

# TITLE 06 – TRIBAL COURTS

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## Chapter 01      Generally

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### Sec. 06.01.001      Judicial System

The Tribal Court is the judicial system of the Central Council of Tlingit & Haida Indian Tribes of Alaska (Tlingit & Haida), established by the Constitution, and is hereby recognized and confirmed as a separate branch of the Tlingit & Haida government. The judicial system shall consist of the Supreme Court, Trial Court, the Court of Elders and such other courts as the Tribe's governing body, in consultation with the Judiciary Committee, may designate. The Tribal Court shall resolve matters by taking evidence and rendering both written and oral decisions. Each final decision of the trial court comes with the right of appeal to the Supreme Court.

### Sec. 06.01.002      Purpose

To exercise Tlingit & Haida's inherent sovereignty and provide a culturally reflective forum to address justice needs. Judicial services shall be guided by southeast traditional tribal values.

### Sec. 06.01.003      Definitions

When used in this Title, the following words will have the meanings here given, unless the context clearly indicates another meaning. If the meaning of a word is not clear, the Tribal Court shall construe the word in harmony with the purpose of the Title.

- A. **“Associate Judge”** means a judicial officer who presides over trial cases.
- B. **“Associate Justice”** means a judicial officer who presides over Supreme Court cases.
- C. **“Chief Judge”** means the judge who presides over the Trial Court.
- D. **“Chief Justice”** means the justice who presides over the Supreme Court.
- E. **“Clerk of the Court”** means the employee responsible for making and maintaining court records.

- F. **“Counsel”** means an attorney or a lay advocate.
- G. **“Court Administrator”** means the employee in charge of the day to day operations of Tribal Court who also serves as a liaison with the other branches of government.
- H. **“Customary law”** means the practice or regular conduct of Tlingit and Haida people of acting in a certain way based on Tlingit or Haida culture.
- I. **“Court of Elders”** means the body established to resolve disputes by traditional methods and to resolve questions of customary law.
- J. **“Indian”** means a person who is enrolled, or is eligible for enrollment, in a federally recognized tribe or who is recognized as First Nations.
- K. **“Judge”** means a judicial officer of the Tribal Court, including justices, judges, and magistrates.
- L. **“Judge Pro Tempore”** means a person who has a limited appointment to a Trial Court case or cases.
- M. **“Judiciary Committee”** means the standing committee established to conduct business pursuant to the Constitution and this Title.
- N. **“Justice Pro Tempore”** means a person who has a limited appointment to a Supreme Court case or cases.
- O. **“Magistrate”** means a judicial officer who presides over trial cases, as assigned by the Chief Judge, or designee, or Chief Justice if the Chief Judge position is vacant.
- P. **“Tribal Court”** means the Tlingit & Haida Judicial System as described in this Title.
- Q. **“Supreme Court”** means the appellate court of the Tlingit & Haida Judicial System.

**Sec. 06.01.004          Jurisdiction**

- A. **General.** The jurisdiction of the Tlingit & Haida Courts shall extend, except as limited by Tlingit & Haida law, to:
  - 1. All persons;
  - 2. All subject matters that are permitted now or in the future, to be within the jurisdiction of a court of a federally recognized tribe; or
  - 3. All matters having to do with the rights in or encumbrances to lands within or without the territory of Tlingit & Haida held by the United States in trust for Tlingit & Haida or its citizens or held in restricted fee status by Tlingit & Haida or its citizens.
- B. **Civil.** The Court shall have general civil jurisdiction over all civil actions arising

under the Constitution and laws of the Tribe, including the tribal common law, over all general civil claims, and over all transitory claims.

**C. Criminal.** The Court shall have jurisdiction over all criminal offenses enumerated in statute.

**D. Probate.** The Court shall have jurisdiction over all real property and personal property.

**E. Tribal Sovereign Immunity.** Tlingit & Haida, its governing bodies, its agencies, enterprises, chartered organizations, corporations, or entities of any kind, and its officers, employees, agents, contractors, and attorneys, in the performance of their duties, shall be immune from suit; except where the sovereign immunity of Tlingit & Haida and its officers and employees is expressly, specifically, and unequivocally waived, consistent with the Constitution.

#### **Sec. 06.01.005           Applicable Law**

The courts shall apply the laws of Tlingit & Haida, including the customary laws of the Tribe, to all matters coming before the courts; provided that where no applicable Tlingit & Haida law or customary law can be found, the courts may use, in the following order, laws of other federally recognized tribes, federal law, and state law. In all actions, and as to all claims or defenses, which concern or are based upon a contract, lease, or any other agreement or instrument, which contains a choice of law provision, the courts shall apply the governing law so specified.

#### **Sec. 06.01.006 Freedom from Improper Influence**

The court shall be free from improper influence. Neither the governing body of the Tribe nor any Tribal official, employee, or other person, including a judicial officer not assigned to a case, shall interfere with the administration of justice carried out by the Judicial System, except by participation as a party in a case through the procedures established.

#### **Sec. 06.01.007           Rules of Court**

The court shall establish and maintain Rules of Court, which shall be approved by the Chief Justice and subject to review by the Judiciary Committee and adoption by the Tribe's governing body.

#### **Sec. 06.01.008           Records**

**A.** Tlingit & Haida Court shall be a court of record.

**B.** Unless otherwise addressed by statute, all records of Court shall be public records.

**1.** Confidential information shall not be open to inspection.

**Sec. 06.01.009            Duties and Powers of Judges**

- A.** All judges of the Court shall have the power, including but not limited, to:
  - 1.** Hear and determine cases and controversies;
  - 2.** Issue subpoenas;
  - 3.** Issue and enforce judgments, ruling and orders; and
  - 4.** Recommend the President appoint a Court of Elders for the purpose of an advisory opinion;
- B.** A judge has a duty to render a decision within thirty (30) days following complete submission of a matter for decision, provided however, the Court may, upon notice to the parties, take an additional thirty (30) days.

**Sec. 06.01.010            Administration of Court**

**A. Court Administrator.** The administration of the Court shall be the responsibility of the Court Administrator, or designee; the Court Administrator shall be supervised by the President. The Court Administrator shall supervise all non-judicial staff. Administration of the Court shall include but not be limited to operation, planning and budgeting, developing, and financial management, and reporting. The Court Administrator shall coordinate with the Chief Justice, or designee, for the effective and efficient administration of justice.

**B. Clerk of the Court.**

- 1.** The Clerk, or designee, shall receive and process Court documents; provide forms; attend and assist in Court proceedings; record all Court proceedings; maintain all records, forms, documents, orders, and judgments; enter orders and judgments; receive and disburse all fees, fines, and charges; and perform other duties as the Court Administrator shall designate.
- 2.** The Clerk shall not provide legal advice.

**Sec. 06.01.011            Recusal of Judicial Officers**

- A.** A judge may recuse the judge's own self pursuant to Tribal Rules of Judicial Conduct.
- B. Motion for Recusal.** A party may file a motion for recusal. The motion shall be accompanied by an affidavit that states why the party believes the judge should not hear the case. The motion shall be filed at least 5 days before a proceeding. The judge shall act on the motion prior to the proceeding. An order denying recusal is a final order and may be appealed. If recusal is denied, a party may request a stay of proceedings pending appeal.

**Sec. 06.01.012            Tlingit & Haida Bar**

- A.** There is established a Tlingit & Haida Bar. No person shall appear in the Court as counsel or preside over a case as a judicial officer prior to admission to the Tlingit & Haida Bar.

- B.** All counsel who wish to be admitted to practice before the Tribal Court may be admitted to practice upon a motion in writing by order of the Chief Justice, or designee.
- C.** Any person who is a member in good standing of the bar of any tribe, state or territory of the United States or the District of Columbia, is of good moral character, and demonstrates to the Court a thorough knowledge of this code, the rules of the Tlingit & Haida Tribal Court, federal laws and regulations applicable to Tlingit & Haida, and knowledge of the culture and traditions of the Tlingit and Haida people is eligible to apply for admission to general practice as a licensed attorney in the Tlingit & Haida Tribal Court.
- D.** Any person who is eighteen (18) years of age or older, has not ever been convicted of a felony nor of a misdemeanor in the past year, is of good moral character, and demonstrates to the Court a thorough knowledge of this code, the rules of the Tribal Court, and knowledge of the culture and traditions of the Tlingit and Haida people is eligible to apply for admission to general practice in this Court as a lay advocate, and may represent parties in civil matters only.
- E. Oath.** The oath for admission to the Tribal Court as counsel or a lay advocate is as follows:

***TLINGIT & HAIDA BAR OATH***

***“I, \_\_\_\_\_, do solemnly swear that:***

- 1. I have read the Constitution of the Central Council of Tlingit & Haida Indian Tribes of Alaska and am familiar with its contents;***
- 2. I will respect and obey the Tlingit & Haida Constitution in all respects;***
- 3. I will abide by the Rules established by the Tribal Court;***
- 4. I will, at all times, maintain the respect due the Tribal Court and its officers;***
- 5. I will not counsel or speak for any suit or proceeding which shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the Tribe;***
- 6. I will employ such means only as are consistent with truth and honor and will never seek to mislead a judge or jury by any false statement; and***
- 7. I will abstain from all offensive conduct in the Tribal Court.***

- F. Roster.** The Clerk of the Court will maintain a roster and the signed oaths of all attorneys and lay advocates admitted to practice before Court.

## Chapter 02 Trial Court

Sec. 06.02.001	Trial Court
Sec. 06.02.002	Composition of Court
Sec. 06.02.003	Qualifications of Judges
Sec. 06.02.004	Appointment
Sec. 06.02.005	Terms
Sec. 06.02.006	Reviews

### Sec. 06.02.001 Trial Court

There is established a Trial Court whose purpose is to hear cases and controversies.

### Sec. 06.02.002 Composition of Court

The Trial Court shall consist of such number of judges as is necessary, as determined by Tlingit & Haida and the Judiciary Committee. The Trial Court may include a Chief Judge, Associate Judges and Magistrates.

### Sec. 06.02.003 Qualifications of Judges

- A. Generally.** A judge shall be over the age of twenty-nine (29); not have been convicted of a felony within the preceding ten (10) years; not have been convicted of a misdemeanor within the preceding five (5) years; submit three character references who can attest to the candidate's competency to serve as a judicial officer; and prior to being appointed shall be admitted to and a member in good standing of the Tlingit & Haida Bar.

### Sec. 06.02.004 Appointment

Judges shall be appointed by the Executive Council. Such appointments shall be made after the Judiciary Committee has screened the candidates. Appointments are subject to the acceptance of the position and taking the oath of office.

- A. Screening Process.** The Judiciary Committee shall screen candidates for judicial office.

- 1. Screening for Initial Appointments.** Candidates shall be rated as, not qualified, qualified or highly qualified, based on the applicable position description.
- 2. Screening for Subsequent Appointments.** Candidates shall be rated as recommended for reappointment or not recommended for reappointment.

### Sec. 06.02.005 Terms

- A. Initial Term.** The initial term for appointment of trial court judges shall be one year.

**B. Subsequent Terms.** Subsequent terms for appointment shall be at least two years and no more than four years.

**Sec. 06.02.006            Reviews**

3. The Chief Justice shall annually review all Trial Court judges.
4. The reviews shall be available to Judiciary Committee for its use.



## Chapter 03. Supreme Court

Sec. 06.03.001	Supreme Court
Sec. 06.03.002	Justices
Sec. 06.03.003	Qualifications of Justices
Sec. 06.03.004	Notice of Intent
Sec. 06.03.005	Term of Office

### Sec. 06.03.001 Supreme Court

There is established a Supreme Court whose purpose is to hear appeals from the Trial Court, and such other matters as may be designated to it by law.

### Sec. 06.03.002 Justices

- A. Generally.** The Supreme Court shall consist of a Chief Justice and two Associate Justices. Additional justices may be added as necessary, as determined by Tlingit & Haida, in consultation with the Chief Justice and the Judiciary Committee.
- B. Election.** It takes a majority of the quorum present voting for a candidate in order for the candidate to be elected.

### Sec. 06.03.003 Qualifications of Justices

A justice shall be over the age of twenty-nine (29); not have been convicted of a felony within the preceding ten (10) years; not have been convicted of a misdemeanor within the preceding five (5) years; submit three character references who can attest to the candidate's competency to serve as a judicial officer; and prior to being elected shall be admitted to and a member in good standing of the Tlingit & Haida Bar.

### Sec. 06.03.004 Notice of Intent

Candidates shall submit to the Judiciary Committee a Notice of Intent thirty (30) days prior to the first day of Tribal Assembly in order to have sufficient time to perform screening prior to elections.

- A. Screening Process.** Candidates for the Supreme Court shall be screened by the Judiciary Committee and the results announced to Tribal Assembly prior to the election. The Judiciary Committee shall rate candidates as highly qualified, qualified or not qualified.

### Sec. 06.03.005 Term of Office

- A. Generally.** Justices shall serve for terms provided for in the Tlingit & Haida Constitution.
- B. Vacancies.** In the event of a vacancy, the Executive Council shall appoint, after screening by the Judiciary Committee, a justice to fill the vacancy until the next

annual Tribal Assembly, whereupon, the Tribal Assembly shall elect a replacement justice to serve the remaining term of office.

## **Chapter 04. Court of Elders**

<b>Sec. 06.04.001</b>	<b>Findings and Policy</b>
<b>Sec. 06.04.002</b>	<b>Scope of Authority of the Court of Elders</b>
<b>Sec. 06.04.003</b>	<b>Composition of the Court of Elders</b>
<b>Sec. 06.04.004</b>	<b>Records</b>

### **Sec. 06.04.001 Findings and Policy**

WHEREAS, there is a need for traditional resolution of appropriate issues according to Tlingit & Haida customary law and traditional methods. THEREFORE, it is the policy of Tlingit & Haida that the Tribal Court shall certify to a Court of Elders questions on appropriate subjects.

### **Sec. 06.04.002 Scope of Authority of the Court of Elders**

- A.** The Court of Elders shall determine if there are traditional or customary laws applicable to questions or issues certified to it by the Tribal Court and shall respond with written advisory opinions concerning application of such laws.
- B.** Upon the joint written request and knowing consent of the parties to a dispute, the Court of Elders may, in its discretion, accept, hear and mediate an issue applying traditional law and custom.
  - 1.** The Court of Elders may hear and mediate only disputes among citizens concerning matters not governed by a constitutional provision, ordinance, law, resolution, code or regulation of Tlingit & Haida, and not otherwise within the jurisdiction of the Tribal Court. Parties to a matter heard by the Court of Elders may not be represented by attorney or lay advocate.
  - 2.** The Court of Elders' written decision or agreement shall be filed by the Clerk of the Tribal Court and treated as a final judgement, except that no appeal shall be permitted from the Court of Elders

### **Sec. 06.04.003 Composition of the Court of Elders**

- A.** As the need arises, the President may appoint at least two (2) and not more than six (6) citizens of the Tlingit & Haida Communities, including elder village tribal citizens to comprise a Court of Elders for a particular matter.
- B.** The Court of Elders may seek advice from any source knowledgeable on Tlingit and Haida clan custom or tradition, including learned treatises, historical references, prior case law, or persons generally regarded within the Community as learned in tribal custom. The weight to be given to such source shall be determined by the Court of Elders.

**Sec. 06.04.004    Records**

All responses to certified questions, advisory opinions or determinations of the Court of Elders shall be in writing and filed with the Clerk of the Tribal Court, evidence received that, in the opinion of the Court of Elders, requires confidentiality shall be filed under seal.

## Chapter 05. Special Courts

**Sec. 06.05.001 Wellness Court**

**Sec. 06.05.001 Wellness Court**

**A. Authorization.** The Wellness Court is hereby authorized and established as part of the Tribal Court.

**B. Purpose.** The Wellness Court is created to:

1. Promote overall wellness among our youth, adults, and families;
2. Encourage healthy, responsible behavior among our youth, adults, and families to promote their health, safety, and welfare;
3. Offer rehabilitative pathways, including alternatives to incarceration and outcomes otherwise directed by justice systems;
4. Prevent or minimize the placement of children into foster care or out of home placement;
5. Increase the safety of our communities by reducing patterns of recidivism related to the abuse of alcohol and drugs, violence, and other unhealthy behaviors;
6. Support our youth, adults and families through the Southeast Traditional Tribal Values and the cultural practices of the Tlingit and Haida for any purpose consistent with the general purpose.

**C. Scope and Jurisdiction.**

1. The Tribal Court is authorized to enact policies and procedures to operate Wellness Court programs for youth, adults, and families.
  - a. At least one member of a Wellness Court participant's household must be enrolled, or eligible for enrollment.
2. Wellness Court policies and procedures shall describe:
  - a. The target population, such as youth, adults, and families involved in Child In Need of Care cases;
  - b. Eligibility requirements for the target population to be admitted into the Wellness Court;

- c. How the target population will be referred to the Wellness Court, including acceptance of cases transferred from foreign court systems;
- d. Legal procedures for handling cases in the Wellness Court in a manner that encourages frequent interaction between participants and judicial officers;
- e. The services that will be coordinated to benefit the target population;
- f. How participants will access structured and phased substance abuse treatment and rehabilitation services, which may incorporate cultural values and practices;
- g. Mechanisms for participant accountability including responses and rewards to encourage consistency with program requirements, and alcohol and drug testing;
- h. Mechanisms, such as releases of information, to provide the Wellness Court with information from cooperating agencies, programs and treatment providers;
- i. Confidentiality protections for program participants;
- j. Data tracking and evaluation for the Wellness Court;
- k. Qualifications for staff and expectations for ongoing education and training; and
- l. Any other necessary policies to implement and operate the Wellness Court consistent with this Chapter.

**D. Protections for Wellness Court Participants.**

- 1. Wellness Court proceedings and records shall be closed to the public.
- 2. Cooperating agencies, programs and treatment providers shall share information regarding the participant with the Wellness Court.
- 3. Wellness Court staff and judicial officers will follow all applicable laws and regulations regarding participant protected health information.
  - a. Wellness Court staff and judicial officers will obtain informed consent in writing prior to the release of any protected health information.
- 4. Wellness Court records shall be maintained securely.

- E. Appeals.** Orders revoking admission to the Wellness Court are final orders subject to appeal.
- F. Sovereign Immunity.** Nothing in this Chapter shall diminish, impair, or be construed to waive the right of Tlingit & Haida to assert the defense of sovereign immunity, and nothing contained herein shall impair the validity of this defense; and the right to assert that defense is and shall remain inviolable.

## Chapter 06. Judiciary Committee

**Sec. 06.06.001**      **Judiciary Committee**

**Sec. 06.06.002**      **Authority & Duties**

**Sec. 06.06.001**      **Judiciary Committee**

The Judiciary Committee will consist of at least five (5) and no more than nine (9) Delegates of the Tribal Assembly, such number of delegates to be determined by the Executive Council.

- A. Judiciary Participation.** The judiciary may be invited to attend meetings of the Judiciary Committee. Subject to the discretion of the Judiciary Committee chair, the judiciary may participate in meetings but shall not vote on any committee business.

**Sec. 06.06.002**      **Authority & Duties**

The Judiciary Committee, who shall meet at least three times per year, has the following authority and duties, to:

- A.** Screen candidates and applicants for the for judicial office;
- B.** Recommend the Tribal Court budget;
- C.** Review the Rules of Court and Code of Judicial Conduct, and proposed changes, which shall be subject to adoption by the Tribe's governing body;
- D.** Recommend, in consultation with the Chief Justice, additional justices and increases or decreases to the number of judges;
- E.** Recommend a list of judges and justices pro tempore;

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**F.** Hear and adjudicate complaints against judicial officers and Tlingit & Haida Bar members, consistent with the Constitution, the Tribal Rules of Judicial Conduct and this Title.


**1.** For the sole purpose of exercising its authority under this section, the Judiciary Committee may be provided confidential records of the court.

ENACTED this 1<sup>st</sup> day of March, 2022, by the Executive Council of the Central Council of Tlingit & Haida Indian Tribes of Alaska.

**CERTIFY**

  
\_\_\_\_\_  
President Richard J. Peterson

**ATTEST**

  
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Tribal Secretary Ralph Wolfe