

MATCH-E-BE-NASH-SHE-WISH BAND OF POTTAWATOMI INDIANS  
JUDICIAL ORDINANCE

**CHAPTER I  
PURPOSE**

**Section 1     Short Title.**

This Ordinance may be cited as the “Gun Lake Judicial Ordinance.”<sup>1</sup>

**Section 2     Purpose and Authority.**

This Ordinance is adopted pursuant to the Tribal Council’s authority at Article VIII, Section 3 of the Gun Lake Tribal Constitution to establish qualifications for the judges and justices of the Gun Lake Tribal Judiciary and to otherwise implement the Tribe’s judicial authority.

**CHAPTER II  
QUALIFICATIONS OF JUDGES AND JUSTICES**

**Section 1     Qualifications.**

The Court Administrator, Court Clerk, and members of Tribal Council shall not be eligible to serve as a Judge of the Tribal Court or Justice of the Supreme Court. Any person 25-years or older shall be eligible to serve as a Judge of the Tribal Court or a justice of the Supreme Court in addition to the following qualifications:

- (a) Education of a Juris Doctorate from an accredited law school.
- (b) Member in good standing of a state bar association.
- (c) A minimum of five (5) years experience as a tribal Judge in a tribal justice system exercising both civil and criminal jurisdiction.
- (d) Must be well-versed in concepts of federal Indian law, tribal law and principles of tribal sovereignty, and jurisdiction.
- (e) Must not have been convicted of a felony or a crime involving dishonesty nor ever been permanently disbarred by any jurisdiction.
- (f) Must have outstanding interpersonal skills and experience supervising other legal professionals required.

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<sup>1</sup> Legislative History – Enacted by Tribal Council Resolution 09-525 (June 9, 2009); Amended by Tribal Council Resolution 12-733 (September 27, 2012); Amended by Tribal Council Resolution 13-809 (August 1, 2013); Amended by Tribal Council Resolution 14-887 (December 4, 2014).

(g) Must have excellent oral and written communication skills.

(h) Ability to discern legal issues, define problems, collect data, establish facts and draw valid legal conclusions and develop timely solutions. Ability to interpret and follow tribal law and court procedures. Ability to think and write in clear and logical terms.

(i) Knowledge and experience working with Indian Child Welfare Act preferred.

**Section 2 Terms of Office.**

(a) The term of office for the Chief Judge shall be four (4) years from the date of election and the term for any elected Associate Judges shall be two (2) years.

(b) Judges shall continue in office until their successors are duly appointed and installed in office, or until they have died, resigned, or been removed from office.

**Section 3 Election.**

All Judges of the Tribal Court shall be elected by the membership, with the Chief Judge specifically elected to that office. In the event there are no qualified judges participating in an election, the Tribal Council shall appoint a Chief Judge pursuant to an affirmative vote of five (5) of six (6) Tribal Council members (excluding the Tribal Chairman). This subsection is inapplicable to appointments of justices of the Gun Lake Supreme Court pursuant to the Tribal Constitution, ARTICLE VIII, SECTION 4.

**Section 4 Chief Judge, Associate Judges and Additional Courts.**

By resolution, the Tribal Council shall designate the number of Associate Judges, and may increase or decrease the number of Associate Judges from time to time (without limiting the term of any Associate Judge). The Tribal Council, by resolution, may ordain inferior courts of the Gun Lake Tribal Court as necessary

**Section 5 Oath of Office.**

Each person, prior to assuming the office of Judge of the Tribal Court or Justice of the Supreme Court, shall take the following oath before the Chairperson of the Tribal Council:

“I swear (or affirm) that I will support and defend the Constitution, By-laws, and laws of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, and that I will faithfully and diligently perform the duties of (Chief Judge, Associate Judge, Supreme Court Justice, as applicable) of the Gun Lake Tribal Court, to the utmost

of my ability, with impartiality and without improper favor, to the end that justice may be fully served.”

### **CHAPTER III APPROPRIATIONS**

#### **Section 1 Tribal Court Appropriations**

(a) The Tribal Council shall appropriate and authorize the expenditure of Tribal funds for the operation of the Tribal Court. The amounts to be appropriated shall be consistent with the needs of the Tribal Courts for proper administration of justice within the Reservation and for the Tribe in recognition of the Tribal Judiciary as a separate branch of government under the Gun Lake Tribal Constitution.

(b) To assist the Tribal Council in making such appropriations, the Chief Judge of the Tribal Court or the Court Administrator shall submit proposed budgets and reports of expenses and expenditures to the Tribal Council, at such intervals and in such form as may be prescribed by the Tribal Council. Such budgets and reports shall include the operation of the office of the Court Administrator.

(c) The Tribal Council may prescribe a system of accounting for funds received from any source by the Courts of the Tribe and the Court Administrator.

(d) from federal appropriations or grants; and from other sources of revenue as the Court and the Tribal Council deem appropriate.

### **CHAPTER IV SOVEREIGN IMMUNITY**

#### **Section 1 Sovereign Immunity.**

The sovereign immunity from suit of the Tribe, a tribal agency, instrumentality of the Tribe, and every elected Tribal Council member or tribal official with respect to any action taken in an official capacity or in the exercise of the official powers of any such office, in any court, federal, state, or tribal is hereby affirmed; nothing in this Ordinance shall constitute a waiver of the Tribe’s sovereign immunity. The Tribal Court shall have no jurisdiction over any suit brought against the Tribe in the absence of an unequivocally expressed waiver of that immunity by the Tribal Council.

#### **Section 2 Tribal Action Not Waiver of Sovereign Immunity.**

No enforcement action taken pursuant to this Ordinance, including the filing of an action by the Tribe or any agency of the Tribe in the Tribal Court, shall constitute

a waiver of sovereign immunity from suit of the Tribe, or any elected Tribal Council member or tribal official with respect to any action taken in an official capacity, or in the exercise of the official powers of any such office, either as to any counterclaim, regardless of whether the counterclaim arises out of the same transaction or occurrence, or in any other respect.

**Section 3 Waiver of Sovereign Immunity.**

The sovereign immunity of the Tribe and any elected Tribal Council member or tribal official with respect to any action taken in an official capacity, or in the exercise of the official powers of any such office, in any action filed in the Tribal Court with respect thereto, may only be waived by a formal resolution of the Tribal Council after consultation with its attorneys. All waivers shall be unequivocally expressed in such resolution. No waiver of the Tribe's sovereign immunity from suit may be implied from any action or document. Waivers of sovereign immunity shall not be general but shall be specific and limited as to duration, grantee, action, and property or funds, if any, of the Tribe or any agency of the Tribe subject thereto. No express waiver of sovereign immunity by resolution of the Tribal Council shall be deemed as consent to the levy of any judgment, lien, or attachment upon property of the Tribe or any agency of the Tribe other than property specifically pledged or assigned therein.

**CHAPTER V  
COUNSEL**

**Section 1 Legal Representation.**

Any person who is a party in any civil trial or proceedings before the Tribal Court may represent herself or himself, be represented at his or her own expense by a professional attorney who is licensed to practice law before the Tribal Court, except the Court Administrator, the Clerk of Court, a Judge of Tribal Court, or a member of the Tribal Council.

**Section 2 Tribal Licensing of Professional Attorneys.**

Professional attorneys who are not members of the Tribe may appear on behalf of any party in any trial proceeding before the Tribal court, provided they are licensed to practice law before the Tribal court. Such license shall be issued upon compliance with the following:

(a) Filing with the Court Administrator an affidavit that the applicant is licensed to practice law before the highest court of any state and in good standing with the state bars of which the attorney is admitted to practice.

(b) Filing with the Court Administrator an affidavit that the applicant has studied and is familiar with the Constitution and Bylaws of the Tribe, this Ordinance, all

other Ordinances of the Tribe, Title 25 of the United States Code, and Title 25 of the Code of Federal Regulations.

(c) Paying an annual license fee at the current established rate.

(d) Filing with the Court Administrator an affidavit swearing (or affirming) to the following Oath of Admission:

“I do solemnly swear (or affirm) that I will support the Constitution of the United States and the Constitution and Bylaws of the Match-E-Be-Nash-She-Wish Band of Pottawatomis Indians;

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 shall appear to me to be unjust, nor any defense except such as I believe to be honestly valid or debatable under the law;

I will employ for the purpose of maintaining the causes confided to me such means only as are consistent with truth and honor, and I will never seek to mislead any Judge or jury by any artifice, or 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.”

Licensed Tribal Court attorneys will be required to swear (or affirm) to the preceding Oath of Admission before the Court Administrator prior to making any Tribal Court appearances.

### **Section 3      Revocation of Professional Attorney’s Tribal License.**

A license issued pursuant hereto may be revoked or suspended by the Tribal Court. Such action may be taken on its own motion or upon sworn complaint by any member of the Tribe. Revocation or suspension shall be ordered only after written notice to the licensee of the motion or complaint and after a hearing before all judges of the Tribal Court unless a conflict of interest prohibits such participation. 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, Tribal court or has

filed a false affidavit with the Court Administrator to obtain his/her license, or has violated his/her oath made before the Court Administrator 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 VI GENERAL COURT PROVISIONS**

### **Section 1     **Court Rules and Procedures.****

The Tribal Court shall have the exclusive authority to establish and promulgate rules of procedure, including rules of appellate procedure, for the conduct of its proceedings and the operations of the Court which are not inconsistent with this Ordinance or other governing and applicable law.

### **Section 2     **Laws Applicable in Civil Actions.****

(a) In all civil actions the Tribal Court shall apply this Ordinance, all amendments thereto, all tribal laws enacted hereafter and all customs and usages of the Tribe. In the event any doubt arises as to the customs and usages of the Tribe, the court may request the advice of tribal citizens familiar with tribal customs and usages.

(b) In the event that an issue arises in an action which is not addressed by this Ordinance, all amendments thereto, all tribal laws enacted hereafter and all customs and usages of the Tribe, the court may apply statutes, regulations, and case law of any Tribe or the federal government or State. Application of such law shall not be deemed an adoption of such law or an action to defer to the jurisdiction.

### **Section 3     **Inclusion of Language from Other Laws. Does Not Confer Jurisdiction.****

Inclusion of language, definitions, procedure, or other statutory or administrative provisions of the State of Michigan or other state or federal entities in the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians Tribal Code shall not be deemed an adoption of that law by the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians and shall not be deemed an action deferring to state or federal jurisdiction within the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians where such state or federal jurisdiction may be concurrent or does not otherwise exist.