



TRIBAL RULES OF JUDICIAL CONDUCT



CENTRAL COUNCIL OF THE TLINGIT & HAIDA
INDIAN TRIBES OF ALASKA



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PREAMBLE

The Tlingit & Haida Tribal Court is grounded in the principle that an unbiased and competent judiciary is essential to the administration of justice. The purpose of the Tlingit & Haida Tribal Court Rules of Judicial Conduct (hereinafter "Rules") is to promote a spirit and appearance of fairness toward persons coming before the courts of the Tlingit & Haida Tribes and to ensure due process in all proceedings.

The Rules are intended to establish basic standards governing the conduct of all Tlingit & Haida tribal judges. The Rules are not intended as an exhaustive guide for conduct. Judges should be governed in their judicial and personal activities by general ethical standards. The Rules are designed to define roles and responsibilities, and implement the standards for regulation of judicial conduct through disciplinary proceedings or removal as set forth in the Tlingit & Haida Tribal Code.

The Rules are to be applied consistently with applicable tribal laws, rules of court, decisional law, tribal tradition and custom, common sense and in the context of all relevant circumstances.

SECTION 1. TITLE

This Chapter is known as the Tlingit & Haida Tribal Court Rules of Judicial Conduct.

SECTION 2. APPLICABILITY OF RULES

Any person who has been appointed or elected as a judge of the Tlingit & Haida Tribal Court is subject to these Rules.

- A.** "Presiding Judges" and "Magistrates Judges" are paid staff members of Tlingit & Haida and shall adhere to these rules at all times.
- B.** Part-time Judges, Judges Pro Tempore and elected judges are subject to these rules, with exceptions. A part-time judge is a judge who serves on a less than full time but regularly scheduled basis. A Judge Pro Tempore is a judge who serves on a temporary fill-in basis as needed. An elected judge serves the court on a limited basis for a specific purpose.

Recognizing that these judges are not employed members of the Court, they may have other jobs, duties and tasks that prevent them from fully complying with all mandates of these rules. These judges shall abide by these rules, but are free to continue to provide representation as attorneys, but are limited as follows:

Shall not act as an attorney in a proceeding in which they have served as judge or in any related proceeding; and shall not allow the practice of law to interfere with the impartial fulfillment of the judge's judicial duties.

SECTION 3. CANONS

Canon 1. A Judge shall uphold the integrity and independence of the Judiciary. An independent and honorable judiciary is essential to justice in the Tlingit & Haida Tribes. A tribal judge shall help create and maintain such judiciary, and shall observe high standards of conduct toward achieving this goal. A judge shall maintain a separation between the judicial branch and other branches of tribal government and shall avoid any contact or duty that violates such a

separation. The provisions of these Rules are to be construed and applied to further that objective.

Canon 2. A Judge Shall Avoid Impropriety and the Appearance of Impropriety in all the Judge's Activities.

- A.** A judge shall respect and comply with the laws and traditions of the Tlingit & Haida and shall at all times act in a manner that promotes public confidence in the honesty and impartiality of the Tlingit & Haida judiciary.
- B.** A judge shall not allow family, social or other personal relationships to influence his or her judicial conduct. A judge shall not attempt to use the prestige of their judicial office to advance the private interests of others; nor shall they convey the impression that anyone has special influence on him or her as judge. A judge shall not testify voluntarily as a character witness. A judge shall not hold membership in any organization that practices discrimination; provided however that this does not preclude a judge from being a member of an Indian tribe or from membership in an organization in which membership is based upon the political status of being Indian.

Canon 3. A Judge Shall Perform the Duties of Judicial Office Impartially and Diligently.

- A.** Judicial Duties in General. The judicial duties of a staff judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of office prescribed by Tlingit & Haida Tribal Code. In performance of these duties, the following standards apply:
 - 1.** Adjudicative Responsibilities.
 - a.** A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.
 - b.** A judge shall hear and decide promptly matters assigned to the judge except those in which disqualification is required.
 - c.** A judge shall require order and decorum in proceedings before the judge.
 - d.** A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, attorneys, and others with whom the judge deals in an official capacity and shall require similar conduct of lawyers, staff, court officials and others subject to the judge's direction and control.
 - e.** A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, tribal membership, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, court officials and others subject to the judge's direction or control to do so.
 - 2.** A judge shall require attorneys in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race,

tribal membership, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This section does not preclude legitimate advocacy when race, tribal membership, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

- 3.** Where not permitted by law, a judge shall not initiate, permit or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding except that:

 - a.** Where circumstances require, ex parte communications for scheduling or administrative purposes or emergencies that do not concern substantive matters or issues on the merits are authorized; provided the judge:

 - i.** Reasonably believes that no party will gain a procedural or tactical advantage because of the ex parte communication, and
 - ii.** Makes provision promptly to notify all other parties of the substance of the ex parte communication and allows an opportunity to respond.
 - b.** A judge may obtain the advice of a disinterested expert on the law, tribal tradition or custom applicable to a proceeding before the judge if the judge gives notice to the parties of the person consulted and the substance of the advice.
 - c.** A judge may consult with other judges or with court personnel whose function is to aid the judge in carrying out the judge's adjudicative responsibilities.
 - d.** A judge may, with the consent of the parties, confer separately with the parties and their attorneys to mediate or settle matters pending before the judge.
 - e.** A judge may initiate or consider any ex parte communication when expressly authorized by law to do so.
- 4.** A judge shall abstain from public comment about a pending or impending proceeding in any court, and shall require similar abstention on the part of court personnel subject to the judge's direction and control, unless that person is designated as the spokesperson for the court. This subsection does not prohibit judges from making public statements during their official duties or from explaining for public information the procedures of the court. This section does not apply to proceedings in which the judge is a litigant in a personal capacity.
- 5.** A judge shall not commend or criticize jurors for their verdict other than in a court order or opinion in a proceeding, but may express appreciation to jurors

for their service to the judicial system and the community.

6. A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. A judge shall not directly or indirectly use, disseminate, disclose or in any way reveal confidential information of the Tlingit & Haida, its enterprises, programs, employees, and tribal membership except to the extent authorized by the Tlingit & Haida Tribal Code. Confidential information includes, but is not limited to, data relating to finances, computer programs, budget information, court records when protected by statute, or any other non-public information concerning the governmental business or affairs of the Tlingit & Haida.

B. Disqualification.

1. A judge shall disqualify him or herself on the judge's own initiative in any proceeding in which the judge has reason to believe that they could not act with complete impartiality. A judge acting under this subsection (1) need not state the grounds of disqualification.
2. A judge shall disqualify him or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:
 - a. The judge has a personal bias or prejudice concerning a party or a party's attorney, or personal knowledge of disputed evidentiary facts concerning the proceeding;
 - b. The judge served as a lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge has been a material witness concerning it;
 - c. The judge, or any member of the judge's family or person residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding or has any other interest that could be substantially affected by the proceedings;
 - d. The judge, their spouse or significant other, or a person in a reasonably close family relationship to either of them, or the spouse of such person is:
 - i. A party to the proceeding, or an officer, director or trustee of a party;
 - ii. Acting as an attorney in the proceeding;
 - iii. Known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
 - iv. To the judge's knowledge likely to be a material witness in the proceeding.

- e. A judge shall keep informed about the judge's personal and fiduciary economic interests, and make a reasonable effort to keep informed about the personal economic interests of the judge's spouse or significant other and minor children residing in the judge's household.

C. Alternatives to Disqualification.

- 1. A judge disqualified by the terms of Section B of this Canon may disclose on the record the basis of the judge's disqualification and may ask the parties and their attorneys to consider whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and attorneys without participation of the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.
- 2. A judge may decline to disqualify him or herself in any proceeding in which disqualification might otherwise be required under subsections (1) of this subsection, if no other judge is available and disqualification will result in a failure of justice. In such a case, the judge shall disclose on the record the basis for disqualification and shall thereafter disqualify her or himself if at any time, it is possible to transfer the proceeding to another judge without a failure of justice.

Canon 4. A Judge Shall Regulate Their Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Duties.

- A. Extra-Judicial Activities in General.** A judge shall conduct all of the judge's extra-judicial activities so that they do not:
 - 1. Cast reasonable doubt on the judge's capacity to act impartially as a judge;
 - 2. Demean the judicial office; or
 - 3. Interfere with the proper performance of judicial duties.
- B. Employment and Political Activities within the Tlingit & Haida Tribes.** A judge shall resign his or her judicial office with the Tlingit & Haida if he or she:
 - 1. Becomes a candidate for, or a member of, the Tlingit & Haida Executive Council; or
 - 2. Becomes a candidate for, elected or appointed as Tlingit & Haida President.
- C.** Section B above does not preclude a judge from being a member or officer for the judge's Tribal community council or from being a Tlingit & Haida delegate.
- D. Avocational Activities.**
 - 1. A judge may write, lecture, teach and speak on legal and non-legal subjects and engage in the arts, sports and other social and recreational activities of the Tribes or elsewhere if these activities do not interfere with the performance of his or her judicial duties.

E. Civic or Charitable Activities

- 1.** A judge may participate in civic or charitable activities that do not reflect upon their impartiality or interfere with the performance of their judicial duties.
- 2.** A judge may participate in any educational, religious, charitable or similar organization. A judge may serve as an officer, director, trustee or non-legal advisor of an organization devoted to the improvement of the law, the legal system or the administration of justice or of an educational, religious, charitable or civic organization not conducted for profit, subject to the following limitations and other requirements of these Rules:
 - a.** A judge shall not participate in any activity if it is likely that the organization will be involved in proceedings which would ordinarily come before the judge;
 - b.** A judge shall not participate in any activity if it is likely that the organization will be involved in adversary proceedings in either the Tribal Court or Court of Appeals.
- 3.** A judge, as an officer, director, trustee or non-legal advisor, or as a member or otherwise:
 - a.** May assist an organization described by Section E (2) of this Canon in planning fund-raising and may participate in the management and investment of the organization's funds, but shall not personally participate in the solicitation of funds or other fund-raising activities, except that a judge may solicit funds from other judges over whom the judge does not exercise supervisory or appellate authority;
 - b.** May make recommendations to public and private fund-granting organizations on projects and programs concerning the law, the legal system or the administration of justice;
 - c.** Shall not personally participate in membership solicitation if the solicitation may reasonably be perceived as coercive or, except as permitted in Section E (1) of this Canon, if the membership solicitation is essentially a fund-raising mechanism;
 - d.** Shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

F. Financial Activities.

- 1.** A judge shall not engage in financial business dealings that:
 - a.** May reasonably be perceived to exploit the judge's judicial position;
or
 - b.** Involve the judge in frequent transactions or continuing business relationships with those attorneys or other persons likely to come before the court on which the judge serves.

2. Except as allowed by the laws, traditions or customs of the Tlingit & Haida, neither a judge nor a member of the judge's family should accept a gift, bequest, favor or loan from anyone which would affect or appear to affect his or her impartiality in judicial proceedings, or on the judge's appearance of fairness. For the purposes of this section, "family member" means any relative of the judge by blood or marriage, or a person treated by the judge as a family member, who resides in the judge's household. A judge may however accept:
 - a. A gift incidental to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use;
 - b. An invitation to the judge and the judge's spouse, significant other or guest to attend a judicial or bar related function or an activity devoted to the improvement of the law, the justice system or the administration of justice;
 - c. Ordinary social hospitality;
 - d. A gift from a relative or friend, for a special occasion, such as birthday, wedding or anniversary, if the gift is commensurate to the occasion and the relationship;
 - e. A loan from a lending institution in its regular course of business on the same terms and based on criteria applied to other applicants; or
 - f. A scholarship or fellowship awarded on the same terms and based on the same criteria applied to other applicants.
 3. A judge may receive income and reimbursement of expenses attributable to the extra-judicial activities permitted by these Rules, if the source of payments does not give the appearance of impropriety. Income may not exceed a reasonable amount nor may they exceed what a person who is not a judge would receive because of the same activity.
- G.** Extra-judicial appointments. Unless allowed by tribal law or tradition, a judge should not accept appointment to any other Tlingit & Haida tribal governmental entity or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the tribal justice system or the administration of justice. A judge however, may represent the Tlingit & Haida Tribes on ceremonial occasions or in connection with historical, educational or cultural activities.

Canon 5. A Judge Shall Refrain from Inappropriate Political Activity.

- A.** A judge shall refrain from all political activities or actions that could be interpreted in the Tlingit & Haida tribal community as supporting a political position or candidate that might interfere with the performance of their judicial activities except for improvement of the Tlingit & Haida justice system, or amendment to the Tlingit & Haida justice system's authority or funding.

- B.** Outside Political Activity. A judge shall refrain from all other political activity inappropriate to their judicial office. Inappropriate outside political activity may include, without limitation, activity that is likely to be construed by the Tlingit & Haida community as supporting a political position adverse to the political rights of the Tribes or individual members. A judge may, however, engage in political activities of electoral politics at the local, state, or federal levels.

SECTION 4. DISCIPLINE AND REMOVAL OF JUDGES

In order to ensure compliance with these Rules, it is necessary to establish a means of enforcement. The disciplinary procedures contained herein shall not be utilized in substitution for the judicial appeal process.

- A.** Removal of Judges. The removal of a Tlingit & Haida tribal judge is governed by Tlingit & Haida Tribal Code § Section 06.01.080. (B) and Tribal Constitution Article XI (7).
- B.** All complaints shall go to the Judiciary Committee as required by law.
- C.** Process. Complaints shall be filed with the General Counsel's office, who shall transmit the complaint to the Chairman of the Judiciary Committee. The process to be followed after the filing of a complaint shall be:
 - 1.** Not more than fourteen (14) calendar days after the filing of the complaint and service upon the subject judge, the subject judge shall file a written response to the complaint.
 - 2.** The Chair of the Judiciary Committee may have an informal meeting with the subject judge and/or complainant to determine whether to proceed with a formal process or to settle the dispute with agreed terms.
 - 3.** The Chair of the Judiciary Committee may enlist and/or appoint an independent reviewer at any stage of the proceeding.
 - 4.** Within fourteen (14) calendar days after the subject judge files a response, the Chair of the Judiciary Committee may allow in their discretion for the complainant to file a brief response.
 - 5.** Discovery shall be as allowed by the Chair of the Judiciary Committee, who has subpoena power for the purposes of the hearing.
- D.** Hearings. The Judiciary Committee may hold a hearing. Such a hearing shall be recorded. Every witness shall be sworn.
 - 1.** Rights of the Judge. The judge who is the subject of the complaint is entitled to be present at the hearing, to be represented by legal counsel at the judge's own expense, to introduce evidence, to examine and cross-examine witnesses and to subpoena documents and witnesses.
 - 2.** Evidence. The Chair of the Judiciary Committee shall conduct the hearing in a fair and impartial manner. The hearing is not bound by formal rules of evidence, except provisions relating to privileged communications. The sole object of such hearing is to expeditiously determine whether a violation of

law or these Rules has been committed.

- E.** Decision. After a hearing the Judiciary Committee shall decide whether they are satisfied by clear and convincing evidence that the judge:
1. Has committed unethical conduct as defined by these Rules and Statute;
 2. Has persistently failed to perform the duties of office;
 3. Has committed misconduct in office consisting of any knowing violation of tribal law;
 4. Has any physical or mental disability which prevents the performance of duties; or
 5. Is ineligible under the specific qualifications for office.
- F.** Findings and Action. The Judiciary Committee shall make findings of fact and conclusions of law in a written decision. If the Judiciary Committee decides that the charges have not been established sufficiently, they shall dismiss the matter and provide written notice to both the judge complained against and the complainant. If the Judiciary Committee decides that the charge has been sufficiently established, they shall report their written decision to both the judge and the complainant. The Judiciary Committee may issue either an oral or written reprimand to the judge, or if the Judiciary Committee finds that the judge's activity meets the criteria for suspension or removal under Tlingit & Haida Law and Constitution.

Adopted: April 21, 2017