

**Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians
Court Rules of Judicial Conduct**

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Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians Court Rules of Judicial Conduct

Preamble

The Gun Lake Tribal Judiciary is grounded in the principal that an unbiased and competent judiciary is essential to the administration of justice. The purpose of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians (Gun Lake Tribe) *Court Rules of Judicial Conduct* (hereinafter "*Rules*") is to promote a spirit of fairness toward all persons coming before the courts of the Gun Lake Tribal Judiciary and to ensure due process in all proceedings.

These *Rules* are intended to establish basic standards to govern the conduct of all judges and justices of the Gun Lake Tribal Judiciary. These *Rules* are not intended as an exhaustive guide for conduct. Judges (hereinafter refers to both judges and justices) should be governed in their judicial and personal activities by general ethical standards. These *Rules* are designed to implement the standards for regulation of judicial conduct through disciplinary proceedings or removal as set forth in the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians' *Tribal Constitution*.

These *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. Applicability of Rules. Any person, whether or not an attorney, who has been elected as a judge of the Gun Lake Tribal Court or appointed as a justice of the Gun Lake Supreme Court is subject to these *Rules*. All judges should comply with these *Rules*, except as provided below:

- A. Part-time Judges.** A part-time judge is a judge who serves on a continuing or periodic basis, but is permitted by tribal law to devote time to some other profession or occupation. A part-time judge:
1. Is required to comply with these *Rules*, unless otherwise specifically exempted;
 2. Must not practice law as an attorney in:
 - a. the Gun Lake Tribal Court; or
 - b. the Gun Lake Supreme Court;
 3. Must not act as an attorney in a proceeding in which they have served as judge or in any related proceeding; and
 4. Must not allow the practice of law to interfere with the impartial fulfillment of the judge's judicial duties.
- B. Part-time Judge's Partner and Associates.** A part-time judge's partners and associates may practice law with respect to any matter except:

1. Those matters which have, would or appear likely to come before the court on which the judge serves or any court subject to appellate jurisdiction of the court on which the judge serves;
2. Any matter related to matters upon the merits of which the judge has acted in a judicial capacity or in which the judge had substantial involvement in a judicial capacity; or
3. To the extent that such practice would interfere with the impartial fulfillment of the part-time judge's judicial duties.

C. Judge *Pro Tempore*. A judge *pro tempore* is a person who is appointed to act temporarily as a judge. A judge *pro tempore*:

1. Is required to comply with these *Rules*, unless otherwise specifically exempted.
2. Must not practice law, at the time of service as judge *pro tempore*, as an attorney in:
 - a. the Gun Lake Tribal Court; or
 - b. the Gun Lake Supreme Court.
3. Must not act as an attorney in a proceeding in which they have served as judge or in any related proceeding.
4. Must not allow the practice of law to interfere with the impartial fulfillment of the judge's judicial duties.

Section 2. Canons.

Canon 1. A Judge Must Uphold the Integrity and Independence of the Judiciary. An independent and honorable judiciary is essential to justice in the Gun Lake Tribal community. A judge of the Gun Lake Tribal Judiciary must help create and maintain such a judiciary, and must observe high standards of conduct toward achieving that goal. A judge must maintain a separation between the judicial branch and other branches of tribal government and must 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.

Canon 2. A Judge Must Avoid Impropriety and the Appearance of Impropriety in All Activities.

- A. A judge must respect and comply with the laws, traditions and customs of the Gun Lake Tribe and must at all times act in a manner that promotes public confidence in the honesty and impartiality of the Gun Lake Tribal Judiciary.
- B. A judge must not allow family, social or other personal relationships to influence his or her judicial conduct. A judge must not attempt to use the prestige of their judicial office to advance the private interests of others; nor must they convey the impression that anyone has special influence on him or her as judge. A judge must not testify voluntarily as a character witness. A

judge must not hold membership in any organization that practices invidious discrimination on the basis of race, gender, religion, national origin, sexual orientation, disability, age, or socioeconomic status; provided however that this does not preclude a judge from being a member of an Indian tribe or from membership in an organization in which membership is based upon the political status of being Indian.

Canon 3. A Judge Must Perform the Duties of Judicial Office Impartially and Diligently.

- A. Judicial Duties in General.** The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of office prescribed by Gun Lake Tribal law. In performance of these duties, the following standards apply;
- B. Adjudicative Responsibilities.**
1. A judge must be faithful to the law and maintain professional competence in it. A judge must not be swayed by partisan interests, public clamor or fear of criticism.
 2. A judge must hear and decide promptly matters assigned to the judge except those in which disqualification is required. A judge must endeavor to issue all rulings and decisions within reasonable timeframes, such as suggested below:
 - a. The Gun Lake Tribal Court shall endeavor to issue rulings on motions within 14 calendar days and trials within 42 calendar days of submission of briefs or completion of hearings, and, upon the filing of a request by a party for findings of fact and conclusions of law, the Gun Lake Tribal Court shall, within 28 calendar days of filing of the request, issue findings of fact and conclusions of law; and
 - b. The Gun Lake Supreme Court shall endeavor to issue its decisions and orders within 56 calendar days following the conclusion of any oral argument or submission of final briefs if oral argument is not held.
 3. A judge must require order and decorum in proceedings before the judge.
 4. A judge must be patient, dignified and courteous to litigants, jurors, witnesses, attorneys, and other with whom the judge deals in an official capacity and must require similar conduct of lawyers, staff, court officials and others subject to the judge's direction and control.
 5. A judge must perform judicial duties without bias or prejudice. A judge must 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 membership, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, and must not permit staff, court officials and others subject to the judge's direction or control to do so.
 6. A judge must require attorneys in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based up on race, tribal membership, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, against parties, witnesses, counsel or others. This Section 2B(6) does not preclude legitimate advocacy

when race, tribal membership, gender, religion, national origin, disability, age, sexual orientation or socioeconomic status, or other similar factors, are issues in the proceeding.

7. A judge must give every person who is legally interest in the proceeding, or his or her attorney, a full right to be heard in accordance to Gun Lake Tribal law.
8. A judge must 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 for scheduling or administrative purposes or emergencies that do not concern substantive matters or issues on the merits are authorized; provided the judge:
 - i. Reasonably believes that no party will gain a procedural or tactical advantage as a result 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, and affords the parties reasonable opportunity to respond.
 - 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 in an effort to mediate or settle matters pending before the judge.
 - e. A judge may initiate or consider any *ex parte* communication when expressly authorized to do so.
9. A judge must abstain from public comment about a pending or impending proceeding in any court, and must require similar abstention on the part of the court personnel subject to the judge's direction and control. This subsection 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.
10. A judge must 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.
11. A judge must not disclose or use, for any purpose unrelated to judicial duties, nonpublic information acquired in a judicial capacity. A judge must not directly or indirectly use,

disseminate, disclose or in any way reveal confidential information of the Gun Lake Tribe, its enterprises, programs, employees, and tribal membership except to the extent authorized by the Gun Lake Tribe. Confidential information includes, but is not limited to, data relating to finances, computer programs, budget information, or any other non-public information concerning the governmental business or affairs of the Gun Lake Tribe.

C. Administrative Responsibilities.

1. A judge must discharge the judge's administrative responsibilities without bias or prejudice and must maintain professional competence in judicial administration. A judge must cooperate with other judges and court officials in the administration of court business.
2. A judge must require staff, court officials and others subject to the judge's direction and control to observe standards of fidelity and diligence that apply to the judge and refrain from manifesting bias or prejudice in the performance of their official duties.
3. A judge with supervisory authority for the judicial performance of other judges should take reasonable measures to assure the prompt disposition of matters before them and the proper performance of their other judicial responsibilities.
4. A judge may not make unnecessary appointments. A judge must exercise the power of appointment impartially and on the basis of merit. A judge must avoid favoritism. A judge must not approve compensation of appointees beyond the fair value of services rendered.

D. Disciplinary Responsibilities.

1. A judge who receives information indicating a substantial likelihood that another judge has committed a violation of these *Rules* must convey such information to the Chief Judge of the Gun Lake Tribal Court in accordance with Section 3(C) of these *Rules*. The Chief Judge must take such action as he or she deems appropriate, which may include a vote for removal pursuant to Article VIII, Section 5 of the *Tribal Constitution*. If the Chief Judge is the person believed to have committed the violation, the information should be conveyed to the Chief Justice of the Gun Lake Supreme Court.
2. A judge who receives information indicating a substantial likelihood that an attorney has committed a violation of the Gun Lake Tribe's *Court Rules of Professional Conduct for Attorneys* must convey the information to the Chief Judge of the Gun Lake Tribal Court. A judge having knowledge that an attorney has committed a violation of the Gun Lake Tribe's *Court Rules of Professional Conduct for Attorneys* that raises a substantial question as to the attorney's honesty, trustworthiness or fitness as an attorney in other respects must inform the Chief Judge.

E. Disqualification.

1. A judge must disqualify himself or herself on the judge's own initiative in any proceeding in which the judge has reason to believe that they could not act with complete impartiality. A judge acting under the subsection (1) need not state the grounds of disqualification.

2. A judge must disqualify his or her 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 knows that they individually (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, their 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 must keep informed about the judge's person 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.

F. Alternatives to Disqualification.

1. A judge disqualified by the terms of Section E of this Canon may disclose on the record the basis of the judge's disqualification and may ask the parties and their attorneys to consider, out of the presence of the judge, whether to waive disqualification. If following disclosure of any basis for disqualification other than personal bias or prejudice concerning a party, the parties and their attorneys without participation of the judge, all agree that the judge should not be disqualified, and the judge is then willing to participate, the judge may participate in the proceeding.
2. A judge may decline to disqualify his or her self in any proceeding in which disqualification might otherwise be required under subsections (1) or (2) of this subsection, if no other judge is available and disqualification will result in a failure of justice. In such a case, the judge must disclose on the record the basis for disqualification and shall thereafter disqualify his or

her self if at any time it is possible to transfer the proceeding to another judge without a failure of justice.

Canon 4. A Judge Must Regulate Their Extra-Judicial Activities to Minimize the Risk of Conflict with Judicial Duties.

- A. Extra-Judicial Activities in General.** A judge must 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. Employment and Political Activities within the Band.** In accordance with Article VIII, Section 1 of the *Tribal Constitution*, a judge must resign his or her judicial office with the Tribe if he or she:
1. Becomes a candidate for or a member of the Tribal Council, any Salaried Commission of the Tribe, or the Tribe's Election Committee; or
 2. Becomes employed by the Tribe, any Tribal enterprise or other entity controlled or affiliated with the Tribe, or becomes a member of any board or commission of the Tribe or any Tribal enterprise or other entity controlled by the Tribe.
- C. Avocational Activities.**
1. A judge may write, lecture, teach and speak on legal and non-legal subjects and reengage in the arts, sports and other social and recreational activities of the Tribe or elsewhere if these activities do no interfere with the performance of his or her judicial duties.
 2. A judge is prohibited from engaging in any form of gaming, of any kind (including charitable games) at any facility operated by the Tribe, any Tribal enterprise or other entity controlled by or affiliated with the Tribe. Nothing herein precludes a judges from utilizing other amenities of any Tribe-owned or controlled gaming facility, including but not limited to, restaurants, shops, shows, banquet facilities, or hotel accommodations, provided such utilization does not otherwise violate these *Rules*.
- D. Civic or Charitable Activities.**
1. A judge may participate in civic or charitable activities that do not reflect upon their impartiality or interfere with the performance of their 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 must 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 must not participate in any activity if it is likely that the organization will be involved in adversary proceedings in either the Gun Lake Tribal Court or Gun Lake 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 D(2) of this Canon in planning fund-raising and may participate in the management and investment of the organization's funds, but must not personally participate in the solicitation of funds or other fund-raising 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. Must not personally participate in membership solicitation if the solicitation may reasonably be perceived as coercive or, except as permitted in Section D(1) of this Canon, if the membership solicitation is essentially a fund-raising mechanism; and
 - d. Must not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation.

E. Financial Activities.

1. A judge must 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. Except as allowed by the laws, traditions or customs of the Tribe, neither a judge nor a member of the judge's family should accept a gift, bequest, favor or loan from anyone which would affect or appear to affect his or her impartiality in judicial proceedings, or on the judge's appearance of fairness. For the purposes of this section, "family member" means any relative of the judge by blood or marriage, or a person treated by the judge as a family member, who resides in the judge's household. A judge may however accept:

- a. A gift incidental to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use;
 - b. An invitation to the judge and the judge's spouse, significant other or guest to attend a judicial or bar related function or an activity devoted to the improvement on the law, the justice system or the administration of justice;
 - c. Ordinary social hospitality;
 - d. A gift from a relative or friend, for a special occasion, such as birthday, wedding or anniversary, if the gift is fairly commensurate with the occasion and the relationship;
 - e. A loan from a lending institution in its regular course of business on the same terms and based on criteria applied to other applicants; or
 - f. A scholarship or fellowship awarded on the same terms and based on the same criteria applied to the other applicants.
3. A judge may receive income, honoraria, 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.
- a. Income and honoraria may not exceed a reasonable amount nor may they exceed what a person who is not a judge would receive as a result of the same activity.
 - b. Expense and reimbursement or payment must be limited to the actual cost or established per diem of travel, food and lodging reasonably incurred by the judge and where appropriate to the occasion, by the judge's spouse or guest. Any payment in excess of such an amount must be treated as an honorarium.
- F. Extra-Judicial Appointments.** Unless allowed by tribal law or tradition, a judge should not accept appointment to any other Gun Lake Tribe 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 the Tribe on ceremonial occasions or in connection with historical, education or cultural activities.

Canon 5. A Judge Must Refrain from Inappropriate Political Activity.

- A. No Supporting a Political Position or Candidate.** A judge must refrain from all political activities or actions that could be interpreted in the Tribal community as supporting a political position or candidate that might interfere with the performance of their judicial activities.
- B. No Engagement in Political Activity of the Tribe.** Unless authorized by tribal law or tradition, a judge must not engage in any Tribe-related political activity except on the behalf of measures to improve the law, the tribal justice system, or the administration of justice. Prohibited activities include, without limitation:

1. Declaring candidacy for political office of the Tribe;
2. Acting as a leader in any political organization of the Tribe;
3. Publicly endorsing or publicly opposing a candidate for political office of the Tribe;
4. Making speeches on behalf of any political organization of the Tribe; or
5. Soliciting funds for or making a contribution to a political organization of the Tribe or candidate for political office of the Tribe, or purchasing tickets for political party dinners or other functions of the Tribe.

C. Outside Political Activity. A judge must refrain from all other political activity inappropriate to their judicial office. Inappropriate outside political activity may include without limitation, activity that is likely to be construed by the Gun Lake Tribal community as supporting a political position adverse to the political rights of the Tribe or individual members. A judge may, however, engage in political activities of electoral politics at the local, state, or federal levels.

Section 3. 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 must not be utilized in substitution for the judicial appeal process.

- A. Removal of Judges.** The removal of a Gun Lake Tribal Court Judge or Gun Lake Supreme Court Justice is governed by Article VIII, Section 5 of the *Tribal Constitution*.
- B. Majority Vote of Tribal Judiciary.** As governed by Article VIII, Section 5 of the *Tribal Constitution*, the Gun Lake Tribal Judiciary may remove any judge or justice by an affirmative vote of a majority of all other members of the Gun Lake Tribal Judiciary for:
 1. Unethical conduct, as defined by the American Bar Association Code of Judicial Conduct;
 2. Physical or mental disability which prevent the performance of judicial duties;
 3. Persistent failure to perform duties;
 4. Gross misconduct that is clearly prejudicial to the administration of justice; or
 5. Ineligibility, under Article VIII, Section 4 of the *Tribal Constitution*, to serve as a member of the Gun Lake Tribal Judiciary.
- C. Discipline of Tribal Judges by the Chief Judge.** The Chief Judge of the Gun Lake Tribal Court must review complaints made against Tribal Judges and may discipline a Tribal Judge in his or her discretion. In the event that the Chief Judge is the subject of the complaint the Chief Justice of the Gun Lake Supreme Court must review the complaint.

1. **Filing of Complaints.** Complaints against a judge alleging unethical or unlawful conduct of a judge must be made in writing and must be signed by the complainant. Each complaint must be filed with the Tribal Court Administrator who will assign a docket number. Upon receipt of such complaint, the Tribal Court Administrator must provide a copy of the complaint to the Chief Judge and serve the judge who is the subject of the complaint.
2. **Initial Review.** The Chief Judge must make an initial determination based on the complaint whether the conduct alleged is sufficient to warrant removal or other discipline. If the conduct alleged is sufficient to warrant removal or other discipline, the Chief Judge must proceed with a determination under this subsection. If the Chief Judge determines that the conduct alleged is insufficient for discipline, he or she must dismiss the matter, notifying the complainant of the action.
3. **Confidentiality.** All proceedings before the Chief Judge are confidential, and no information may be published except:
 - a. Upon a written request of the Gun Lake Tribal Council in connection with the consideration of the appointment or reappointment of a person who is or has been a Gun Lake Tribal Court Judge or Gun Lake Supreme Court Justice, the Chief Judge must provide information on any complaints made against the judicial candidate and the Chief Judge's disposition thereof; or
 - b. Upon the request of the judge whose conduct is being investigated that any hearing held may be made public.
4. **Process.** The process to be followed after the filing of a complaint shall be:
 - a. Not more than fourteen (14) calendar days after the filing of the complaint and service upon the subject judge, the subject judge must file a written response to the complaint.
 - b. Within fourteen (14) calendar days after the subject judge files a response, the Chief Judge may allow in his or her discretion for the complainant to file a brief response.
 - c. Discovery may be as allowed by the Chief Judge, who has subpoena power for the purposes of the hearing.
5. **Hearings.** The Chief Judge must hold a hearing. Such a hearing must be recorded. The Chief Judge has subpoena power and every witness must be sworn.
 - a. **Rights of the Judge.** The Judge who is the subject of the complaint is entitled to be present at the hearing, to be represented by legal counsel at the judge's own expense, to introduce evidence, to examine and cross-examine witnesses and to subpoena documents and witnesses.
 - b. **Evidence.** The Chief Judge must conduct the hearing in an informal manner so as to do substantial justice and provide a fair hearing but is not bound by formal rules of evidence, except provisions relating to privileged communications. The sole object of

such hearing is to expeditiously determine whether a violation of law or these *Rules* has been committed.

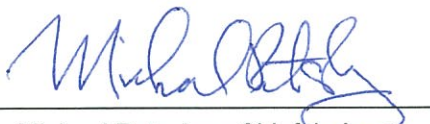
- 6. Decision.** After a hearing, the Chief Judge must decide whether he or she is satisfied by clear and convincing evidence that the judge:
- a. Has committed unethical conduct as defined by these *Rules*;
 - b. Has persistently failed to perform the duties of office;
 - c. Has committed misconduct in office consisting of any knowing violation of tribal law;
 - d. Has any physical or mental disability which prevents the performance of duties;
 - e. Is ineligible under the specific qualifications for office; or
 - f. Has failed to attend three (3) consecutive meetings without a valid excuse.
- 7. Judicial Findings and Action.** The Chief Judge must make findings of fact and conclusions of law in a written decision. If the Chief Judge decides that the charges have not been established sufficiently, he or she must dismiss the matter and provide written notice to both the judge complained against and the complainant. If the Chief Judge decides that the charge has been sufficiently established, he or she must report his or her written decision to both the judge and the complainants. The Chief Judge may issue either an oral or written reprimand to the judge, or if the Chief Judge finds that the judge's activity meets the criteria for removal under Article VIII, Section 5 of the *Tribal Constitution*, recommend a vote for removal by the Tribal Judiciary.

Section 4. Short Title and Citation Format.

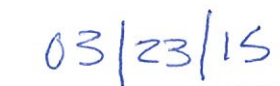
- A. **Short Title.** These *Rules* are titled "Rules of Judicial Conduct."
- B. **Citation.** The official abbreviated citation form to these *Rules* is: MBPI RJC.

CERTIFICATION OF ADOPTION

The Chief Judge of the Tribal Court adopts the above Chapter of Court Rules.



 Michael Petoskey, Chief Judge



 Date