elected officials, employee's and members of the Judicial Board shall submit to a drug test within 30 days of the adoption of this policy. Future drug tests shall be conducted on a random schedule. Failure to voluntarily comply with this policy shall be deemed grounds for immediate dismissal for employees. In the case of judges, impeachment proceedings will be initiated and the judge will be immediately suspended. In the case of other elected officials, recall procedures will be immediately commenced or another remedy will immediately begin.

RULE 31. Programs and/or components added to the Judicial Branch of Government.

To encourage the fair administration of justice and provide for continuity and accountability to the public, it shall be the policy of the Judicial Branch of Government to place all administrative authority of any program which exercises any judicial authority within the Turtle Mountain Jurisdiction under the supervision and direction of the designated Court Administrator and the Chief Judge.

RULE 32. Modifications in work and/or responsibility.

To encourage the fair administration of justice and assure that the public will continue to enjoy the speedy administration of justice and assist the Judicial Board in their constitutionally charged responsibility to determine the number of Associate Judges needed, any addition of work or responsibility to the existing Chief and Associate Judges of the Turtle Mountain Tribal Court by the addition of new programs to the Judicial Branch of Government shall be first approved by the Judicial Board.

RULE 33. Surety Bail Bond.

To encourage the fair administration of justice and ensure that all Indian defendants and persons working within the Judicial Branch of Government are afforded equal treatment, it shall be the policy of the Judicial Branch of Government to apply equally Chapter 1.09 Bail of the Turtle Mountain code of 1976. The acceptance of surety bail bond procedure as identified in Section 1.0903 of the Turtle Mountain Tribal code shall require the taking of things of actual value such as a Bondman's check, or the persons title to items of property or other such thing of value to assure the appearance of the defendant for trial. A signature or written/oral promise is insufficient to constitute a surety bond and will not be accepted as a surety.

REPEAL OF PRIOR CODE OF ETHICS

This Amended Code of Ethics approved by the Judicial Board shall repeal any and all prior Codes of Ethics regarding judges, elected officials and tribal court employee's effective **May 29, 2003**