
TRIBAL RULES OF JUDICIAL CONDUCT



CENTRAL COUNCIL OF THE TLINGIT & HAIDA
INDIAN TRIBES OF ALASKA

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PREAMBLE

The Tlingit & Haida Court is grounded in the principle that an independent and honorable judiciary is essential to the administration of justice. The purpose of the Tribal Rules of Judicial Conduct (hereinafter “Rules”) is to preserve the integrity of the judiciary and enhance public confidence in the judicial system.

The Rules are intended to establish basic standards governing the conduct of all Tlingit & Haida 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 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 document is known as the Tribal Rules of Judicial Conduct (“Rules”).

SECTION 2. APPLICABILITY OF RULES

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

- A.** Judicial officers who are full-time employees of Tlingit & Haida shall adhere to these Rules at all times.
- B.** Part-time judges, judges pro tempore and elected justices are subject to these Rules, with exceptions as noted below in this subsection.

Recognizing that these judges are not full-time employees, 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:

They 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 their judicial duties.

SECTION 3. RULES

Rule 1. A judge shall uphold the integrity and independence of the judiciary. An independent and honorable judiciary is essential to the administration of justice. A judge shall help foster 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 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.

Rule 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 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, clan, social or other personal relationships to influence the judge's own judicial conduct. A judge shall not attempt to use the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey the impression that anyone has special influence over the judge in the judge's adjudicative capacity. 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 citizen of an Indian tribe or from membership in an organization in which membership is based upon the political status of being Indian.

Rule 3. A judge shall perform the duties of judicial office impartially and diligently.

A. Judicial Duties in General. The judicial duties of a full-time judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of office prescribed by 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 recusal 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 citizenship, 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 citizenship, 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 citizenship, 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 are authorized for scheduling or administrative purposes or emergencies that do not concern substantive matters or issues on the merits; 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 Tlingit & Haida, its enterprises, programs, employees, and tribal citizenship except to the extent authorized by the Tlingit & Haida 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 government, business or affairs of Tlingit & Haida.

B. Recusal.

1. A judge shall recuse the judge's own self on the judge's own initiative in any proceeding in which the judge has reason to believe the judge could not act with complete impartiality. A judge acting under this subsection (1) need not state the grounds for the recusal.
2. A judge shall recuse the judge's own self 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, the judge's 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 Recusal.

- 1.** A judge who should recuse the judge's own self by the terms of Section B of this Rule may disclose on the record the basis of the judge's potential recusal and may ask the parties and their attorneys to consider whether the parties are willing to allow the judge to hear the case despite the basis for a potential recusal. If following disclosure of any basis for potential recusal 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 recuse the judge's own self, 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 recuse the judge's own self in any proceeding in which recusal might otherwise be required under subsections (1) of this subsection, if no other judge is available and recusal will result in a failure of justice. In such a case, the judge shall disclose on the record the basis for the potential recusal and shall thereafter recuse the judge's own self if at any time, it is possible to transfer the proceeding to another judge without a failure of justice.

Rule 4. A judge shall regulate the judge's own 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.** Political Activities within Tlingit & Haida. A judge shall resign his or her judicial office with the Tlingit & Haida if the judge becomes a candidate for, elected or appointed as Tribal Assembly 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 if these activities do not interfere with the performance of the judge's judicial duties.
- E.** Civic or Charitable Activities.
1. A judge may participate in civic or charitable activities that do not reflect upon the judge's impartiality or interfere with the performance of the judge's 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 adversarial proceedings in either the Tribal Court or Supreme Court.
 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 rule in planning fundraising 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 fundraising 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 rule, if the membership solicitation is essentially a fundraising mechanism;
- d.** Shall not use or permit the use of the prestige of judicial office for fundraising 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.** A judge may accept a gift, bequest, favor or loan consistent with the laws, traditions or customs of Tlingit & Haida. A gift, bequest, favor or loan which would affect or appear to affect impartiality in judicial proceedings, or negatively reflect on the judge's appearance of fairness, should be turned over to Tlingit & Haida to avoid eroding public confidence in the judicial system.
 - a.** A judge shall maintain a log of gifts received where there is a reasonable question that the gift could be perceived as affecting the judge's impartiality or fairness. The log shall be disclosed to the Judiciary Committee on an annual basis. The log shall be a confidential record.
 - b.** When the judge has a reasonable question regarding the propriety of the gift received, the judge may confer with the Judiciary Chair, or the Chair's designee, regarding the judge's ability to accept the gift. The Chair may offer guidance or refer the matter to the Judiciary Committee to consider the propriety of the gift.
- 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 Tlingit & Haida 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 Tlingit & Haida on ceremonial occasions or in connection with historical, educational or cultural activities.

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

- A.** A judge shall refrain from all political activities or actions that could be interpreted by the Tlingit & Haida tribal community as supporting a political position or candidate that might interfere with the performance of his or her judicial duties 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 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 tribe or individual citizens. 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 as a substitution for the judicial appeal process.

- A.** Removal of Judges. The removal of a Tlingit & Haida judge is governed by Tlingit & Haida Code and Constitution.
- B.** All complaints shall go to the Judiciary Committee as required by law.
- C.** Process. All complaints shall be in written form, signed by the complainant. The written complaint shall include contact information for the complainant. Complaints shall be filed with the Court Administrator, or designee, who shall transmit the complaint to the Chairman of the Judiciary Committee, or the Chair's designee, and the Chief Justice, or the Chief Justice's designee, or an Associate Justice chosen at random by the Court Administrator if the Chief Justice is the subject of the complaint. A designee shall be empowered to act consistent with the authority delegated to the designator under these Rules. The process to be followed after the filing of a complaint shall be:
 - 1. Jurisdictional Determination. The Judiciary Committee Chair shall review the complaint within 10 working days of receipt to determine whether it is within the scope of the Judiciary Committee's jurisdiction. Complaints determined to be outside the jurisdiction shall be dismissed by the Judiciary Chair and the complainant notified within 10 working days of the Jurisdictional Determination.

2. **Initial Review.** The Judiciary Committee Chair and Chief Justice shall conduct each month an initial review of all complaints within the Committee's jurisdiction. Initial Review must be completed at the monthly meeting following the Jurisdictional Determination. The initial review shall include a review of relevant court records. Complaints may be dismissed as not supported by the record, if the Judiciary Committee Chair and Chief Justice both concur in that decision. A complainant shall be notified within 10 working days if the complaint is dismissed after Initial Review.
 - a. The dismissal of a complaint does not preclude later consideration of the matters involved in that complaint to the extent that they may evidence a pattern or practice of misconduct or are otherwise relevant to the consideration of any other complaint or matter before the Judiciary Committee.
3. **Investigation.** If the complaint is not resolved after Initial Review, the Judiciary Committee shall open an Investigation within 10 working days Initial Review. The subject judge shall be notified in writing when an Investigation is opened and be provided a copy of the complaint.
 - a. **Scope.** The Judiciary Committee is not required to review any material beyond what was available at Initial Review but may seek additional information if the Committee concludes such information is necessary. The Judiciary Committee may invite or require the subject judge to provide a written response to the complaint. The response shall be addressed to the Judiciary Committee Chair. Discovery shall be allowed. Rules regarding privileged communication shall apply. The Judiciary Committee Chair is authorized to issue subpoenas for records.
 - i. **Non-Compliance with Subpoena.** The Judiciary Committee Chair may, in the Chair's discretion, petition the Tribal Court for an order compelling compliance with a subpoena if a person does not attend, testify, or produce a document required by a subpoena.
4. **Hearing.** At the discretion of the Judiciary Committee Chair, the Judiciary Committee may convene a hearing to consider the complaint. The Judiciary Committee Chair shall preside over the hearing and ensure that it is conducted in a fair and impartial manner. The hearing shall be recorded.
 - a. **Rights of the Subject Judge.** The subject judge is entitled to: (1) be represented by counsel, but only at the subject judge's own expense, (2) be present at the hearing, (3) introduce evidence, (4) examine and cross-examine witnesses, and (5) subpoena documents and witnesses.
 - b. **Evidence.** All testimony shall be sworn statements and all witnesses testifying at the hearing shall be sworn in. Discovery shall be allowed.

Rules regarding privileged communication shall apply. The Judiciary Committee Chair is authorized to issue subpoenas for purposes of the hearing.

5. Determination. After an Investigation, the Judiciary Committee shall determine whether it is satisfied by clear and convincing evidence that the subject judge:
 - a. Has violated a provision of the Tribal Rules of Judicial Conduct and that the violation is of such a serious nature as to warrant formal disciplinary action;
 - b. Has a disability which materially affects the judge's ability to perform the requirements of the judge's position; or
 - c. Has acted in violation of the constitutional standards for judicial conduct.
6. Resolution. After Investigation and Determination, the Judiciary Committee shall decide what is an appropriate resolution. The Judiciary Committee may dismiss the complaint as not supported by the record, issue an oral reprimand, a private letter of reprimand, a public letter of reprimand, suspension or removal, provided that suspension or removal must be authorized under the Tlingit & Haida Constitutional and laws. The Committee may also order the subject judge to receive training.
7. Decision. After Investigation, the Judiciary Committee shall issue a written decision. Written decisions shall be issued within 60 days of the opening of an investigation. For good cause, the Judiciary Committee Chair shall have the ability to extend the timeframe for issuing a written decision by 30 days.
 - a. If the Committee concludes that the complaint is not supported by the record, the Decision shall state that conclusion and dismiss the complaint.
 - b. If the Committee does not dismiss the complaint as not supported by the record, it shall issue a decision that shall include findings of fact and the Committee's Determination and Resolution.
8. Notification. At the end of the complaint process, the complainant shall be notified of the outcome within 10 working days. If there is an Investigation, the subject judge shall be notified of the outcome and receive a copy of the Decision within 10 working days.
9. Independent Review. At the discretion of the Judiciary Committee Chair, an independent reviewer may be engaged at any point in this process to review the complaint and related records and offer guidance. Independent reviewers should have served on the bench or been admitted to the bar, including any bar of the United States or a tribal bar.

10. Reporting. The Judiciary Committee Chair shall report to the Judiciary Committee at regularly scheduled meetings regarding: (1) the number of complaints filed since the previous report, (2) the number of complaints rejected for lack of jurisdiction, (3) the number of dismissed as not supported by the record, and (4) the number of complaints currently outstanding.
11. Records. The Court Administrator shall maintain all records of the Discipline and Removal process. Records may only be requested by the Judiciary Committee Chair and the Chief Justice.
12. Confidentiality. The entire Discipline and Removal process shall be confidential to the Judiciary Committee, other involved judicial officers, the Court Administrator, and involved court personnel, except that:
 - a. Statistical reports of complaints shall not be confidential;
 - b. Public letters of reprimand shall not be confidential; and
 - c. Decisions that result in suspension or removal shall not be confidential.

Adopted: April 21, 2017

Amended: April 19, 2021, **November 19, 2021**