

Tule River Indian Tribe

JUDICIAL ORDINANCE

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CHAPTER 1. GENERAL PROVISIONS

Section 1.01 Establishment of Tribal Court

Pursuant to Article VI, Section 1(j) of the Tribe's Constitution, and Article V, Section 1 of the Tribe's Bylaws, the Tribal Council of the Tule River Indian Tribe hereby establishes a judicial department to be known as the Tule River Tribal Court. In addition to a Tribal Court, there may be established a Court of Appeal and a Peace Making Panel.

Section 1.02 Title

This Ordinance is the Judicial Ordinance of the Tule River Indian Tribe. Specific provisions may be cited to by chapter or section number as appropriate (e.g., Judicial Ordinance, Chapter 1; Judicial Ordinance § 1.02).

Section 1.03 Purpose

This Ordinance is enacted to authorize the Tribal Court to exercise the Tribe's inherent judicial power to preserve and protect tribal and individual resources, tribal culture and traditions, and the health and safety of tribal members and individuals within the Tribe's jurisdiction.

In resolving matters before the Tribal Court, the objective of the Court shall be to determine the truth, and to seek a resolution that restores balance to the community in accordance with the customs and traditions of the Tribe, repairs relationships, results in fairness, and uses retribution and punishment only when necessary.

Section 1.04 Effective Date and Enforceability

This Ordinance becomes effective and enforceable immediately following its approval by the Tribal Council. Subsequent amendments to this Ordinance become effective and enforceable immediately following their approval by the Council, unless some other date is specified by the Council for a particular amendment.

Section 1.05 Jurisdiction

The Tribal Court may exercise the Tribe's territorial, personal, and subject matter jurisdiction to the fullest extent possible on any basis consistent with this Ordinance, the Tribe's other laws and Constitution and Bylaws, and federal law. The jurisdiction of the Court includes:

- (A) Territory
 - (1) All lands within the exterior boundaries of the Reservation and all lands owned by, held in trust for, leased, or used by the Tribe, its members, or any other entity established by the Tribe.
 - (2) Other lands as provided for in other applicable law.

(B) Persons

- (1) The Tribal Council and its members, to the extent consistent with this Ordinance;
- (2) Tribal employees, tribal officers, tribal officials, to the extent consistent with this Ordinance;
- (3) Arms of the Tribe, tribal agencies and departments, and other entities of the Tribe, to the extent consistent with this Ordinance;
- (4) Persons or entities who have entered into contracts with the Tribe or its legal entities;
- (5) Persons or entities doing business within the territorial jurisdiction of the Tribal Court;
- (6) Members of the Tribe;
- (7) Other Indians;
- (8) Any person who is considered a tribal member or an Indian by the Tribe;
- (9) All persons or other entities that have consented to the jurisdiction of the Tribe;
- (10) Persons or entities who have engaged, or may engage, in any conduct that may affect the ability of the Tribe to govern itself or may threaten the health, safety or welfare of the Tribe or the residents of the Reservation;
- (11) Persons or entities who engage, or may engage, in any conduct that does or may threaten or has or may have some direct effect on the political integrity or economic security of the Tribe; and
- (12) Other persons or entities over whom the Tribe has jurisdiction under any other law.

(C) Subject Matter

The Tribal Court has subject matter jurisdiction over all cases or controversies which the Tribe has authorized the Court to hear. The Court may decline to exercise its jurisdiction if it finds:

- (1) Another court has the jurisdiction to hear the case and would be more convenient for the parties than the Court;
- (2) One of the parties is not a person over whom the Court can exercise its authority; or,
- (3) The case is of such a nature that the Court should not hear it.

Section 1.06 Sovereign Immunity

Notwithstanding any other provision of tribal law in effect on the date on which this Ordinance is enacted, this Section shall act as a limited waiver of sovereign immunity for the Tribal Council, Council members, tribal employees, tribal officers, tribal officials, entities which are arms of the Tribe, tribal agencies and departments, and other tribal entities, only to the extent necessary for the Tribal Court to hear cases in accordance with this Ordinance.

- (A) With respect to actions against the Tribal Council, the Court's powers of judicial review may only be exercised if a case is initiated by a Council member, or a recently-removed

Council member if he or she is challenging his or her removal. The Court's review shall be limited to the question of whether, in making any decision, the Council adhered to the applicable rules, procedures, and tribal law. The Court shall be limited to issuing declaratory relief, unless additional relief is authorized by tribal law or by contract.

- (B) With respect to actions against tribal employees, tribal officers, tribal officials, entities which are arms of the Tribe, tribal agencies and departments, and other tribal entities, the Court's powers of judicial review may only be exercised if a case is initiated by a member of the Tribe, unless a non-member is otherwise authorized to initiate a case by tribal law or contract, only after all tribal administrative remedies have been exhausted. The Court's review shall extend to the question of whether the employee, officer, official, arm, agency, or department acted arbitrarily or capriciously, abused its discretion, or otherwise acted not in accordance with law. The Court's power to grant relief shall be limited to declaratory relief, injunctive relief, and specific performance, unless additional relief is authorized by tribal law or by contract.
- (C) With respect to individual members of the Tribal Council, employees, officers, or officials, the Court's powers of relief shall include reasonable monetary penalties if the Court finds that an individual has breached a duty, or has violated a tribal law, with both malicious intent and specific intent. Such penalties, if imposed, may be awarded to those injured by the breach or violation, or to the general treasury of the Tribe, at the discretion of the Court in the interests of justice.

Nothing in this Ordinance shall be construed to be any further waiver of sovereign immunity.

Section 1.07 Judicial Power of the Court

- (A) The Tribal Court may hear any matter arising under any tribal law, ordinance, resolution, policy, rule, or similar legislative or quasi-legislative enactment.
- (B) Notwithstanding any other provision of tribal law or similar enactment in effect on the date on which this Ordinance is enacted, the Tribal Court is authorized to hear, in lieu of the Tribal Council, all matters where tribal law identifies the Council or its designee as an appellate or reviewing body, and appeals from the decision of any department, agency, commission, or entity of the Tribe, even where that decision is described as "final," "binding," or similar. The Tribal Court shall not hear enrollment matters.
- (C) The Tribal Council may authorize and establish an Appellate Court to review cases from the lower Tribal Court. If so established, even where a tribal law states a decision is "final," "binding," or similar, the Appellate Court shall have the power to interpret the Constitution and Bylaws and laws of the Tribe, to declare laws of the Tribe void if such laws are not in agreement with the Tribe's Constitution and Bylaws, and to issue the same remedies for which the Tribal Court is authorized. Decisions of the Appellate Court are final.

- (D) The Tribal Court (and Appellate Court, if established) is granted all other powers necessary to exercise jurisdiction consistent with this Ordinance.

Section 1.08 Liberal Construction

This Ordinance will be liberally construed to give full effect to the purposes for which it was enacted.

Section 1.09 Interpretation of Law

The Constitution and Bylaws, ordinances, resolutions, common law, and custom and tradition of the Tribe will be used to liberally interpret these provisions to provide for a fair hearing and fair enforcement of the laws of the Tribe. If there is no applicable tribal law, and if necessary for the proper adjudication of an action before the Court, the Court may look to other tribal law or the laws of other tribes for guidance, or to federal law and state law for guidance, as long as there is no conflict with tribal law.

Section 1.10 Conflicts with Other Laws

- (A) Tribal Laws - Any tribal law or policy that conflicts with this Ordinance is hereby repealed to the extent that it is contrary or inconsistent with this Ordinance.
- (B) Federal Laws - Unless otherwise prohibited by federal law, this Ordinance will apply in all cases where federal law is in conflict with this Ordinance or permits a choice of tribal or federal law.
- (C) State Laws - To the extent that the laws of any state may be relevant to proceedings before the Court, such laws may be read as only advisory and not directly binding.

Section 1.11 Amendments

- (A) Amendments to this Ordinance approved by the Tribal Council become part of the Ordinance for all purposes and will be codified and incorporated herein in a manner consistent with the numbering and organization of this Ordinance.
- (B) The Tribal Council may appoint a Judiciary Committee which will be responsible for recommending amendments to this Ordinance.
- (C) Any person may submit recommended amendments to the Tribal Council, or Judiciary Committee if established, using the ordinary method of bringing a matter before the Council's or Committee's attention. The Council or Committee will review the proposed amendment for the purposes of determining its fairness and to examine whether the proposed amendment, if enacted, will conflict with the Constitution and Bylaws or any other section in this Ordinance.

The Tribal Council, or Judiciary Committee if established, may consult with the Court, tribal attorney, or any other tribal entity during the review process. If established, the Committee, after reviewing the proposed amendment and after reviewing all comments, will provide the proposed amendment to the Council for review and comment.

- (D) All amendments to this Ordinance must be adopted by the affirmative vote of the Tribal Council present at a duly-called regular or special meeting of the Council where a quorum is present.

Section 1.12 Adoption of Court Rules

- (A) The Chief Justice of the Tribal Court will develop and adopt administrative rules necessary for the daily operation of the Court.
- (B) If any court rules conflict with or are inconsistent with any Tule River tribal laws, the tribal laws will govern.

CHAPTER 2. DEFINITIONS

For the purposes of this Ordinance, the following words have the definitions attached to them in this Ordinance, unless a definition is otherwise apparent from the context of this Ordinance.

Action means a court proceeding to address a dispute or violation of the law.

Constitution and Bylaws means the Constitution and Bylaws of the Tule River Indian Tribe of California.

Immediate family member means a father, mother, son, daughter, sister, brother, uncle, aunt, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, step-brother, step-sister, half-brother, half-sister, grandmother, grandfather, grandmother-in-law, or grandfather-in-law.

Judiciary Committee or *Committee* is a committee which may be appointed by the Council to offer amendments to the Ordinance and assist with the administration of the Court.

Party means any person who is a participant or involved in or the subject of, whether active or inactive, voluntary or involuntary, including one made a party by the action of another person, any case, trial, hearing, controversy, matter, relationship or proceeding which is encompassed within any procedure under this Ordinance.

Person means any individual, firm, co-partnership, joint venture, association, social club, fraternal organization, corporation, estate, trust, receiver, trustee, syndicate, state, county, city, municipality, district or other political subdivision of a state, or any other legal entity or group acting as a unit.

Reservation means the Tule River Reservation as set forth in the Tribe's Constitution and Bylaws.

Tribal Council or *Council* means the governing body of the Tribe established under Article III of the Tribe's Constitution and Bylaws.

Tribal Court or *Court* means the Tribal Court established under this Ordinance.

Tribal law includes the Constitution and Bylaws, ordinances, resolutions, common law, customary law, and other legislative or quasi-legislative enactments adopted by the Tribe.

Tribe means the Tule River Indian Tribe.

CHAPTER 3. ORGANIZATION OF THE COURT

Section 3.01 Composition of the Court

The Tribal Court consists of one Chief Judge and additional Judges as may be deemed necessary by the Tribal Council.

If so established by the Tribal Council, the Appellate Court shall consist of one Chief Justice and two Associate Justices.

The Tribal Court will be funded by general appropriations from the Tribe; from filing fees, penalties, and assessments for costs to persons before the Court; from federal appropriations or grants; and from such other sources of revenue as the Council deems appropriate.

Section 3.02 Staff to Support the Court

(A) Tribal Court Clerk

- (1) Before taking office, the Tribal Court Clerk must state in the presence of the Tribal Court Judge that he or she will perform the Clerk's duties faithfully and honestly, will not let personal views and relationships affect the performance of the Clerk's duties, will not attempt to influence the course of Court proceedings, and will not reveal confidential matters which the Clerk learns of in the course of official duties.
- (2) The Tribal Court Clerk has the following authority and responsibilities:
 - (a) Maintain a calendar of hearing dates and deadlines and assist with scheduling of Court proceedings;
 - (b) Prepare documents and distribute materials related to Court hearings;
 - (c) Notify the Judge and parties, as required by tribal law, of actions taken, hearings scheduled, and other developments requiring their attention;

- (d) Prepare and maintain records of all matters brought before the Court, including the taking of or providing for records of hearings;
- (e) Receive and record money for fines and costs charged to parties in matters before the Court;
- (f) Keep records of property seized, held for use as evidence, disposed of, and returned in the course of Court proceedings; and,
- (g) Perform other duties as assigned by the Tribal Court Judge.

(B) Other Staff

Subject to the Court’s budget and the Tribal Council’s approval, the Court may arrange for other staff (bailiff, reporter, etc.) as necessary for its orderly operation.

Section 3.03 Court Records

Court records are subject to the following rules:

- (A) Court records will be kept in the office of the Court Clerk on the Reservation and may only be removed for the purpose of hearings.
- (B) All testimony and arguments given in open court will be electronically recorded by the Court Clerk and will be a part of the record for the case and be kept with the other records of the case. A transcript of the recording(s) will be made under the direction of the Clerk upon the request of a Judge or of a party when the case is appealed. Unless excused by the Court, a party requesting a transcript will bear the expense of its preparation.
- (C) All court records are confidential, except as otherwise provided in this Ordinance or other tribal law, or as directed by the Tribal Court.

Section 3.04 Personnel Policies for Court Staff

Tribal Court support staff will be subject to the Tribe’s personnel policy and procedures unless otherwise provided for herein. The Tribal Court Judge may be required to complete performance reviews of staff and judicial personnel assigned to the Tribal Court.

CHAPTER 4. JUDGES

Section 4.01 Appointment of Judges

Tribal Court Judges will be selected and appointed by the Tribal Council, or Judiciary Committee if established and so authorized by the Council. A Chief Judge shall preside over the Court. Associate Judges, appellate Judges and pro tem Judges may be appointed as needed. Before appointment, all judicial candidates will be screened through the Council or Committee, if established and so authorized by the Council.

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Section 4.02 Qualifications of Judges

All individuals recommended for appointment and confirmation as a Tribal Court Judge must:

- (A) Have a law degree (juris doctorate);
- (B) Have a minimum of seven years' experience practicing law (which may include service on a tribal, federal, or state court bench);
- (C) Be knowledgeable of Indian, federal, and California law;
- (D) Be knowledgeable of the Constitution and Bylaws and laws of the Tribe;
- (E) Be a person of honor, integrity, and good moral character. This may be supported by letters or statements of recommendation to the Tribal Council or Tribal Judicial Committee, if established, or by other reliable means;
- (F) Agree to be subject of a background investigation conducted by the Tribe; and,
- (G) Not have been convicted of an act involving moral turpitude, dishonesty, corruption, or a violent felony.

Section 4.03 Additional Qualifications of a Judge

Once appointed, a Tribal Court Judge must also:

- (A) Not serve in any capacity or hold any office which may affect the individual's actual or perceived judicial impartiality;
- (B) Not concurrently serve as a member of an administrative board or panel empowered by the Tribe to issue decisions on the basis of tribal law; and,
- (C) Adhere to judicial ethics as established by the Tribe or as commonly recognized in federal and state courts.

Section 4.04 Judicial Terms of Office

- (A) The term of office for the Chief Judge of the Tribal Court will be up to five years.
- (B) In the event a Chief Judge is not appointed for the following term by the end of the current term, the sitting Chief Judge will be extended until a valid appointment is made.
- (C) If the Chief Judge leaves office or is removed for cause prior to the end of his or her term, a new Chief Judge shall be appointed for a new term.
- (D) Associate judges, appellate judges and pro tem judges will serve terms as needed.

Section 4.05 Oath of Office

Prior to taking office, and in the presence of the Tribal Chairman, all Judges must take the following oath of office:

I, _____, do solemnly promise that I will respect and uphold the Constitution and Bylaws and laws of the Tule River Indian Tribe; that I will discharge the duties of the office of Tribal Court Judge faithfully, honestly, and impartially to the best of my ability; and, that I will maintain a professional and respectful manner and demeanor at all times.

Section 4.06 Judicial Salaries

Judicial salaries will be established by the Tribal Council, or Judiciary Committee, if established and so authorized by the Council. Once established, a Judge's salary may not be reduced during his/her term of office.

Section 4.07 Judicial Duties

The Chief Judge must:

- (A) At least annually, or at other times as requested by the Council, provide a written report to the Council detailing current and anticipated caseloads, general conditions existing in the Court, funding needs, and recommendations for improving operations.
- (B) Ensure that all orders, decisions, and rules of the Tribal Court are documented and maintained in accordance with recordkeeping policies established by the Court.
- (C) Swear in, or arrange for a former Tribal Chairman to swear in, Tribal Council members upon the commencement of their term of office, to ensure that Council members will uphold the Constitution and Bylaws of the Tribe, respect tribal law, and adhere to the rules and standards of their office.

Section 4.08 Judicial Code of Conduct

- (A) A Judge must recuse him or herself from taking part in any matter that involves immediate family members, or where he or she has any direct financial interest, or where there is any other reason the Judge cannot be impartial, or where the Judge finds that a reasonable person would believe that the Judge could not be impartial.
- (B) A Judge must make good faith efforts to review court calendars prior to scheduled hearing dates for the purpose of considering whether he or she should recuse himself or herself from any matters.

Section 4.09 Removal or Discipline of Judges

- (A) A Judge may be removed from office for cause and only after due notice and a hearing before the Tribal Council.

- (B) The Tribal Chairman or his or her designee shall provide a written statement setting out the facts and reasons for the removal to the Judge in question and to the Tribal Council at least 30 days before the meeting at which the charges for removal shall be presented.
- (C) A majority vote of the eligible voters of the Tribal Council is needed to remove a judge.
- (D) A Judge may be represented by counsel at his/her removal hearing.
- (E) A Judge may only be removed if there is reasonable cause. Reasonable cause means:
 - (1) Conviction of a crime;
 - (2) Use of official position for personal or immediate family member gain;
 - (3) Changes that make the Judge ineligible under the required qualifications for Judges; or,
 - (4) Neglect of judicial duties.

CHAPTER 5. LEGAL REPRESENTATION

Section 5.01 Legal Representatives

Any person who is a party in any proceedings before the Tribal Court may represent themselves or be represented by any other person who is licensed to appear before the Court. The Clerk of the Court or other Court staff, a Judge, or a member of the Tribal Council or Judiciary Committee may not act as a representative for any other person or party.

Section 5.02 Licensing of Lay Advocates

Lay advocates may become licensed to practice in the Tribal Court or Appellate Court by:

- (A) Filing an affidavit with the Tribal Court Clerk which states that the applicant has studied and is familiar with the Constitution and Bylaws of the Tribe, this Ordinance, all other tribal laws, and the Tribe's rules of court.
- (B) The applicant must pay an annual license fee of \$50.00. The Court in the interest of justice has the authority to waive the fee.
- (C) Take the following oath before the Tribal Court Clerk either in person or by affidavit:

“I do solemnly affirm that I will support all the laws of the Tule River Indian Tribe. I will maintain the respect due to the Tribal Court and its judicial officers. I will employ confidentiality for the purpose of maintaining the causes confided to me and such means only as are consistent with truth and honor, and I will never seek to mislead any Judge, jury, or court personnel by false statement or misrepresentation of fact or law. I will conduct myself in an orderly, courteous, and respectful manner and shall not misbehave or disrupt, obstruct, or otherwise

interfere with the conduct of any proceeding by the Court or the administration of justice by the Court.”

Section 5.03 Licensing of Attorneys

Licensed attorneys may appear on behalf of any party in the Tribal Court or Appellate Court, provided they are licensed to practice law before the Tribal Court. Such license will be issued upon compliance with the following:

- (A) Filing with the Tribal Court Clerk an affidavit which states the following:
 - (1) That the applicant is licensed to practice law in any jurisdiction; and
 - (2) That the applicant has studied and is familiar with the Constitution and Bylaws of the Tribe, this Ordinance, all other tribal laws, and the Tribe’s rules of court.
- (B) Payment of an annual license fee of \$250.00.
- (C) Taking the following oath before the Clerk of the Court, either in person or by affidavit:

“I do solemnly affirm that I will support the laws of the Tribe and I will maintain the respect due to the Tribal Court and its judicial officers. I will not counsel or maintain any suit or proceeding which appears to me unjust, nor any defense except such as I believe to be honestly valid or debatable under the law. I will employ confidentiality for the purpose of maintaining the causes confided to me and such means only as are consistent with truth and honor and I will never seek to mislead any Judge, jury, or court personnel by false statement or misrepresentation of fact or law. I will employ in the conduct of my duties the highest degree of ethics and moral standards with which my profession is charged and I will be guided at all times by the quest for truth and justice. In the conduct of my duties as an attorney, I will not impugn the morals, character, honesty, good faith, or competence of any person, nor advance any fact prejudicial to the honor or reputation of any person, unless required by the justice of the cause with which I am charged.”

Section 5.04 Revocation of License

Any license issued pursuant to the above may be revoked or suspended by the Tribal Court. Such action may be taken on its own motion or upon a sworn complaint by any person. Revocation or suspension will be ordered only after written notice to the licensee and after a hearing before the Tribal Court. Following a hearing, the Tribal Court may revoke or suspend the license upon a finding that the licensee has been disbarred or suspended from the practice of law by any court of the United States, any state or tribal court, or has filed a false affidavit with the Tribal Court Clerk to obtain his/her license, or has engaged in misconduct or unethical conduct in the performance of his/her duties as an attorney, has violated his/her oath or has been found in contempt of court by the Tribal Court.

CHAPTER 6. PEACE MAKING PANEL

Section 6.01 Purpose

The purpose of the Peace Making Panel is to provide a non-adversarial way to resolve disputes. The Panel is intended to make use of respected members of the community to heal conflicts among its members. If established by the Council, the Panel shall be an optional forum which can be used only with the parties' consent. The Tribal Court may refer a case to the Peace Making Panel if the parties consent. Parties who choose to use the Panel may also continue their case in Tribal Court if the Panel does not resolve the dispute to the satisfaction of all parties.

Section 6.02 Appointment

The Tribal Council, or Judiciary Committee if established and so authorized by the Council, may appoint one or more Peacemakers to carry out the duties and responsibilities set forth in this Ordinance. The Council or Committee may consult with the Tribal Court in appointing Peacemakers.

Section 6.03 Qualifications

Peacemakers shall be members of the Tribe, and known and respected in the community as those with experience and good judgment. A Peacemaker must recuse him or herself from hearing matters or taking part in any deliberation that involve immediate family members, or in any matter in which he or she has any direct financial interest, or where there is any other reason the Peacemaker cannot be impartial.

Section 6.04 Duties

To resolve disputes, Peacemakers shall, as needed, do the following:

- 1) Conduct informal conferences;
- 2) Ensure in each conference that all relevant facts are presented and that all parties have an opportunity to speak;
- 3) Encourage the parties to reach an agreement that is acceptable to all of them; and,
- 4) Attend training ~~at Tribal Court expense~~ as required by the Tribal Council.

Section 6.05 Procedure

- (A) Any party to a case filed with the Tribal Court who wishes to have a peacemaking conference shall file and serve on all parties a request for conference with the Court Clerk. If no party has filed an objection to the request within 10 days of the date of filing of the request, the Tribal Court shall refer the case to the Peace Making Panel for settlement within 30 days.

- (B) A Peacemaker shall then contact the parties to schedule a conference and explain the basic rules of the conference. If a party after hearing this explanation, objects to holding a conference, the Peacemaker shall not hold it. If the parties do not agree on a Peacemaker, the Chief Judge shall designate a Peacemaker.
- (C) If the nonmoving party agrees to a conference, the Peacemaker shall send written notice of it to the parties. The notice shall contain:
- (1) The names of the parties;
 - (2) The date, time, and place of the conference;
 - (3) The allegation(s) and a brief statement of the alleged facts on which it is based; and,
 - (4) A brief description of how the conference works.

Section 6.06 Representation

No party to a peacemaking conference may be represented by counsel. A party may only be represented by a spokesperson to the extent necessary for the party to understand the nature of the proceedings or to participate effectively.

Section 6.07 Appeals

A party aggrieved by the decision of the Peacemaker may appeal to the Tribal Court. The Tribal Court shall hear the case as if it were initiated in the Tribal Court, provided, however, that it shall take notice of the Peacemaker's decision.