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**CHAPTER I  
GENERAL PROVISIONS**

**Sec. 3-1-1 Title**

This Section of the Poarch Band of Creek Indians Tribal Code shall be known as the "Judicial Code."

**Sec. 3-1-2 Definitions**

- (a) "Defendant" means anyone charged with a criminal or civil offense under the Tribal Code of the Poarch Band of Creek Indians.
- (b) "Drug Court" means the Poarch Band of Creek Indians Drug Court.
- (c) "Drug Court Team" means the advisory body to the Drug Court Judge and includes the Tribal Court Administrator, the Tribal Prosecutor, a Probation Officer, the Tribal Clerk of Court, the Treatment Provider, and any other person designated by the Tribal Court Administrator.
- (d) "Gift" means any gratuity, special discount, favor, honorarium, hospitality, payment, loan, subscription, economic opportunity, advance, deposit of money, services, or other benefit received, directly or indirectly, which the recipient did not obtain for fair market value or lawful equivalent consideration.
- (e) "Immediate family member" means spouse (including common law relationship), parent, child, sibling, grandparent, and/or grandchild. These relationships are determined by blood (within the first or second degree), marriage (within the first or second degree), adoption, foster care, or legal wardship.
- (f) "Judge" means any person appointed to a Court in the Tribal Judicial System.
- (g) "Tribal Bar" means all of the attorneys licensed or authorized to practice law in the Tribal Judicial System.
- (h) "Tribal Code" means the Poarch Band of Creek Indians Tribal Code.
- (i) "Tribal Council" means the nine-member body elected by the General Council.
- (j) "Tribal Court" means the Poarch Band of Creek Indians Tribal Court.
- (k) "Tribal Entity" means all authorities, commissions, enterprises, and other entities established by the Tribal Council.

- (l) "Tribal Government" means the Tribal Council, the office of the Tribal Chairman and all offices and departments that report directly to the Tribal Chairman.
- (m) "Tribal Judicial System" means the Poarch Band of Creek Indians Supreme Court, the Poarch Band of Creek Indians Tribal Court, the Poarch Band of Creek Indians Drug Court, the Tribal Court Administration, and such other courts as are established or approved by the Tribal Council.
- (n) "Tribal Member" means an enrolled member of the Poarch Band of Creek Indians.
- (o) "Tribal Official" means any person who has been elected or appointed to the Tribal Council, committee, authority, commission, board and/or any other organization under the auspices of the Poarch Band of Creek Indians.
- (p) "Tribal Supreme Court" means the Poarch Band of Creek Indians Supreme Court.
- (q) "Tribe" means the Poarch Band of Creek Indians.

**Sec. 3-1-3 Judicial System**

- (a) The judicial power of the Poarch Band of Creek Indians is vested exclusively in a judicial system which shall consist of the Poarch Band of Creek Indians Supreme Court, the Poarch Band of Creek Indians Tribal Court, the Poarch Band of Creek Indians Drug Court, Tribal Court Administration, and such other courts as are established or approved by the Tribal Council.
- (b) The courts described in this Title and established or approved by the Tribal Council shall have all authority provided by Tribal law.

**Sec. 3-1-4 Qualifications for Judges**

To be eligible to hold the position of judge in any court in the Tribal Judicial System, a person must be:

- (a) An attorney licensed to practice law;
- (b) At least five (5) years' experience as a practicing attorney;
- (c) Capable of preparing the papers and reports incident to the positions;
- (d) Of high moral character and integrity, with the ability to maintain confidentiality;

- (e) Physically able to carry out the duties and responsibilities of the office;
- (f) Willing to participate in travel and training as deemed necessary; and
- (g) Aware of the issues unique to American Indian tribes.

Preference shall be given to American Indians.

**Sec. 3-1-5 Appointment of Judges and Tribal Court Administrator**

Any vacancy for the position of judge for a court in the Tribal Judicial System or position of Tribal Court Administrator shall be filled by the Tribal Chairman nominating an individual to fill the position and the Tribal Council confirming the nomination with a majority vote.

**Sec. 3-1-6 Oath of Office for Judges**

On taking office, the judge shall swear the following oath:

I, \_\_\_\_\_, do solemnly swear or affirm that I will support and defend the Constitution of the United States, and the Constitution of the Poarch Band of Creek Indians; and that I will faithfully, honestly and impartially discharge the duties of the office of the Tribal Judge/Tribal Chief Justice/Tribal Associate Justice/Drug Court Judge to the best of my ability, so help me God.

**Sec. 3-1-7 Removal of Judges**

- (a) Any judge may be removed from office for neglect of duty or violation of a rule of judicial conduct as found in Chapter 6 of this Title if two-thirds (2/3) of the total membership of the Tribal Council vote in favor of the removal. All members of the Tribal Council do not need to be present.
- (b) Should any judge be removed or resign from office or be unable to serve by reason of death or incapacity, the Tribal Chairman shall nominate an individual to fill the remainder of the unexpired term, and the Tribal Council shall confirm the nomination with a majority vote.
- (c) Should any judge disqualify himself or herself from any particular case pursuant to §3-6-4(c), the Tribal Court Administrator

shall assign a judge to that case from a list of qualified alternate judges approved by the Tribal Council.

**Sec. 3-1-8 Civil Immunity in Judicial Capacity**

No judge shall be liable in any civil proceeding for any utterances or acts made or done by him or her in his or her judicial capacity.

**Sec. 3-1-9 Records of the Tribal Judicial System Open to the Public**

All files and records of the courts of the Tribal Judicial System shall be open for public inspection, except that the files and records of juvenile, Drug Court, and ethics matters shall not be open to public inspection and may be inspected only with prior specific judicial authorization. In ethics matters, the parties may waive the confidentiality of any designated files or records.

**CHAPTER II  
POARCH BAND OF CREEK INDIANS  
TRIBAL COURT**

**Sec. 3-2-1 Tribal Court Composition**

The Poarch Band of Creek Indians Tribal Court shall be composed of one (1) Tribal Judge.

**Sec. 3-2-2 Term of Office**

- (a) The Tribal Judge shall hold office for a period of three (3) years, unless sooner removed pursuant to §3-1-7(a) or by reason of resignation, death, or incapacitation.
- (b) The Tribal Judge's term of office can be reconfirmed without limitation by the Tribal Council upon expiration of each three (3) year term.

**Sec. 3-2-3 Duties of Tribal Judge**

- (a) The Tribal Judge shall preside over all civil, criminal, and juvenile actions which come before the Tribal Court of the Poarch Band of Creek Indians and shall oversee the Tribal Court Administration.
- (b) The Tribal Judge shall have the following additional duties and responsibilities:
  - (1) Set trial dockets and schedule sessions of the Tribal Court;

- (2) Draft and promulgate rules governing the administration of Tribal Court and rules governing practice and procedure in Tribal Court; provided, that such rules do not contradict any rules of procedure enacted by the Tribal Council or Tribal Supreme Court or abridge, enlarge, or modify the substantive right of any party;
- (3) Monitor the privacy and accuracy of all juvenile records; and
- (4) Refer cases to the Drug Court; defer sentencing in cases referred to Drug Court; revoke a defendant's participation in the Drug Court program; and expunge the record of defendants who successfully complete the Drug Court program.

**CHAPTER III  
POARCH BAND OF CREEK INDIANS  
DRUG COURT**

**Sec. 3-3-1 Establishment of Drug Court**

The Poarch Band of Creek Indians Drug Court shall be a deferred sentencing program established to divert those nonviolent offenders with substance abuse problems away from the regular Court system and toward a more holistic approach, which involves a treatment-oriented perspective.

**Sec. 3-3-2 Drug Court Composition**

The Poarch Band of Creek Indians Drug Court shall be composed of one (1) Drug Court Judge and a Drug Court Team.

**Sec. 3-3-3 Term of Office of Drug Court Judge**

- (a) The Drug Court Judge shall hold office for a period of three (3) years, unless sooner removed pursuant to §3-1-7(a) or by reason of resignation, death, or incapacitation.
- (b) The Drug Court Judge's term of office can be reconfirmed without limitation by the Tribal Council upon expiration of each three (3) year term.

**Sec. 3-3-4 Duties of Drug Court Judge**

- (a) The Drug Court Judge shall preside over all matters referred to it by the Tribal Court.
- (b) The Drug Court Judge shall have the following additional duties and responsibilities:
  - (1) Schedule sessions of the Drug Court, where the Judge shall meet with each individual Drug Court participant;
  - (2) Draft and promulgate rules governing the administration of Drug Court; provided, that such rules do not contradict any rules of procedure enacted by the Tribal Council or Tribal Supreme Court or abridge, enlarge, or modify the substantive right of any party;
  - (3) Meet with the Drug Court Team as necessary;
  - (4) Order punishments and incentives as necessary to further the objectives of the Drug Court, provided that such terms or conditions do not violate or abridge any fundamental or substantive right of any party; and
  - (5) Monitor the privacy and accuracy of all Drug Court records and recommends to the Tribal Judge, upon the participant's completion of the program, that a participant's record be expunged.

**Sec. 3-3-5 Participation in Drug Court**

- (a) A defendant in Tribal Court is eligible to participate in the Drug Court if:
  - (1) The defendant is a Tribal Member or a child of a Tribal Member;
  - (2) The defendant is not a juvenile;
  - (3) The defendant has a substance abuse problem;
  - (4) The defendant is charged with crime or civil offense motivated by substance abuse;
  - (5) The Tribal Prosecutor recommends to the Tribal Court that the defendant be referred to Drug Court;
  - (6) The defendant is charged with a nonviolent offense; provided, however that the Tribal Court Judge may waive this requirement, if the Tribal Prosecutor believes that the defendant

will likely respond to rehabilitative treatment despite the violent nature of the offense;

- (7) The defendant does not have a history of violent acts; provided, however that the Tribal Court Judge may waive this requirement, if the Tribal Prosecutor believes that the defendant will likely respond to rehabilitative treatment despite the defendant's violent past;
  - (8) The defendant has not participated more than twice in Drug Court;
  - (9) The defendant's participation in the program has never been revoked; and
  - (10) The defendant voluntarily and knowingly enters a plea of guilty to a criminal offense or admits liability in the civil offense.
- (b) Tribal Members and children of Tribal Members, who are at least eighteen years of age or older, may also participate in Drug Court if he or she is referred to Drug Court from a state Court or social service agency, including the Poarch Band of Creek Indians Family Services Department.

#### **Sec. 3-3-6 Conditions of Drug Court**

- (a) In any case in which a defendant is admitted into Drug Court, there shall be a written agreement between the defendant and the Drug Court Team. The agreement shall include, but not be limited to, the terms of Drug Court.
- (b) The conditions of Drug Court may include, but are not limited to, one or more of the following:
  - (1) Participate in an education setting, including but not limited to, secondary education, postsecondary education, job training school, trade school, GED classes, or adult basic education courses;
  - (2) Financially support his or her spouse, children, or both, or pay child support, spousal support, or both, including allowing such support to be withheld or garnished from the wages or salary of the defendant;
  - (3) Refrain from the use of alcohol and drugs and from frequenting places

where alcoholic beverages or illegal controlled substances are sold, possessed, or used;

- (4) Refrain from contact with certain persons or premises;
- (5) Obtain and maintain employment;
- (6) Attend individual, group, or family counseling;
- (7) Pay court costs, fees, fines, or both, incurred as a result of the offense charged, including allowing such costs to be withheld or garnished from the wages or salary of the defendant;
- (8) Pay costs associated with participation in Drug Court, including allowing such costs to be withheld or garnished from the wages or salary of the defendant;
- (9) Observe curfews or home detention or travel constraints as set out in the offender's agreement; and/or
- (10) Observe any other terms or conditions of the Drug Court Judge or Drug Court Team, provided that such terms or conditions do not violate or abridge any fundamental or substantive right of any party.

#### **Sec. 3-3-7 Drug Court Records and Communications**

Drug Court records are confidential and shall not be admissible in subsequent proceedings, civil or criminal. Communications between the Drug Court Treatment Provider and the defendants shall be privileged unless a court of competent jurisdiction determines there is a compelling public interest that the communications be submitted to the court for an in camera review.

#### **Sec. 3-3-8 Revocation of Participation in Drug Court**

- (a) Upon a recommendation from the Drug Court Team that the defendant's participation in Drug Court should be revoked, the Tribal Prosecutor shall file a petition in Drug Court showing probable cause that a defendant has violated the terms or conditions of Drug Court. The Drug Court Judge shall order a hearing on the revocation. The order must require the defendant to appear at a specified time and place for the hearing. A copy of the

petition and the order setting the hearing shall be personally served by the Tribal Police or by certified mail. The Drug Court Judge may also issue an arrest warrant directing any peace officer or probation officer to arrest the defendant and bring the defendant before the Court.

- (b) At the hearing, the defendant must be advised of:
  - (1) The allegations of the petition;
  - (2) The opportunity to appear and to present evidence on the defendant's behalf;
  - (3) The opportunity to question adverse witnesses; and
  - (4) The right to be represented by a Tribal Public Defender, if the Poarch Band of Creek Indians makes such representation available, or to hire his or her own representation.
- (c) A hearing is required before the defendant's participation in Drug Court is revoked unless the defendant admits the allegations and waives the right to a hearing.
- (d) At the hearing, the Tribal Prosecutor shall prove, by a preponderance of the evidence, that there has been a violation of the terms and conditions of Drug Court.
- (e) If the Tribal Prosecutor proves that the defendant has violated the terms and conditions of Drug Court, the Drug Court Judge may:
  - (1) Continue the defendant's Drug Court participation without a change in terms or conditions;
  - (2) Continue the defendant's Drug Court participation with modified or additional terms and conditions; or
  - (3) Revoke the defendant's participation in Drug Court and transfer the matter to Tribal Court for the Tribal Judge to impose any sentence that could have been originally imposed. The Drug Court Judge shall state the reasons for his or her determination in the order.
- (f) If the Drug Court Judge finds that the Tribal Prosecutor has not proved by a preponderance of the evidence that there

has been a violation of the terms and conditions of Drug Court participation, the Drug Court Judge:

- (1) Must dismiss the petition for revocation and order the immediate release of a defendant, if in custody; and
  - (2) May modify or add terms and conditions of Drug Court participation.
- (g) If a defendant's participation in Drug Court is revoked, the matter is transferred to Tribal Court, along with a copy of the Drug Court Judge's order revoking participation in Drug Court. The Tribal Judge shall sentence the defendant and shall consider any elapsed time and either expressly allow all or part of the time as a credit against the sentence or reject all or part of the time as credit, except that credit must be allowed for time served in a detention center.

**CHAPTER IV  
POARCH BAND OF CREEK INDIANS  
SUPREME COURT**

**Sec. 3-4-1 Tribal Supreme Court**

The Poarch Band of Creek Indians Supreme Court shall be composed of one (1) Tribal Chief Justice and two (2) Tribal Associate Justices.

**Sec. 3-4-2 Term of Office of Tribal Chief Justice and Tribal Associate Justices**

- (a) All members of the Tribal Supreme Court shall be appointed to staggered three (3) year terms. In order to implement the staggering of terms, the Tribal Chief Justice shall be appointed to an initial three (3) year term; one (1) Tribal Associate Justice shall be appointed to an initial two (2) year term; and one (1) Tribal Associate Justice shall be appointed to an initial one (1) year term. Thereafter, all members of the Tribal Supreme Court shall be elected to three (3) year terms, and the Tribal Supreme Court may designate the Tribal Chief Justice on an annual basis.
- (b) The terms of office can be reconfirmed without limitation by the Tribal Council upon expiration of each three (3) year term.

**Sec. 3-4-3 Duties of Tribal Chief Justice and Tribal Associate Justice**

- (a) The Tribal Supreme Court shall:
  - (1) Preside over all cases appealed from Tribal Court and shall render decisions in said appeals;
  - (2) Exercise original jurisdiction in the issue and determine writs of quo warranto and mandamus in relation to matters in which no other Court has jurisdiction;
  - (3) Issue writs of injunction, habeas corpus, and such other remedial and original writs as are necessary to give the Tribal Supreme Court general superintendence and control of inferior Courts in the Tribal Judicial System; and
  - (4) Draft and promulgate rules governing the administration of all courts in the Tribal Judicial System and rules governing practice and procedure in the Tribal Supreme Court; provided, that such rules do not contradict any rules of procedure enacted by the Tribal Council or abridge, enlarge, or modify the substantive right of any party.
- (b) The Tribal Chief Justice shall also set the appellate docket and schedule sessions of the Tribal Supreme Court.

**CHAPTER V  
TRIBAL COURT ADMINISTRATION**

**Sec. 3-5-1 Tribal Court Administration**

Tribal Court Administration shall be composed of one (1) Tribal Court Administrator, one (1) Tribal Clerk of Court, and the necessary staff as approved by the Tribal Council.

**Sec. 3-5-2 Qualifications of the Tribal Court Administrator**

The Tribal Court Administrator shall have qualifications as set forth by the Poarch Band of Creek Indians pursuant to its Tribal Court Administrator job description.

**Sec. 3-5-3 Appointment of Tribal Court Administrator**

The Tribal Court Administrator shall be nominated by the Tribal Court Judge and confirmed by the Tribal Council. The Tribal Court Administrator shall be supervised by and report to the Tribal Court Judge.

**Sec. 3-5-4 Duties of Tribal Court Administrator**

The Tribal Court Administrator shall be responsible for the administration of all activities and all non-judicial staff members of the Tribal Judicial System. Specific duties shall include:

- (a) Hiring, directing, and supervising the all non-judicial staff members of the Tribal Judicial System;
- (b) Directing and supervising the Tribal Clerk of Court and such Deputy Court Clerks, as may be needed, who shall be responsible for inter alia:
  - (1) Keeping the records of the Tribal Judicial System;
  - (2) Maintaining indexes of all actions and all judgments issued in the Tribal Judicial System;
  - (3) Administering oaths and taking acknowledgements and affidavits;
  - (4) Issuing and signing all writs and process of every description issued in the Tribal Judicial System;
  - (5) Transmitting all summons, pleadings, subpoenas, orders, and other court documents to the appropriate parties;
  - (6) Maintaining and distributing the dockets for the Tribal Judicial System;
  - (7) Scheduling sessions of the Poarch Band of Creek Indians Tribal Court and Supreme Court in coordination with the Tribal Judge and Tribal Chief Justice;
  - (8) Collecting all fines or other sums paid to or by order of the Court; and
  - (9) Performing all the duties assigned to his or her office by the Ethics Code;
- (c) Directing and supervising the probation program;
- (d) Directing and supervising Drug Court;

- (e) Acting as a Tribal magistrate whose powers are limited to:
  - (1) Issuing arrest warrants;
  - (2) Setting bail;
  - (3) Approving surety bonds and receiving cash bail in criminal proceedings;
  - (4) Authorizing the release of defendants on their personal recognizance; and
  - (5) Receiving pleas of guilty in criminal cases and imposing fines in uncontested traffic cases where a schedule of fines has been set by the Tribal Council;
- (f) Coordinating the transcription or recording of all official Court proceedings;
- (g) Coordinating the selection of jurors for jury trials;
- (h) Setting fees for pleadings, summons, subpoenas, and for any other filings and for copies of such records;
- (i) Training non-judicial staff members of the Tribal Judicial System in legal procedures;
- (j) Maintaining the Tribal Judicial System law library with all decisions issued by the Tribal Court and the Tribal Supreme Court, all redacted decisions and advisory opinions issued by the Poarch Band of Creek Indians Ethics Board, and an inventory for all books and periodicals;
- (k) Maintaining a registry of Tribal Bar members;
- (l) Annually updating the Tribal Bar members who are in good standing on Tribal Code revisions;
- (m) Developing a working relationship with surrounding jurisdictions, and state and federal courts and acting as a liaison between Tribal Judicial System and the county, state, and federal judicial systems;
- (n) Conducting public relations activities for the Tribal Judicial System;
- (o) Securing, administering, and monitoring compliance for any federal grants or contracts received by the Tribal Judicial System and developing and maintaining the budget for the Tribal Judicial System; and
- (p) Receiving, reviewing, investigating, and resolving complaints regarding operation of Tribal Court Administration.

**Sec. 3-5-5 Civil Immunity of Tribal Court Administrator and Tribal Clerk of Court**

Neither the Tribal Court Administrator nor the Tribal Clerk of Court shall be liable in any civil proceeding for any utterances or acts made or done by either in the scope of their duties.

**Sec. 3-5-6 Reports to the Tribal Council**

- (a) The Tribal Court Administrator shall by the 15<sup>th</sup> day following the end of each quarter submit a written report to the Tribal Council detailing: (1) how many cases and what types of cases were filed the previous quarter in each of the courts in the Tribal Judicial System; and (2) how many of the cases were disposed of in each court during the quarter.
- (b) At the end of each calendar year, the Tribal Court Administrator shall conduct judicial evaluations of each judge in the Tribal Judicial System by surveying the Tribal Bar on such issues as fairness, sensitivity to diversity and bias, legal knowledge of the Tribal Code of the Poarch Band of Creek Indians, legal knowledge of court procedures, integrity, diligence, impartiality, judicial temperament, communication skills, efficient administration of his or her court, respect for the rule of law, independence from political and institutional influences, and professional conduct. The results of such survey shall be reported to the Tribal Council no later than ninety (90) days following the end of the calendar year.

**Sec. 3-5-7 Prohibition on Service**

No Tribal Council member shall be employed by the Tribal Court Administration.

**CHAPTER VI  
JUDICIAL RULES OF CONDUCT**

**Sec. 3-6-1 Application of Judicial Rules of Conduct**

All judges in the Tribal Judicial System shall adhere to the Judicial Rules of Conduct as enumerated in this Chapter.

**Sec. 3-6-2 A Judge Shall Uphold the Integrity and Independence of the Judiciary**

An independent and honorable judiciary is indispensable to justice in our society. A judge shall participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved. The provisions of this Chapter are to be construed and applied to further that objective.

**Sec. 3-6-3 A Judge Shall Avoid Impropriety and the Appearance of Impropriety**

- (a) A judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- (b) A judge shall at all times maintain the decorum and temperance befitting his or her office and shall avoid conduct prejudicial to the administration of justice which brings the judicial office into disrepute.
- (c) A judge shall not allow his or her family, social, political or other relationships to influence the judge's judicial conduct or judgment. A judge shall not lend the prestige of judicial office to advance the private interests of the judge or others; nor shall a judge convey or permit others to convey the impression that they are in a special position to influence the judge. A judge shall not testify voluntarily as a character witness.

**Sec. 3-6-4 A Judge Shall Perform the Duties of His Office Impartially and Diligently**

The judge's judicial duties include all the duties of the judge's office prescribed by law. In the performance of these duties, the following standards apply:

- (a) Adjudicative Responsibilities
  - (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.
  - (2) 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, and shall resist influences on the Court by Tribal Officials, governmental officials or any other individuals attempting to improperly influence the Court.

- (3) A judge shall require order and decorum in proceedings before the judge. A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require similar conduct of lawyers, his or her staff, Court officials and others subject to the judge's direction and control. He or she should not interfere in the proceedings except where necessary to protect the rights of the parties. A judge shall not take an advocate's role.
- (4) 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 against parties, witnesses, counsel or others, including, but not limited to, bias or prejudice based upon race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, and shall not permit staff, Court officials, and lawyers, and others subject to the judge's direction and control to do so. This section does not preclude legitimate advocacy by lawyers when race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.
- (5) A judge shall accord to every person who has a legal interest in a proceeding, or that person's lawyer, the right to be heard according to law. A judge shall refrain from all out-of-Court or other communications with parties, witnesses, Tribal Officials, agents or others concerning a pending proceeding except that:
  - (i) A judge may initiate or consider any ex parte communications when expressly authorized by law to do so.

- (ii) A judge may initiate ex parte communication for scheduling or administrative purposes that do not deal with substantive matters or issues on the merits; provided:
  - (A) The judge reasonably believes that no party will gain a procedural or tactical advantage as a result of the ex parte communication, and
  - (B) The judge makes provision to notify promptly all other parties of the substance of the ex parte communication and allows an opportunity to respond.
  - (C) A judge may obtain the advice of a disinterested expert on the law 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, and affords the parties reasonable opportunity to respond.
- (6) A judge shall dispose of all judicial matters promptly, efficiently and fairly.
- (7) A judge shall not, while a proceeding is pending or impending in any Court in the Tribal Judicial System, make any public comment that might reasonably be expected to affect its outcome or impair its fairness or make any nonpublic comment that might substantially interfere with a fair trial or hearing. The judge shall require similar abstention on the part of court personnel subject to the judge's direction and control. This section does not prohibit judges from making public statements in the course of 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.
- (8) A judge shall not, with respect to cases, controversies or issues that are likely to come before the Court, make pledges, promises or commitments that are inconsistent with the impartial performance of the adjudicative duties of the office.
- (9) 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.
- (10) A judge shall not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity.
- (b) Administrative Responsibilities
  - (1) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and maintain professional competence in judicial administration, and shall cooperate with other judges and Court officials in the administration of Court business.
  - (2) A judge shall require staff, Court officials and others subject to the judge's direction and control to observe the standards of fidelity and diligence that apply to the judge and to refrain from manifesting bias or prejudice in the performance of their official duties.
  - (3) A judge shall take or initiate appropriate disciplinary measures against a judge or lawyer for a violation of judicial or professional rules of conduct of which the judge has personal knowledge.
- (c) Disclosure and Disqualification
  - (1) If a judge is in a proceeding in which the judge's impartiality might reasonably be questioned, the judge shall disclose on the record his relationship to the parties, the witnesses, the lawyers, and/or the proceedings. The judge shall disqualify himself from the proceeding unless the parties waive disqualification. Situations where the judge's impartiality might reasonably be questioned, include, but are not limited to, the following situations:
    - (i) The judge has a personal bias or prejudice concerning a party or a

- party's lawyer, or has personal first-hand knowledge of disputed evidentiary facts concerning the proceeding;
- (ii) The judge served or serves as a lawyer, advocate, or personal representative for a party or witness, or a person with whom the judge has been associated in a professional capacity served or serves as a lawyer, advocate, or personal representative for a party or witness;
  - (iii) The judge knows that he or she, individually or as a fiduciary, or the judge's immediate family member, wherever residing, or any other member of the judge's family residing in the judge's household,
    - (A) Is a party to or is likely to be a witness in the proceeding;
    - (B) Has a financial interest in the subject matter in controversy; or
    - (C) Has any other interest that could be substantially affected by the proceeding; provided, however, that any judge who is a Tribal Member does not need to disqualify himself or herself if the financial or other interest in the proceeding is a benefit or program offered to Tribal Members or Tribal employees, which may include the judge and/or his or her immediate family member, if the selection of recipients
      - (I) Is based on objective criteria established by the Tribal Council or the relevant Tribal or federal authority and
      - (II) Does not require the exercise of any discretion;
  - (iv) The judge, while a judge or a candidate for office, has made a

- public statement that commits, or appears to commit, the judge with respect to any issue in the proceeding; and
  - (v) The judge has an ongoing attorney-client relationship with Tribal Government, a Tribal Entity, or Tribal Member who is a party to the proceeding or had such a relationship at the time the events giving rise to the proceeding occurred.
- (2) The parties and their lawyers shall consider, out of the presence of the judge, whether to waive disqualification. If, following disclosure the parties and lawyers all agree, without participation by the judge, 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.

**Sec. 3-6-5 A Judge May Engage in Activities to Improve the Law, the Legal System, and the Administration of Justice**

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him or demean the judicial office:

- (a) A judge may speak, write, lecture, teach and participate in other activities concerning the law, the legal system, the administration of justice, and nonlegal subjects.
- (b) A judge may appear at a public hearing before, or otherwise consult with, the Tribal Council on matters concerning the law, the legal system, or the administration of justice, except when acting pro se in a matter involving the judge or the judge's interests.
- (c) A judge may serve as an officer, director, trustee or non-legal advisor of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice.

**Sec. 3-6-6 A Judge Shall Conduct Extra-Judicial Activities as to Minimize the Risk of Conflict with Judicial Obligations**

- (a) A judge may represent the Poarch Band of Creek Indians on ceremonial occasions or in connection with historical, educational or cultural activities.
- (b) A judge may serve as an officer, director, trustee, or non-legal advisor of a private or public business or corporation or of an educational, religious, charitable, fraternal or civic organization, unless the corporation or organization engages in proceedings that would ordinarily come before the judge in the court. However, a judge shall not serve as an officer or director of any Tribal Entity.
- (c) A judge shall not be an employee of Tribal Government or any Tribal Entity.
- (d) A judge shall not engage in financial and business dealings that may reasonably be perceived to exploit the judge's judicial position.
- (e) The Drug Court Judge or any attorney with whom the Drug Court Judge practices shall not represent Tribal Members in criminal proceedings in any Court.
- (f) Subject to the requirements of this Tribal Code, a judge may hold and manage investments of the judge and his or her immediate family members, including real estate, and engage in other remunerative activity.
- (g) A judge shall not solicit or accept a gift from any single source having a market value of more than one hundred fifty dollars (\$150.00) at any one time from any person or organization that is seeking official or professional action or preferential treatment from the judge. Neither shall the judge knowingly solicit gifts for his or her immediate family members or allow his or her immediate family members to accept gifts on the judge's behalf. The judge's immediate family members shall not knowingly solicit gifts for the judge or accept gifts on behalf of the judge. The following are excepted from this rule:
  - (1) Gifts for social or traditional events;
  - (2) Gifts of a trivial or nominal value, such as complimentary items offered to members of the public at large, promotional items, or items received as a result of mass advertising mailings or attendance at a conference or convention;
  - (3) Gifts received on the behalf of the Poarch Band of Creek Indians in the course of diplomatic relations with other Tribal, state, or federal governments;
  - (4) Awards or honors customarily and publicly presented in recognition of public service, provided the gift, award or benefit could not reasonably be perceived as intended to influence the judge in the performance of judicial duties;
  - (5) Food and beverages consumed at banquets, receptions, business dinners, conferences, or similar events; and
  - (6) Political contributions made in accordance with applicable election laws.
- (h) A judge shall not serve as a fiduciary if it is likely that the judge as a fiduciary will be engaged in proceedings that would ordinarily come before the judge, or if the estate, trust or ward becomes involved in adversary proceedings in the Court on which the judge serves or one under its appellate jurisdiction. The same restrictions on financial activities that apply to a judge personally also apply to the judge while acting in a fiduciary capacity.

**Sec. 3-6-7 A Judge Shall Refrain from Inappropriate Political Activity**

- (a) A judge or a candidate for appointment to judicial office shall not engage in any political activity that:
  - (1) Involves persons, organizations or specific issues that would disqualify a judge under this Tribal Code;
  - (2) Creates a reasonable doubt about the judge's impartiality toward persons, organizations or factual issues that foreseeably may come before the Court on which the judge serves, whether or not the judge would be disqualified;

- (3) Implies support by the judge in the judge's official capacity to a cause other than the improvement of the law, the legal system, or the administration of justice; or
- (4) Jeopardizes the political impartiality of the Tribal Judicial System.
- (b) A judge shall resign from judicial office upon becoming a candidate for a non-judicial office either in a primary or in a general Tribal election.
- (c) A candidate for appointment to judicial office or a judge seeking other governmental office shall not engage in any political activity to secure the appointment except that such persons may:
  - (1) Communicate with the Tribal Chairman's Office, including any selection or nominating committee designated by the Tribal Chairman to screen candidates;
  - (2) Seek support, recommendations, or endorsement for the appointment from the members of the Tribal Council, individual Tribal Members, or fellow attorneys; and
  - (3) Provide to those specified in §3-6-7(c)(1) and §3-6-7(c)(2) information as to his or her qualifications for the office.
- (c) The Tribal Council may conduct any investigation into the allegations prior to the hearing if it deems that an investigation is appropriate.
- (d) The judge may appear before the Tribal Council at the hearing to answer the complaint, examine and cross-examine witnesses, and introduce evidence.
- (e) If a majority of the Tribal Council members present find merit to the complaint, the Tribal Council may reprimand the judge, suspend the judge without pay for a period of time, or remove the Judge in accordance with the provisions of this Tribal Code.

#### Legislative History

TCM, October 25, 1986 (enacting Tribal Code, including this Title).

TCM, February 21, 1988 (amending §§3-1-4; 3-1-7; 3-1-9; 3-1-12; 3-1-15; and 3-1-17).

TCM, January 1, 1993 (amending §3-1-23).

TCM, April 18, 1999 (amending §§3-1-21 and 3-1-23).

TCM, November 18, 2001 (amending §3-1-10).

TCM, March 22, 2002 (amending §3-1-14).

TCO 07:005, February 6, 2007 (ratifying Tribal Code, including this Title).

TCO 08:003, March 26, 2008 (amending §3-1-10 adding law license from any state not just state of residence).

TCO 08:006, June 3, 2008 (substantially amending Judicial Title and adding, inter alia a Judicial Code of Conduct).

TCO 10:008, December 2, 2010 (amending supervision of Tribal Court Administrator in §§3-2-3 and 3-5-3).

#### Interpretive Notes and Decisions

##### 1. Generally

The doctrine of *stare decisis* prohibits the Court ruling on an issue in one case and then ruling the exact opposite on the same issue in another case. *Community Recovery Services, Inc. v. PCI Gaming v. Tullis*, No. CV-06-19, at 15 (Poarch Band of Creek Indians Tribal Court 2011).

##### 2. Recusal

The Tribal Judge was not required to recuse himself because he did not have an interest in the outcome of the case and Appellant did not prove that the Tribal Judge's prior knowledge and interactions with Appellant resulted in actual bias or prejudice at trial. *Adams v. Poarch Band of Creek Indians*, No. SC-01-01, at 17-18. (Poarch Band of Creek Indians Tribal Supreme Court 2001)(interpreting § 3-1-8(c) which was later superseded by the adoption of the Chapter 6 (Judicial Standards of Conduct)).

##### 3. Removal

#### Sec. 3-6-8 Violations of the Rules of Judicial Conduct

- (a) Any person who, in good faith, believes or has reason to believe that a judge has violated any provision of this Chapter may file a complaint with the Tribal Council Liaison. All complaints shall include the name of the judge whose alleged violation is being reported, a statement of facts to support the allegations being made, including, but not limited to, the date, time, place, and the persons involved and/or who may have knowledge of the alleged violation, and a signed statement that the information the complainant has provided is accurate to the best of his or her knowledge.
- (b) The Tribal Council Liaison will inform the judge in writing of the complaint against him or her and set the matter for a hearing before the Tribal Council.

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A controversy is a non-justiciable political question if there is a textually demonstrable constitutional commitment of the issue to a coordinate political department or if there is a lack of judicially discoverable and manageable standards for resolving the issue, but the court must first interpret the text in question and determine whether and to what extent the issue is textually committed. *White v. Poarch Band of Creek Indians et al.*, No. SC-11-01, at 3 (Poarch Band of Creek Indians Tribal Supreme Court 2012).

The Tribal Judge's removal is not a non-justiciable political question because the Tribal Code expressed a "textually demonstrable commitment" that a Tribal Judge would serve a definite term unless found to have committed neglect of duty or gross misconduct. *White v. Poarch Band of Creek Indians et al.*, No. SC-11-01, at 5 (Poarch Band of Creek Indians Tribal Supreme Court 2012).

The Tribal Judge had a property interest in his appointment as Tribal Judge for the term of his appointment that could not be voided without being provided minimal due process of notice and an opportunity to be heard, either in writing or in person. *White v. Poarch Band of Creek Indians et al.*, No. SC-11-01, at 10 (Poarch Band of Creek Indians Tribal Supreme Court 2012).

Poarch Band of Creek Indians Tribal Code §3-1-7 (2008) governs the removal of a Tribal Judge and sets forth legislatively enacted procedures serving as the proper minimum constitutional baseline governing the removal of a Tribal Judge. *White v. Poarch Band of Creek Indians et al.*, No. SC-12-01, at 3 (Poarch Band of Creek Indians Tribal Supreme Court 2013).

The Tribal Constitution abrogates Tribal official immunity where assertion of Tribal official immunity would foreclose any review of a Tribal Government decision that directly implicates Tribal judicial independence, such as the removal of a sitting Tribal Judge without due process. *White v. Poarch Band of Creek Indians et al.*, No. SC-12-01, at 8 (Poarch Band of Creek Indians Tribal Supreme Court 2013).

