

## **ARTICLE IX. JUDICIAL**

### **A. Judicial Power Vested**

The judicial power of the Little Traverse Bay Bands of Odawa Indians shall be vested in a Tribal Court system. The Tribal Court system shall be composed of a court of general jurisdiction (referred to as the “Tribal Court”), an appellate court (referred to as the “Tribal Appellate Court”) and such lower courts as the Tribal Council may establish upon written recommendation from the Tribal Judiciary.

### **B. Composition of the Tribal Court System**

1. Tribal Court. The Tribal Court shall consist of one (1) judge who shall be the Chief Judge, and one (1) or more associate judges who shall meet as often as circumstances require. The Chief Judge shall serve as head of the Tribal Judiciary.
2. Tribal Appellate Court. The Tribal Appellate Court shall consist of one (1) Chief Justice and two (2) Associate Justices who shall meet as often as circumstances require. At least one (1) of the three (3) justices shall be an attorney licensed to practice before the courts of a state in the United States and at least one (1) of the justices shall be an enrolled Tribal member who is over fifty five (55) years of age.
3. Other lower courts. Composition of the Tribal Court system may also include such lower courts as are in the future established under Section (A) of this Article.

### **C. Jurisdiction**

1. Inherent Sovereignty. The judicial power of the Tribal Court shall extend to all civil and criminal cases arising under this Tribal Constitution, statutes, regulations or judicial decisions of the Little Traverse Bay Bands of Odawa Indians. This jurisdiction is based on the Tribe’s inherent sovereignty, traditional custom, and Federal law.
2. Power of Judicial Review. The Tribal Court shall have the power to interpret the Constitution and laws of the Little Traverse Bay Bands of Odawa Indians.

3. Court of First Instance. Any such case or controversy arising within the jurisdiction of the Tribal Courts of the Little Traverse Bay Bands of Odawa Indians shall be filed in the Tribal Court before it is filed in any other court.
4. Sovereign Immunity Not Waived. This jurisdiction shall not be construed to be a waiver of the sovereign immunity of the Little Traverse Bay Bands of Odawa Indians.
5. Appellate Review. The Tribal Appellate Court shall have jurisdiction over any case on appeal from the Tribal Court. Appeals decisions shall be decided by the full Appellate Court.
6. Right to Appellate Review. Any party to a Tribal Court action may file an appeal from a final judgment, order or decision of the Tribal Court to the Tribal Appellate Court, based on alleged error of law, procedural violation of this Constitution, laws or regulations enacted by the Tribal Council, or Court Rules, or clear factual error. Appellate procedures shall be set out in the Tribal Court Rules.
7. Finality of Appellate Review. Rulings of the Tribal Appellate Court are final and binding and cannot be appealed to the Tribal Council, Tribal Membership or any other jurisdiction.

**D. Judicial Appointments**

1. Appointment to the Tribal Court. The Judges of the Tribal Court and such lower courts as established under Section (A) of this Article shall be appointed by an affirmative vote of six (6) of the nine (9) members of the Tribal Council. Initial appointments shall take place within one hundred twenty (120) days of the swearing in of the first Tribal Council elected under this Constitution.
2. Appointment to the Tribal Appellate Court. Each justice of the Tribal Appellate Court shall be appointed by an affirmative vote of six (6) of the nine (9) members of the Tribal Council.

**E. Eligibility for Appointment and Service**

1. Tribal Court. A person may be eligible to serve as a Tribal Court Chief Judge or Associate Judge only if he/she:
  - a. Has attained the age of thirty (30) years;
  - b. Is at least one fourth (1/4) North American Indian;
  - c. Is not a Tribal Council member, or the Chairperson or Vice-Chairperson;  
and
  - d. No person shall serve as Chief Judge or Associate Judge within ten (10) years of completion of a sentence or probation upon being convicted of a felony, unless such conviction has been vacated or overturned.
  
2. Tribal Appellate Court. A person may be eligible to serve as the Chief Justice of the Tribal Appellate Court or as an Associate Justice only if he/she:
  - a. Has attained the age of thirty (30) years;
  - b. Is at least one fourth (1/4) North American Indian, other than the Justice who is required to be an attorney, where being Indian is preferred but not mandatory;
  - c. Is not a Tribal Council member or the Chairperson or Vice-Chairperson;  
and
  - d. No person shall serve as an Appellate Court Justice within ten (10) years of completion of a sentence or probation upon being convicted of a felony, unless such conviction has been vacated or overturned.

**F. Terms of Office**

1. Tribal Court Term of Office. Judges of the Tribal Court shall serve for terms of four (4) years and these terms will last until their replacement is sworn in. There

shall be no limitation on the number of terms a judge may serve. The initial appointment of the Chief Judge shall be a four (4) year term, and the Associate Judge(s) shall be a two (2) year term, in order to implement staggered terms of service. All terms for judges thereafter, including additional associate judges, shall be four (4) years.

2. Tribal Appellate Court Term of Office. Justices of the Tribal Appellate Court shall serve for terms of six (6) years. There shall be no limitation on the number of terms a justice may serve. In order to implement staggered terms of service, the initial appointment of one (1) justice shall be for a two (2) year term. The initial appointment of one (1) justice shall be for a four (4) year term. The initial appointment of one (1) justice shall be for a six (6) year term. All subsequent appointments shall be for six (6) year terms.
3. Chief Justice. The justices of the Tribal Appellate Court shall appoint from among themselves one of the justices to serve as Chief Justice for a two (2) year term. There shall be no limit on the number of terms a Chief Justice may serve.

## **G. Compensation**

The Tribal Council shall have the power and responsibility to establish reasonable levels of compensation as governed by statute for the Judges and Justices.

## **H. Judicial Independence**

1. Independent Branch of Government. The Judicial Branch shall be independent from the Legislative and Executive branches of the Tribal government and no person exercising the powers of any of the other two (2) branches of government shall exercise powers properly belonging to the Judicial Branch of Tribal government.
2. Funding Mandate. The Judicial Branch shall prepare and present an annual budget directly to the Tribal Council for funding. The proposed budget may include funding for representation of indigent defendants. Funding for the Judiciary shall be based on its need and status as a branch of government.
3. Court Administration. The Tribal Judiciary shall employ an administrator of the

courts and other assistants as may be necessary to aid in the administration of the courts of the Little Traverse Bay Bands of Odawa Indians. The administrator shall perform administrative duties assigned by the Judiciary.

## **I. Practice and Procedure**

The Tribal Judiciary shall establish the practice and procedure in all courts of the Little Traverse Bay Bands of Odawa Indians, including qualifications to practice before the courts of the Tribe, provided that such procedural rules are consistent with this Constitution and the substantive laws of the Tribe.

## **J. Conflict of Interest**

**1.** Recusal mandated. Any Judge or Justice with a direct personal or financial interest in any matter before the Judiciary shall recuse. Failure to recuse constitutes cause for removal in accordance with Article XIII (B).

**2.** Tribal Court. If the Chief Judge recuses, one of the associate judges shall hear the case. If an associate judge recuses, the Chief Judge or another associate judge shall hear the case. If all Tribal Court judges recuse, the judges of the Tribal Court shall appoint a judge from another Tribal court to serve as temporary associate Tribal Court judge to hear the particular case. In the alternative the Tribal Court may request the Tribal Council to make a special appointment of a judge to hear the particular case. Such special appointees need not meet the requirements specified in section (E) of this Article but must be qualified and capable to preside over the particular case.

**3.** Tribal Appellate Court. If an Appellate Court justice recuses, the Tribal Appellate Court shall appoint a judge from another Tribal appellate court to serve on the Tribal Appellate Court for the particular case. In the alternative the Tribal Appellate Court may request the Tribal Council to make a special appointment of a judge to serve on the Tribal Appellate Court for the particular case. Such special appointees need not meet the requirements specified in section (E) of this Article but must be qualified and capable to participate in the review and decision in the particular case.