

PENOBSCOT NATION JUDICIAL SYSTEM  
RULES OF COURT



Penobscot Nation Judicial System  
Community Building  
12 Wabanaki Way  
Indian Island, ME 04468

Effective Date: September 15, 2016

# Penobscot Nation Rules of Court

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## **PENOBSCOT NATION JUDICIAL SYSTEM**

### **OPERATING PROCEDURES FOR RULEMAKING**

#### **OP 1. SCOPE AND PURPOSE**

- A) These procedures shall apply to all enactments and amendments of rules governing the Penobscot Nation Judicial System.
- B) These procedures may be modified or dispensed with, in whole or in part, by order of the Chief Judge of the Penobscot Nation Tribal Court. An order of the Court promulgating any rule or amendment shall constitute an order modifying or dispensing with these procedures to the extent, if any, they have not been complied with in respect to that proposal.
- C) Nothing herein contained restricts the authority of the Penobscot Nation Tribal Court to promulgate rules or amendments to rules without the participation of any advisory committee or panel, however, such participation is encouraged. The Advisory Committee will consist of two (2) community members, two (2) justices of the Penobscot Nation Court of Appeals, two (2) attorneys, the Chief Judge, Court Clerk, one (1) elder, and one (1) juvenile/young adult.

#### **OP 2. SUBMISSIONS OF PROPOSED RULES AND AMENDMENTS**

- A) Whenever the Chief Judge determines that the Rules of Court need amending, suggestions regarding the rules may be sought from tribal members, the bench or the bar. The suggestions shall be submitted to the Clerk. Any written suggestions received shall be retained by the Court for a minimum of three (3) years.
- B) The format and rules for submission of suggestions shall be established by the Chief Judge of the Penobscot Nation Tribal Court.
- C) Proposed rules and amendments shall be distributed, with an invitation for comments, as follows:
  - 1) One copy to the Clerk of Courts;
  - 2) One copy to each of the Appellate Justices;
  - 3) One copy to the Chief Judge of the Tribal Court
  - 4) One copy to be conspicuously posted in the Clerk's office;
  - 5) One copy posted on the Penobscot Nation Judicial System's webpage; and
  - 6) Copies to such other persons and places as the Chief Judge may direct.
- D) The deadline for receipt of comments shall be thirty (30) calendar days after the distribution of the proposals.
- E) Whenever a summary of a submission, rather than a full submission, is distributed, the Director shall make provision for supplying the full text of the submission to any interested person upon request.

### **OP 3. OPTIONAL MEETING ON SUBMISSIONS**

When the Chief Judge finds that the effectiveness of the rulemaking process will be enhanced thereby, it may order that a meeting of the Appellate Justices, the Chief Judge and the Director of the Penobscot Nation Judicial System be held at a time convenient to the participants. At this meeting, the suggestions, proposed amendments and rules received will be reviewed. At the Chief Judge's discretion, oral comments may be allowed by members of the bar and public.

### **OP 4. DISTRIBUTION OF NEW RULES OR AMENDMENTS**

Following promulgation of new rules or amendments, the Director of the Penobscot Nation Judicial System shall promptly cause copies thereof to be distributed in accordance with the requirements of Operating Procedure 2 (C).

### **OP 5. EFFECTIVE DATE**

These rules supersede all previous Penobscot Nation Rules of Court and are effective as of September 15, 2016 by order of the Chief Judge of the Tribal Court.

# PENOBSCOT NATION RULES OF COURT

## **I. JUDICIAL SYSTEM STRUCTURE AND ADMINISTRATION**

### **RULE 1. RULE MAKING AUTHORITY**

In accordance with the decision of the September 27, 1979 General Meeting establishing the Tribal Court, the Court shall set up its own criteria for operating business. The Chief Judge of the Tribal Court shall make and promulgate rules, regulations, and orders governing the administration of the Judicial System. The Chief Judge shall have the general supervisory authority over the Judicial System. All decisions involving financial and personnel matters, however, shall be made in consultation with the Director of the Judicial System.

### **RULE 2. ADMINISTRATIVE RESPONSIBILITY OF THE CHIEF JUDGE**

The Chief Judge, shall, in accordance with the rules and regulations of the Penobscot Nation Judicial System, be responsible for the efficient operation of the Tribal Court and for the expeditious dispatch of litigation therein and for the proper conduct of business in the Court. The Chief Judge may require reports from the Court staff and may issue orders and regulations necessary for the efficient operation of the Tribal Court.

### **RULE 3. QUALIFICATIONS OF JUDGE AND JUSTICES**

The minimal acceptable qualification for a Penobscot Nation judicial candidate shall be membership, in good standing, in the bar of any state or a federal court. For cases governed by the Indian Civil Rights Act's enhanced sentencing authority set forth at 25 U.S.C. § 1302(c)(3), or the special domestic violence jurisdiction governed by 25 U.S.C. § 1304, the presiding judge must be licensed by any jurisdiction and must possess sufficient legal training to preside over criminal proceedings.

### **RULE 4. COURT OF APPEALS**

- A) **Pool of Justices.** A pool of no less than five (5) Appellate Justices shall be maintained by the Clerk of Courts at all times. Whenever pool membership is less than five (5) the appropriate action will be taken to fill any vacancies.
- B) **Selection of Court of Appeals Panel.** Upon the proper filing of a Notice of Appeal and fee, the Clerk shall choose at random, three (3) Appellate Justices to review the record and render a decision. Any conflicts of interest which develop shall be disclosed by the justice to the Clerk upon discovery. The Clerk will then choose another Appellate Justice.
- C) **Chief Justice.** The Clerk shall appoint one of the three (3) justices as Chief Justice for the appeal. The Chief Justice shall ensure that the decision is rendered in a timely manner.
- D) **Meetings.** There are no organized meetings or sessions of the Courts of Appeals.
- E) **Scope of review.** Review by the Appellate Justices shall be unlimited in scope, but directed to the issues of basic fairness and compliance with applicable tribal law, tribal rules of court and the federal Indian Civil Rights Act.

## **RULE 5. LIST OF JUDGES AND JUSTICES**

The Clerk shall maintain the lists of judges and justices for the Penobscot Nation and such record and copies thereof duly attested by him or her are evidence of the due appointment and qualifications of all such judicial officers.

## **RULE 6. CHIEF JUDGE UNABLE TO ATTEND; CONTINUATIONS AND JUDGE PRO TEMPORE**

- A) **Continuances.** Whenever the Chief Judge is unable to attend a court session, the Clerk of the Court may continue any case in such Court for the next appropriate docket.
- B) **Judge Pro Tempore.** In the event that the Chief Judge is unable to attend Court, and a case which is scheduled to be heard has already been continued for thirty (30) days due to the Chief Judge's absence, the Clerk of Courts shall randomly select and appoint an Appellate Justice who shall sit as Judge Pro Tempore for that case. An Appellate Justice may also serve as Judge Pro Tempore when a case demands a hearing or arraignment to occur within a short period of time and the Chief Judge is unavailable, or if the Chief Judge would have a conflict of interest in hearing a matter.
- C) **Appeals.** Should a matter that was decided by an Appellate Justice sitting as a Judge Pro Tempore later be appealed, then that justice shall not serve on the Court of Appeals panel for that case.

## **RULE 7. ADMINISTERING OF OATHS**

The Clerk of Courts may administer oaths required by law unless another person is specifically required to do so.

## **RULE 8. APPOINTMENT AND DUTIES OF TRIBAL JUSTICE OF THE PEACE**

The Chief Judge of the Tribal Court may appoint any attorney-at-law, who is duly licensed to practice law in any state or a federal court and a member of the Penobscot Nation Bar to serve as a Penobscot Nation Justice of the Peace. A Justice of the Peace may receive complaints and issue process for the arrest of persons charged with offenses and issue search warrants, all in accordance with law, and to perform all other such acts and duties that are or may be authorized by tribal law. The powers to issue process for the arrest of persons charged with offenses and subject and to issue search warrants extend to offenses subject to the jurisdiction of the Penobscot Nation.

## **RULE 9. APPOINTMENT AND COMPENSATION OF CLERK OF COURT**

The Director shall apply to the Chief and Tribal Council for the appointment of a Clerk of Courts and such other clerical assistants as may be necessary to serve the Penobscot Nation's Judicial System. Clerks and clerical assistants shall be compensated as determined by the Penobscot Nation.

## **RULE 10. CLERK PRO TEMPORE**

Whenever Clerk of Courts is absent or temporarily unable to perform his or her duties as a clerk and an existing or immediate session of the Court renders it necessary, the Chief Judge may designate a clerk pro tempore who shall have the same powers and duties as the Clerk of Courts.

## **RULE 11. ACCOUNTING BY CLERKS**

The Clerk of Courts shall account quarterly to the Director, and Chief and Council for all fees received or payable to the Clerk by virtue of his or her office.

## **RULE 12. RECEIPT OF FINES, FORFEITURES AND PROCEEDS OF SALES OF PROPERTY**

- A) **Immediate Deposit.** The Clerk of Courts shall receive all fines, forfeitures, sale proceeds, and bill of costs imposed by the judge and upon receipt of such, shall immediately deposit them with the Finance Department who shall deposit in the Tribal Court's designated special fees and fines account within two (2) business days.
- B) **Proceeds of Sales of Property.** Proceeds of all sales of property made under the judgment or decree of the Tribal Court and any or all other sums of money from whatever source derived in civil proceedings coming into the custody of the Court shall be deposited in the Tribal Court's Special Account, and shall be withdrawn therefrom upon order of the Clerk of Courts, countersigned by the Director. All deposits shall be the name of the beneficiary with the Clerk of Court designated as custodian.

## **RULE 13. DUTIES OF CLERK AS TO RECORDS; FEES**

The Clerk of Courts shall receive and safely keep all such records and papers lodged in his or her offices and give attested copies thereof in accordance with the Court's fee schedule. Such copies shall be as valid as if certified by notaries.

## **RULE 14. CLERK AS RECORDING OFFICER**

- A) **Representation Prohibited.** No clerk, register or recording officer of the Tribal Court shall serve as a legal counsel in any civil action or matter pending in the Court, neither shall s/he commence actions render therein, nor aid in drafting any document or paper which s/he is by law required to record, in full or part. The Clerk of Court and any clerical assistant may, however, ensure that forms are fully complete prior to filing with the Court.
- B) **General Assistance.** Notwithstanding provisions of this rule, clerks may explain the procedures of the Court to all litigants. The Clerk shall not give legal advice.

## **RULE 15. DUTIES OF CASE MANAGER/PROBATION OFFICER**

- A) **Duties Prescribed.** The Case Manager/Probation Officer shall perform the duties which are prescribed for him or her by tribal law, policies and procedures.
- B) **Pre-Sentencing Investigations.** The Case Manager/Probation Officer shall, at the Court's request, conduct investigations and prepare pre-sentencing reports of the Court.
- C) **Supervision.** The Case Manager/Probation Officer shall supervise the probation of each person as ordered by the Court.

- D) **Conduct and Condition of Person in Custody.** The Case Manager/Probation Officer shall keep informed of the conduct and condition of each person placed under his or her supervision and to use suitable methods to encourage him or her to improve his or her conduct and condition.
- E) **Records and Reports.** The Case Manager/Probation Officer shall keep records of each case and make reports as required.
- F) **Community Service.** The Case Manager/Probation Officer shall oversee and provide reports to the Court of any person providing community service in lieu of payment of a fine or as sentenced by the judge. The Case Manager/Probation Officer shall arrange such community service applicable with the defendant and handle the necessary agreements between the Nation's various departments and the defendant. Upon the completion of any community service, a complete record of the work completed shall be filed with the Clerk and become a permanent part of said defendant's record.

## **II. BAR ADMISSION**

### **RULE 16. APPLICATION FOR ADMISSION**

- A) **Application Form.** Any person who seeks admission to the Penobscot Nation Bar shall file an application with the Clerk of Courts. An application form is provided at the Clerk's office. The completed application must be signed in the presence of the Clerk. The approval and signature of the Chief Judge shall also be obtained before admission is considered finalized.
- B) **Fees.** Each request for the application form, other forms and materials required for admission to the Penobscot Nation Bar shall be accompanied by a \$50.00 non-refundable fee.

### **RULE 17. QUALIFICATIONS FOR ADMISSION TO THE BAR**

Any attorney admitted to and in good standing with the bar of any state or a federal court is eligible for admission to the Penobscot Nation Bar.

### **RULE 18. ADMISSION TO PRACTICE**

- A) **Oath upon Admission.** Before any attorney may practice before the Tribal Court, he or she must take an Oath of Admission.
- B) **Rules of Procedure; Certification.** Any attorney admitted to practice before the Tribal Court must agree to abide by the Penobscot Nation Rules of Court and must sign a certification stating that s/he has read the rules. A copy of the Penobscot Nation Rules may be obtained from the Clerk of Courts' office.
- C) **Certificate.** A certificate memorializing the admission of the attorney shall be issued by the Court as soon as may be practicable.

## **RULE 19. ESTABLISHING AND MAINTENANCE OF A CENTRAL REGISTER OF ATTORNEYS**

- A) **Establishment and Maintenance.** It shall be the duty of the Clerk of Courts to establish and maintain the central register of all persons who have been duly admitted as members of the Penobscot Nation Bar. Every attorney admitted to practice shall pay an annual bar fee of \$50.00. The annual fee may be waived by order of the Chief Judge for any Penobscot Nation bar member who serves as court-appointed counsel or guardian ad litem in any case before the Penobscot Nation Tribal Court or Court of Appeals.
- B) **Preparation.** Said list shall be prepared from information furnished to the Clerk of Courts by members of the bar duly admitted to practice before the Tribal Court.
- C) **Revision.** It shall likewise be the duty of the Clerk of Courts to furnish to the Chief Judge a written certificate setting forth any and all additions to the list of members of the bar as well as deletions by reasons of death, resignation, disbarment, suspension or otherwise, and all reinstatements of readmissions when they occur and upon receipt of such amendatory certificate, to revise the central register of attorneys accordingly, to the end that said register may be perpetually maintained with current corrections. A list of persons admitted each year together with the date and place of taking the oath and the date of admission shall be supplied annually to the Chief Judge.
- D) **Register as Evidence.** Whenever in any proceeding before the Tribal Court, it becomes an issue as to whether or not any individual is admitted to practice law as a member of the Penobscot Nation Bar, the certificate of Clerk of Courts as to whether the name of the individual then appears upon the said central register shall be prima evidence of the fact.

### **III. PROFESSIONAL ACCOUNTABILITY**

#### **Rule 20. PROFESSIONAL AND ETHICAL CONDUCT OF JUDGES AND JUSTICES**

- (A) **Penobscot Nation Rules of Judicial Conduct.** Judges and justices of the Penobscot Nation Judicial System shall abide by the Penobscot Nation Rules of Judicial Conduct.
- (B) **Maine Bar Rules.** Unless otherwise required, a judge or justice subject to the full Penobscot Nation Rules of Judicial Conduct shall not be subject to any provision of the Maine Bar Rules as to conduct during any period of judicial service. He or she shall be subject to the Maine Bar Rules with respect to conduct prior to becoming a judge or justice.
- (C) **Oath.** A judge or justice shall also be bound to the conditions subscribed and sworn to in the oath he or she took upon entering office.
- (D) **Misconduct.** Failure of a judge or justice to abide by the Penobscot Nation Rules of Judicial Conduct may result in the filing of a complaint to the Professional Responsibility Review Committee and subsequent disciplinary action.

## **RULE 21. PROFESSIONAL AND ETHICAL CONDUCT OF ATTORNEYS**

- (A) **Maine Bar Rules.** The practice of law by attorneys within the Penobscot Nation Judicial System and the conduct of attorneys with respect to their professional activities and as officers of the Court shall follow the standards established within the Maine Bar Rules, especially the Code of Professional Responsibility. Any attorney admitted to or engaging in, the practice of law in the Penobscot Nation Judicial System shall be subject to the Court's supervision and disciplinary jurisdiction.
- (B) **Oath.** Attorneys admitted to the Penobscot Nation Bar shall be bound to uphold the Oath of Admission to Practice.
- (C) **Misconduct.** Failure by an attorney to abide by the Maine Bar Rules and/or his or her Oath of Admission to Practice may result in the filing of a complaint to the Professional Responsibility Review Committee and subsequent disciplinary action.

## **RULE 22. PROFESSIONAL RESPONSIBILITY REVIEW COMMITTEE**

- (A) **Authority to Hear Complaints.** The Professional Responsibility Review Committee shall have the authority to hear complaints concerning the conduct of judges, justices, and attorneys and to take disciplinary actions against the person complained against, and/or cause his or her removal from the Penobscot Nation Bar if warranted, after a fair hearing.
- (B) **Committee Composition.** The Committee shall consist of the Chief Judge, unless he or she is the subject of the complaint, two Appellate Justices, two members of the Penobscot Nation Bar, and one member of the Penobscot Nation community at large.
- (C) **Committee Appointments.** The Clerk of Court shall appoint two Appellate Justices to serve on the Committee. The Clerk of Court will appoint one of the two Appellate Justices to serve as chairperson for the Committee. The Chairperson shall have the right to vote in all decisions of the Committee. No action shall be taken by the Committee except by a vote of a majority of the Committee.
- (D) **Investigative Authority.** The Committee shall conduct such investigation as it deems fit. At any stage of such an investigation the Committee shall have subpoena power and may require a person to appear or produce evidence before the Committee, and to provide evidence under oath. If the Committee determines that the complaint is unfounded, the Committee shall dismiss the matter, notifying any complainant of its action.
- (E) **Confidentiality.** All proceedings before the Committee shall be confidential, and no information shall be published by the Committee except that:
  - 1) Upon written request of the Chief of Penobscot Nation or the Director in connection with the consideration of the appointment or reappointment of a person who is or has been a Penobscot Nation judge or justice, the Committee shall provide information on any complaints made against the judicial candidate and the Committee's disposition thereof; and
  - 2) Upon request of the person whose conduct is being investigated, or by a majority vote of the Committee, after giving that person an opportunity to express his or her views on the question, any hearing held shall be public.

## **RULE 23. REMOVAL AND DISCIPLINE OF JUDGES OR ATTORNEYS**

- (A) **Filing of Complaints.** Complaints filed against a judge or attorney shall be made in writing and shall be signed by the complainant. Each complaint shall be filed with the Clerk of Courts, who shall assign a docket number, and acknowledge receipt of the complaint. Upon receipt of such a complaint, the Clerk will select and notify the Professional Responsibility Review Committee.
- (B) **Determination to Proceed.** The Committee shall consider each complaint received to determine whether it is within the Committee's authority to hear.
- 1) If the Committee is unable to make that determination, it may request additional information.
  - 2) If the Committee determines that a complaint is not of a type within its authority, it shall dismiss the complaint, notify the complainant of its decision, and notify the party complained against of the nature of the complaint and the Committee's decision.
  - 3) If the Committee determines that a complaint is within its authority, it shall communicate the complaint to the party complained against by providing him or her with a copy of the complaint and shall request a written response. The Committee may conduct such investigation of the matters as it deems appropriate. If the Committee determines that the complaint is unfounded or frivolous or otherwise provides insufficient cause for proceeding, it shall dismiss the complaint and notify the complainant and the party complained against of its decision.
  - 4) The dismissal of the complaint does not preclude later consideration of the matters involved in that complaint to the extent that they may evidence a pattern or practice of misconduct, or are otherwise relevant to the consideration of any other complaint or matter properly before the Committee under these rules. A dismissed complaint may be reconsidered if new information is received upon the basis of which the Committee determines that such reconsideration is necessary to fulfill the purpose of the disciplinary process.
- (C) **Hearings.** The Committee shall hold a hearing at the request of a majority of its members or of the individual whose conduct is being investigated. Such hearing shall be had before the Committee on record. The Committee shall have subpoena power and every witness shall be sworn.
- (D) **Rights of the Accused.** The accused shall be entitled to be present at the hearing, to be represented by counsel at the accused's own expense, to introduce evidence, to examine and cross-examine witnesses, and to subpoena witnesses.
- (E) **Written Notice.** The Committee shall issue to the accused a written notice containing a statement of alleged misconduct, including any section of the Penobscot Nation Rules of Judicial Conduct or Maine Bar Code of Professional Responsibility or Oath taken upon admittance to office alleged to have been violated, or alleged, disability. The notice shall state alleged facts upon which such charges are based. The Committee shall make available to the accused all information concerning such charges as the Committee has acquired.
- (F) **Response to Notice.** Within 20 business days after the receipt of notice, the accused shall file a written response setting forth any admission, denial, affirmative defense, or other matter upon which he or she intends to rely at the hearing.

- (G) **Discovery.** Discovery shall be allowed under the Committee's direction upon request to and approval of the Committee.
- (H) **Evidence.** The Maine Rules of Evidence shall guide evidentiary matters.
- (I) **Committee Decision.** After hearing a matter, the Committee shall decide whether it is satisfied by a preponderance of the evidence that:
- 1) The accused has violated the Penobscot Nation Code of Judicial Conduct or Maine Bar Code of Professional Responsibility or Oath taken upon admittance to office and that the violation is of such serious nature as to warrant formal disciplinary action; or
  - 2) The accused has been convicted of a crime the nature of which casts into doubt his or her continued willingness to conform his or her conduct to the Penobscot Nation Code of Judicial Conduct or Maine Code of Professional Responsibility or to the oath taken upon admittance to office; or
  - 3) The accused is suffering from a disability which materially affects his or her ability to perform his or her duties.
- (J) **Committee Findings and Actions.** The Committee shall make findings of fact and shall draw conclusions of law. If the Committee decides that a charge has not been established, it shall dismiss the matter and provide written notice to both the party complained against and any complainant. If the Committee decides that a charge has been established, it shall report its decision to both the accused and the complainant and take or effect appropriate action promptly.

#### **RULE 24. COMPLAINTS AGAINST OTHER COURT PERSONNEL**

Complaints alleging misconduct or disability of Penobscot Nation Judicial System personnel, other than a judge or attorney with regard to actual practice before the Court, shall be directed to the Director. Upon hearing such complaint, the Director shall make proper investigation and, if warranted, take appropriate action as established within the Nation's Personnel Policies.

### **IV. GENERAL RULES**

#### **RULE 25. SUPREMACY OF TRIBAL RULES**

The procedures of the Penobscot Nation Tribal Court shall be governed by the Maine Rules of Civil Procedure, Criminal Procedure, Evidence, Small Claims, and Probate and their amendments, to the extent practically applicable to the Penobscot Nation Judicial System and in the absence of a specific Penobscot Nation rule. In the event of a conflict between the Maine Rules and the Penobscot Nation Rules of Procedure, the Penobscot Nation's rules shall govern.

#### **RULE 26. SCOPE OF RULES**

These rules govern the procedure in the Penobscot Nation Judicial System in all suits of a civil nature whether cognizable as cases at law or equity or of a criminal nature, including appeals from the Penobscot Nation Tribal Court. They shall be construed to secure the just, speedy and inexpensive determination of every action.

## **RULE 27. JURISDICTION AND VENUE UNAFFECTED**

These rules shall not be construed to extend or limit the jurisdiction of the Penobscot Nation or its courts.

## **RULE 28. MAINE RULES OF EVIDENCE ADOPTED**

The Maine Rules of Evidence are the adopted evidentiary rules and shall be adhered to and followed in the courts of the Penobscot Nation.

## **RULE 29. GENERAL JURISDICTION; CONTROL OF RECORDS**

- A) **General Jurisdiction.** The Penobscot Nation Tribal Court may exercise jurisdiction according to the common law not inconsistent with the federal Indian Civil Rights Act, the Penobscot Nation's laws and ordinances, or tribal policy when no tribal law exists, and may punish contempts against its authority by fine and /or imprisonment, and administer oaths.
- B) **Control of Records.** The Chief Judge has general superintendence of the Penobscot Nation Tribal Court for prevention and correction of errors and abuses where the law does not expressly provide a remedy and has control of all records and documents in the custody of its clerk. Whenever justice or the public good requires, he may order the expunging from the records and papers on file on any case which has gone to judgment of any name or part thereof unnecessary to the purpose and effect of said judgment.
- C) **Holding of Records.** The Clerk shall maintain and hold court records and documents in a secure location for ten years. After the expiration of the ten year holding period, records which the Chief Judge deems as no longer having any value to the Court may be destroyed in such manner.

## **RULE 30. PENOBSCOT NATION REPORTER**

- A) **Rendering of Decisions.** The judge shall render his or her decision in a timely manner after the final hearing on a matter.
- B) **Reporting of Decisions.** All Penobscot Nation Court of Appeals decisions accompanying opinions shall be written and published in the PENOBSCOT NATION REPORTER annually, the official court reporter for the Penobscot Nation Judicial System. Written opinions of the Penobscot Nation Tribal Court which are rendered in cases of first impression or which are deemed significant by the Court as establishing precedent may also be published in the PENOBSCOT NATION REPORTER. Opinions and decisions shall also be published in accordance with the provisions of Penobscot Nation Tribal Law Chapter 30, Publication of Tribal Laws and Court Opinions.

## **RULE 31. OFFICIAL LANGUAGE OF THE COURT**

The official language of the Penobscot Nation Judicial System shall be English. All court proceedings shall be conducted in English. Further, all court documents and records shall be written in English.

### **RULE 32. INTERPRETERS**

- A) **Interpreters.** In the event that a party or witness at a court proceeding does not speak or understand English adequately, the Court may appoint a disinterested interpreter of its own selection, including an interpreter for the deaf.
- B) **Compensation.** The Court shall fix the interpreter's reasonable compensation. The compensation shall be paid out of funds provided by the Penobscot Nation Judicial System or by one or more of the parties as the Court may direct, and may be taxed ultimately as costs, in the discretion of the Court.
- C) **Duties.** Interpreters shall be duly sworn. An interpreter must swear to accurately and honestly interpret all questions and responses rendered in the Courtroom. He or she must disclose any conflict of interest to the Court upon selection or knowledge to the Clerk of Courts, so that another interpreter may be appointed. Confidentiality of records and proceedings must be maintained when required by the Court or by law.

### **RULE 33. COMPENSATION OF WITNESSES**

- A) **Witness Compensation.** Witnesses, other than law enforcement officers testifying in their official capacity, unless the Court shall otherwise order, shall receive \$10.00 for each day's attendance and mileage at the federal allowable rate for each mile going and returning home. The Court in its discretion may allow at the trial of any cause, civil or criminal, a reasonable sum for each day's attendance of any expert witness or witnesses at trial, in taxing the costs of the prevailing party. Such party or the attorney of record shall first file an affidavit within 30 days after the entry of judgment and before the cause is settled, stating the name, residence, number of days in attendance and the actual amount paid or to be paid each expert witness at such trial. No more than \$10 per day may be allowed or taxed by the Clerk of Courts in the costs of any civil action for the per diem attendance of a witness, unless the affidavit is filed, and the per diem is determined and allowed by the Chief Judge.
- B) **Witness Not Obligated Unless Fees Paid or Tendered.** No person is obliged to attend any court as a witness in a civil action or at any place to have his deposition taken, unless compensation for travel to and from the place and for one day's attendance are first paid or tendered.

### **RULE 34. LEGAL ASSISTANCE BY LAW STUDENTS**

- A) **Permitted Activities.** An eligible law school student may appear in the Penobscot Nation Tribal Court, in any civil or criminal action, on behalf of any indigent person receiving legal services through the public defender's office, if the person on whose behalf the student is appearing has indicated in writing consent to that appearance and the supervising lawyer has also indicated in writing approval of that appearance. An eligible student may appear in court in any civil or criminal action on behalf of the Nation or an agency thereof with the written approval of the lawyer who is supervising the student in that appearance. The written consent and approval referred to above shall be filed in the record of the case and shall be brought to the attention of the presiding judge or justice.

- B) **Requirements and Limitations.** In order to be an eligible law student under this rule, the student must:
- 1) Be duly enrolled in a law school approved by the American Bar Association.
  - 2) Have completed legal studies amounting to at least four (4) semesters.
  - 3) Be certified by the dean of the student's law school as being of good character and competent legal ability, as being adequately trained to perform as a legal intern and as having met the other requirements of this subdivision (B).
  - 4) Neither ask for nor receive any compensation or remuneration of any kind from the person on whose behalf such services are rendered.
- C) **Certification.** Certification of a student by the law school dean:
- 1) Shall be filed with the Clerk of Courts.
  - 2) May be withdrawn by the dean at any time by mailing a notice to that effect to the Clerk of Courts. It is not necessary that the notice state the cause of the withdrawal.
- D) **Other Activities.** Subject to the limitations of subdivision (B) of this rule.  
An eligible law student may also engage in other activities authorized by law, under the general supervision of a member of the Nation's Bar, but outside the presence of that lawyer, including:
- 1) Preparation of pleadings and other documents to be filed in any matter in which the student is eligible to appear, but such pleadings or documents must be signed by the supervising lawyer.
  - 2) Preparation of briefs and other documents to be filed in the Court of Appeals in any matter in which the student is eligible to appear, but such documents must be signed by the supervising lawyer.
  - 3) Each pleading, document or brief must contain the name of the eligible law student who practiced in drafting it. If the student has participated in drafting only a portion of it, that fact may be mentioned.
- E) **Supervision.** The member of the bar under whose supervision an eligible law student engages in any of the activities permitted by this rule shall:
- 1) Assume personal professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work.
  - 2) Assist the student in preparation to the extent the supervising lawyer considers it necessary.

## V. CIVIL RULES OF PROCEDURE

### **RULE 35. MAINE RULES OF CIVIL PROCEDURE TO BE FOLLOWED**

In the absence of a Penobscot Nation Rule, the Maine Rules of Civil Procedure and their amendments are to be followed in the Penobscot Nation Tribal Court with the following exceptions:

- A) **Procedure when none specified.** When a procedure is not specifically prescribed, the Court shall proceed in any lawful manner not inconsistent with the Indian Civil Rights Act, tribal law or these rules.
- B) **Venue; Removal.** All trials and hearings shall be held in the Tribal Court. No change of venue or removal to other courts shall be permitted.
- C) **Recording of court proceedings.** All court proceedings shall be electronically recorded.
- D) **Jury Trials.** There shall be no right to a jury trial for civil matters.
- E) **Appeals.** There shall be no appeal in a civil action to any court other than the Penobscot Nation Court of Appeals. The Appellate procedure to be followed is set out in the section below.
- F) **Review of Governmental Action.** Review of governmental action shall be as provided by tribal law only.
- G) **Review of Final Agency Action.** Review of final agency action shall be as provided by tribal law.

### **RULE 36. APPLICABILITY OF RULES**

- A) **To What Proceedings Fully Applicable.** The Penobscot Nation Rules of Civil Procedure apply to all proceedings in suits of a civil nature in the Tribal Court.
- B) **Limited Applicability.** These rules do not alter the practice prescribed by the Laws and Ordinances of the Penobscot Nation or the Penobscot Nation of Rules of Criminal Procedure for beginning and conducting the following proceedings in the Tribal Court or before the Court of Appeals:
  - 1) Proceedings for post-conviction relief in criminal actions or under the writ of habeas corpus and for replevying a person.
  - 2) Proceedings in paternity cases.
  - 3) Proceedings for the removal of an attorney or summary proceedings against an attorney for collection of payment.
  - 4) Applications by any tribal agency, department, board, commission, or officer to enforce a subpoena, to compel the production of documents, or to require answer to pertinent questions.
  - 5) Actions under the statutory small claims procedure except as incorporated expressly or by analogy in the Penobscot Nation Rules of Small Claims Procedure.
  - 6) Ex parte proceedings.

- 7) Proceedings for commitment or recommitment of insane persons or persons mentally ill.
- 8) Proceedings in the juvenile court.
  
- C) **Terminology in Laws and Ordinances.** In applying these rules to any proceeding, the terminology of any law or ordinance which is also applicable to the proceeding, where inconsistent with these rules, shall govern.
  
- D) **Appellate Review.** Review by the Court of Appeals to the extent that review of any such proceeding is available, shall be by appeal in accordance with these rules.

### **RULES 37. CHILD SUPPORT GUIDELINES**

The Tribal Court may utilize the child support guidelines and forms promulgated by the Supreme Judicial Court of Maine, pursuant to and authorized by 19-A M.R.S.A § 2001, for the determination of appropriate child support payments.

### **RULE 38. PRETRIAL PROCEDURE**

- A) **Pretrial Conference.** In any action in the Tribal Court, the Court may in its discretion direct the attorneys for the parties to appear before it for a conference to consider:
  - 1) The simplification of the issues;
  - 2) The necessity or desirability of amendments to the pleadings;
  - 3) The possibility of obtaining admissions of fact and documents which will avoid unnecessary proof;
  - 4) The limitation of the number of expert witnesses; and
  - 5) Such other matters as may aid in the disposition of the action.
  
- B) **Pretrial Order.** The Court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The Court in its discretion may establish a pretrial calendar on which actions may be placed for consideration as above provided.
  
- C) **Failure to Attend Conference.** If a party fails to attend a pretrial conference held under this rule or to comply with any order made hereunder, the Court shall impose on the party or the party's attorney, or both, such sanctions as the circumstances warrant, which may include the dismissal of the action or any part thereof with or without prejudice, the default of a party, the exclusion of evidence at trial, and the imposition of costs, including attorney's fees and travels. The Court may expressly order, where appropriate in its discretion, that the costs of such sanctions be borne by counsel and that they shall not be passed on to counsel's client.
  
- D) **Settlement.** At the pretrial conference the Court shall explore the settlement negotiations had to date between the parties and shall encourage a fair disposition of the case by settlement. Counsel shall be required to make a representation to the Court at the pretrial conference that counsel has made a recommendation to counsel's client in respect to settlement and that the client has acted on such recommendation. Counsel's inability to make such representations shall be grounds for

imposition of sanctions. Counsel shall not be required, over objection, to disclose the substance of any recommendation or the client's action thereon or the extent of counsel's settlement authorization. It is the obligation of counsel to discuss settlement with the Court and other counsel at the pretrial conference in good faith and in a constructive manner.

### **RULE 39. RECORD OF CIVIL CASES**

After rendition of final judgment or decree in any civil action, the Clerk of Court shall, as soon as may be possible, enter judgment on the docket, except in such specific instances as the presiding judge may direct. If either party files a request and tenders the fees thereof, a full, extended record shall be made. The Court may establish the form of such short form record and full, extended record.

### **RULE 40. PROCEEDINGS IN FORMA PAUPERIS**

- A) **Request.** Any person who intends to bring a civil action under these rules, or to file any motion requiring service, may without fee, file a request with the Clerk of Courts asking for leave to proceed in forma pauperis. Such request shall be accompanied by an affidavit of the plaintiff or moving party setting forth:
- 1) the person's monthly income and necessary monthly expenses,
  - 2) that the person possesses no other source from which filing or service fees may reasonably be paid, and
  - 3) that the action is brought, or the motion filed, in good faith.
- B) **Waiver of Filing Fee and/or Waiver Fees.** A request for waiver of the filing fee shall be filed with the complaint. If a mediator is required and a waiver of that fee is sought, a request for waiver of the mediator fee shall also be filed with the complaint. The action shall thereupon be entered upon the docket. If the Court determines that the plaintiff has brought the action in good faith and is without sufficient funds to pay the fee(s), the Court, in its sole discretion, may waive any fees. If the Court denies the request(s), the action shall be dismissed without prejudice, unless within seven calendar days after the denial the plaintiff pays the fee(s) to the Clerk of Courts.
- C) **Payment of service costs.** A request for payment of service costs shall be filed with the complaint or motion. If the Court finds that the action is brought, or the motion filed, in good faith and that the plaintiff or moving party is without sufficient funds to pay all or part of the costs incurred in making service of process, it shall order all or such part of those costs be paid as an administrative expense of the Tribal Court.
- D) **Costs; Reimbursement.** If the plaintiff or moving party prevails, any fee or costs paid under subdivision (B) or (C) of this rule may be taxed as costs against the opposing party, if the Court finds that the party is able to pay such fee or costs. If the Court subsequently discovers a party is able to pay fees or costs, the Court may in its discretion, order a party to do so. The Director is authorized to proceed by execution or action to recover for the appropriate court account all fees or costs which any party becomes liable to pay or reimburse under this subdivision, if such payment is not made voluntarily upon demand.
- E) **Filing Fee for Appeals.** A justice of the Penobscot Nation Appellate Court, selected by the Clerk of Courts, in his or her discretion, may waive or extend the time to pay the filing fee for an appeal.

## **RULE 41. ADMINISTRATIVE INSPECTION WARRANTS**

The Chief Judge may issue warrants to conduct administrative searches following the criteria established in Rule 80E of the Maine Rules of Civil Procedure.

## **RULE 42. SITE INSPECTION WARRANTS**

A judge may issue warrants to conduct surveys and tests on land that is under consideration for purchase or taking through eminent domain by the Penobscot Nation. The Chief Judge shall provide by rule and manner the circumstances for the issuance of such warrants subject to the following conditions:

- A) **Compelling need.** There is a compelling need for the issuance of the warrant, such as required compliances with regulations or protection of the public health, safety or welfare;
- B) **Notice to owner.** The owner of the land shall be served notice at least fourteen (14) days prior to the day when any survey or test is to be initiated;
- C) **Completion within 30 days.** All tests and surveys shall be completed within thirty (30) days of entry;
- D) **Distance from occupied dwelling.** No soil tests may be conducted within 50 yards of an occupied dwelling;
- E) **Site restoration.** Upon completion of any soils test or analysis, all holes, pits or trenches created thereby shall be filled and the site restored as best practicable to its original condition; and
- F) **Compensation for damages.** The owner of the land subject to a survey or test shall have the right to be compensated for any actual damage caused as a result of the surveys or tests. Upon request of the landowner within thirty (30) days after entry on his or her premises, the court shall hold a public hearing to determine whether the landowner is entitled to compensation for actual damages caused by testing. The Court may order that the landowner immediately be paid the amount of compensation to which it determines he or she is entitled. If the landowner is aggrieved by the decision of the Penobscot Nation Tribal Court, an appeal may be filed by that party to the Court of Appeals as provided in Rule 80B (d) of the Maine Rules of Civil Procedure.

## VI. CRIMINAL RULES OF PROCEDURE

### **RULE 43. MAINE RULES OF CRIMINAL PROCEDURE TO BE FOLLOWED**

In the absence of a Penobscot Nation Rule, the Maine Rules of Criminal Procedure and amendments are to be followed in the Penobscot Nation Tribal Court with the following exceptions:

- A) **Procedure when none specified.** When a procedure is not specifically prescribed, the Court shall proceed in any lawful manner not inconsistent with the Indian Civil Rights Act, tribal law or these rules.
- B) **Venue; Removal.** All hearings and trials shall be held in the Tribal Court. No change of venue or removal to other courts shall be permitted.
- C) **Grand Jury.** There shall be no Grand Jury process.
- D) **Arraignments; Probable Cause Hearings.** For all arraignments or probable cause hearings where the defendant has been taken into custody, the Clerk of Courts shall be contacted. The Clerk shall attempt to set up an arraignment with the Chief Judge first. In the event that an arraignment cannot be arranged within forty-eight (48) hours of the defendant being taken into custody, then the Clerk shall try to schedule an arraignment with a Court of Appeals Justice who shall serve as Judge Pro Tempore. If the Chief Judge or a Judge Pro Tempore is unable to arraign the defendant within the forty-eight (48) hours, excluding holidays and weekends, then a probable cause hearing may be held. The Clerk shall attempt to arrange the hearing with the Chief Judge first. If the Chief Judge is not available, a Court of Appeals Justice may sit as Judge Pro Tempore for the probable cause hearing. If no arraignment or probable cause hearing can be arranged within the forty-eight (48) hours, excluding holidays and weekends, the defendant must be released from custody without bail or conditions.
- E) **Recording of court proceedings.** All court proceedings shall be electronically recorded.
- F) **Jury Trials.** There shall be a limited right to trial by jury as specified in Rule 47 below. The jury panel shall consist of no less than six (6) jurors.
- G) **Appeals.** There shall be no appeals to any Court other than the Penobscot Nation Tribal Court of Appeals. A criminal defendant retains the right to petition the United States District Court for the District of Maine for a writ of habeas corpus as provided by the federal Indian Civil Rights Act.

### **RULE 44. CLERKS; TAKING OF BAIL AUTHORIZED**

Clerks of the Tribal Court, during the pendency of a term of court at which criminal cases are cognizable, subject to the control of the judge presiding, may receive bail for the appearance of a defendant.

#### **RULE 45. ELIGIBILITY AND REIMBURSEMENT FOR COURT APPOINTED COUNSEL**

- A) **Assignment of Counsel.** In a criminal proceeding, if the defendant appears without counsel, the Court shall advise the defendant that he or she has the right to counsel. The Court shall assign counsel to represent the defendant unless the defendant elects to proceed without counsel or has sufficient means to employ counsel.
- B) **Request for Court Appointed Counsel.** All requests for court appointed counsel must be made by Motion for Appointment of Counsel and accompanied with a sworn Financial Affidavit and filed with the Clerk of the Tribal Court within two business days of arraignment.
- C) **Determination of Indigence.** The presiding judge shall determine whether a defendant has sufficient means with which to reimburse counsel and in making such determination may examine the defendant under oath concerning the defendant's financial resources. If the Court finds that the defendant has sufficient means with which to bear a portion of the expense of the defendant's defense, it shall appoint the Penobscot Nation's Public Defender but may condition its order on the defendant paying to the Court a specified portion of the counsel fees and costs of defense. When such a conditional order is issued, the presiding judge shall issue a written order setting forth the conditions of appointment and reimbursement.
- D) **Conflicts of Interest.** The Penobscot Nation's Public Defender shall not accept an appointment representing multiple defendants if the exercise of the Public Defender's independent professional judgment on behalf of a client will be, or is likely to be, adversely affected by the Public Defender's representation of another client, or if it would be likely to involve the Public Defender in representing different interests, except to the extent permitted by Rule 3.4 (d) of the Maine Bar Rules of Professional Responsibility.

In the event a conflict of interest arises with regard to a particular defendant and the Public Defender is unable to accept the appointment, the Court shall appoint an attorney to represent the defendant. The defendant shall only be required to reimburse the Court in the amount of the hourly rate assigned for the Public Defender's services. The balance of the Court-appointed attorney's fees shall be reimbursed by the Court.

- E) **On Appeal.** Court-appointed counsel shall continue to represent the defendant in any subsequent appeal unless relieved by order of the trial court or the Court of Appeals.
- F) **Failure to Reimburse Court.** If a defendant has failed to reimburse the Tribal Court for the services of court-appointed counsel as ordered by the Chief Judge, the Court may subject said defendant to contempt proceedings.

#### **RULE 46. FEE SCHEDULES FOR COURT APPOINTED COUNSEL**

- A) **Rate.** An hourly rate for time spent on the appointed case of cases shall be set by the Chief Judge in consultation with the Director. Attorneys shall prorate among the cases any time spent in

common with other cases (e.g. travel, waiting and research time). The Chief Judge will determine the final amount of compensation for each appointed attorney.

**B) Expenses.**

- 1) **Routine Expenses.** Routine expenses, such as postage, copying, telephone calls and office overhead expenses, are considered to be included in the hourly rate. Counsel may request the Court to consider reimbursement for such expenses if they exceed routine amounts by submitting an itemized written request with the voucher explaining the reasons. Itemized non-routine expenses, such as discovery from the Penobscot Nation or the State of Maine, toll calls, and fees paid to the third parties, shall not exceed actual cost. Mileage shall not exceed the applicable federal rate.
- 2) **Other Non-Routine Expenses.** Other non-routine expenses requiring payment to third parties, which have historically required pre-approval by the Court (e.g. medical and psychological experts, investigators, depositions, etc.) are required to be approved in advance, and expenses exceeding the amount ordered by the Court shall not be allowed. The pre-approval requirement for payment to third parties also applies to the Penobscot Nation's Public Defender and Guardian Ad Litem.
- 3) **Other Fees.** Witness, subpoena and service fees shall be reimbursed as ordered by the Chief Judge.

**C) Maximum Counsel Fees.**

1) **Penobscot Nation Tribal Court.**

- a) Maximum fees, including expenses, are set in accordance with the following schedule:

Criminal and juvenile cases	\$ 500.00
Child protective cases	\$1,500.00
Miscellaneous	\$ 500.00

(i.e. post-conviction probation revocation, etc.)

- b) Criminal and juvenile cases shall include all proceedings through final disposition. Any subsequent proceedings shall require new application and appointment. Child welfare cases shall include all proceedings through final disposition. Any subsequent proceedings, such as review hearings, shall be considered a new appointment for purposes of the maximum fee.
- c) The maximum fee may be exceeded upon the approval of the Chief Judge after consultation with the Director. If a fee greater than the applicable maximum is recommended, the judge setting the fee shall state the reasons in writing on the voucher or attachment.
- d) Upon written motion, assistant counsel may be appointed in unusual cases provided the duties of each attorney are clearly and specifically defined and there is no duplication of effort or when deemed necessary to assist the Public Defender.

2) **Court of Appeals.**

Maximum counsel fees are set in accordance with the following schedule:

Appeals	\$500.00
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The maximum fee may be exceeded upon the approval of the Chief Judge after consultation with the Director. If a fee greater than the applicable maximum is recommended, the judge setting the fee shall state the reasons in writing on the voucher or an attachment.

D) **Administration.**

- 1) Vouchers for payment of counsel fees and expenses are to be submitted at the time of final disposition of the case, whenever possible, but in any event not more than sixty (60) calendar days thereafter. Vouchers submitted more than sixty (60) days after final disposition shall not be considered without special leave of the Chief Judge in consultation with the Director.
- 2) Vouchers in cases that involve continuing representation, such as child protective cases, are to be submitted within ten (10) days after the conclusion of each hearing and shall indicate the amount of any vouchers previously submitted for the case. The Court shall review and determine the approved fee as soon as possible upon receipt of the voucher. The approval shall indicate the attorney fee, expenses and total reimbursement approved.
- 3) The Court will make every effort to schedule matters involving court-appointed counsel in such a manner as to limit the number of appearances and waiting time.
- 4) All requests for payment of services shall be accompanied by a detailed and itemized statement of services and expenses. Copies of receipts for payments to third parties shall be attached.

**RULE 47. JURY TRIALS**

A) **Criminal Proceedings.** Any person accused of an offense punishable by imprisonment shall not be denied the right, upon request, to a trial by jury. Such jury shall consist of not less than six persons.

- 1) **Request.** A request for trial by jury shall be made no later than fourteen (14) business days after arraignment, otherwise the defendant shall be deemed to have waived the right to trial by jury. Such request must be made in writing and filed with the Clerk of Courts.
- 2) **Certification.** The Tribal Prosecutor shall certify to the Court on record at arraignment whether, if in the event of conviction, the Penobscot Nation will recommend a sentence of incarceration. If the Tribal Prosecutor is unable to make the required certification at arraignment, the time allowed for requesting a trial by jury shall be tolled until certification is filed with the Court.
- 3) **Judicial Discretion.** If in the pre-trial opinion of the Chief Judge, a sentence of incarceration upon conviction may be appropriate, despite the certification of the Tribal Prosecutor to the contrary, the Chief Judge shall grant a timely request for a jury trial.
- 4) **Right to a New Trial.** A defendant who made a timely jury trial request which was denied by the Court and who is later convicted and sentenced to a period of incarceration, whether or not suspended, is entitled, upon motion, to a new trial before a jury. Said motion for a new trial shall be made not less than 10 days from entry of judgment of conviction.

B) **Jury Selection.**

The jury pool shall be drawn from the below list in descending order of priority:

- 1) Penobscot Nation members, non-Penobscot tribal members, and non-members lawfully residing on the Penobscot Nation reservation or Penobscot Nation trust lands;

- 2) Penobscot Nation members residing off the Penobscot Nation's lands but within a fifty-mile radius of Indian Island, Maine

C) **Jury Exclusion.**

If an individual has served on a jury within the past year, he or she may be excused from jury service.

**RULE 48. JURY FEES**

A juror is entitled to be paid mileage at the prevailing federal rate for travel expenses from the juror's residence to the Court and return and to compensation at the rate of \$10.00 for each day of required attendance at sessions of the Court. Jurors who are employees of the Penobscot Nation who are compensated at their usual rate of pay during their time of service shall not receive a separate juror's fee.

**RULE 49. LAW ENFORCEMENT OFFICERS APPEARING IN TRIBAL COURT**

All Penobscot Nation Law Enforcement Officers shall appear in the Penobscot Nation Tribal Court to give testimony as called upon by the Tribal Prosecutor.

**VII. HEALING TO WELLNESS COURT PROGRAM**

**RULE 50. ADMISSION TO PROGRAM**

A) **Eligibility**

An individual is eligible to apply to participate in the Penobscot Nation Healing to Wellness Court Program (HTWC) if he or she meets the following criteria:

- 1) Is an enrolled Penobscot Nation tribal member;
- 2) Is not currently charged with a violent offense in the Penobscot Nation Tribal Court;
- 3) Has been clinically assessed as a substance abuser with or without a diagnosis of a co-occurring mental health issue;
- 4) Be physically, emotionally, and mentally capable of completing HTWC requirements and participating in program activities; and
- 5) Willing and able to consent to enter the HTWC program.

B) **Admission Procedure in Criminal Cases**

- 1) A defendant who is charged with an offense that involves either the illegal possession, use, or abuse of alcohol or other substances, or which involves behavior stemming from such possession, use, or abuse will be advised by the presiding judge of the availability of HTWC at arraignment;
- 2) A defendant considering applying for admission to the HTWC shall be entitled to consult with legal counsel prior to admission;
- 3) In order to be considered for admission to the program, the defendant must complete a Petition for Admission into the HWTC and file it with the Clerk of Courts;

- 4) Upon receipt of such Petition for Admission, the Clerk of Courts shall forward a copy of the Petition to the HWTC Case Manager;
- 5) Within three (3) business days of receiving the Petition, the HWTC Case Manager shall meet with the defendant, conduct an intake interview, and perform or cause to be performed assessments to determine the defendant's status as a substance abuser and for appropriateness for the program;
- 6) As soon as possible after the completion of the assessments, the HTWC Case Manager shall prepare a written report for submission to the Tribal Court and the HTWC multidisciplinary team containing: the intake information, outcome of assessments; determination of defendant's program eligibility, and recommendation as to whether defendant should be admitted to the HTWC Program;
- 7) Within seven (7) business days, the HTWC Team shall convene either in person, or by telephone or video-conference, to review the defendant's Petition and the Case Manager's report and, if at all possible, make a determination by consensus as to whether defendant should be admitted to the HTWC Program;
- 8) In the event, the HTWC team determines that the defendant is an appropriate candidate for admission to the program, the Case Manager shall inform the Court, in writing, of the decision and the Clerk of Courts shall promptly schedule a hearing before the Tribal Court;
- 9) At the hearing on the defendant's Petition for Admission to the HTWC Program, the presiding judge shall confirm on the record that the defendant has had the opportunity to confer with legal counsel and after doing so, knowingly and voluntarily agrees to the terms of the HTWC Program Participant Order;
- 10) After the defendant signs the Petition and enters a guilty plea to the charge or charges and waives his or her right to a trial; the presiding judge shall enter a judgment of guilty and a deferred sentence of a determinate period of time and order the admission of the defendant into the HTWC program as the conditions of the deferred sentence.

**C) Admission Procedure in Civil Cases**

- 1) A person who is a party in a civil case before the Tribal Court in which it is alleged that the use or abuse of alcohol or other substances is an issue in the dispute, and who is willing to participate in the HTWC program in an effort to resolve the dispute and the underlying substance abuse issues, may voluntarily apply for admission to the HTWC;
- 2) A person suffering the negative effects of use or abuse of alcohol and other substances and who believes that he or she may benefit from participation in the HTWC may voluntarily apply for admission to the HTWC program;
- 3) A person considering voluntarily applying for admission to the HTWC shall be entitled to consult with legal counsel prior to admission;
- 4) In order to be considered for admission to the program, the individual must complete a Petition for Admission into the HWTC and file it with the Clerk of Courts;
- 5) Upon receipt of such Petition for Admission, the Clerk of Courts shall forward a copy of the Petition to the HWTC Case Manager;
- 6) Within three (3) business days of receiving the Petition, the HWTC Case Manager shall meet with the applicant, conduct an intake interview, and perform or arrange to be performed assessments to determine the applicant's status as a substance abuser and for appropriateness for the program;

- 7) As soon as possible after the completion of the assessments, the HTWC Case Manager shall prepare a written report for submission to the Tribal Court and the HTWC multidisciplinary team containing: the intake information, outcome of assessments; determination of applicant's program eligibility and a preliminary recommendation as to whether the applicant should be admitted to the HTWC Program;
- 8) Within seven (7) business days, the HTWC Team shall convene either in person, or by telephone or video-conference, to review the voluntary application and the Case Manager's report and, if at all possible, make a determination by consensus as to whether applicant should be admitted to the HTWC Program;
- 9) In the event, the HTWC team determines that the applicant is an appropriate candidate for admission to the program, the Case Manager shall inform the Court, in writing, of the decision and the Clerk of Courts shall promptly schedule a hearing before the Tribal Court and provide notice to all parties;
- 10) At the hearing on the Petition for Admission to the HTWC Program, the presiding judge shall confirm on the record that the applicant has had the opportunity to confer with legal counsel and after doing so, knowingly and voluntarily agrees to the terms of the HTWC Program Participant Order;
- 11) The Court shall inquire of the opposing party(ies), if any, as to whether there is an objection to the admission of the applicant into the HTWC and the entry of a stay of the proceedings;
- 12) After the defendant signs the Petition, the presiding judge shall enter an order admitting the applicant into the HTWC program;
- 13) Where the applicant is a party in a pending civil matter, the Court shall enter a stay of the case pending the applicant's successful graduation from the program and such other orders as deemed necessary to protect the rights and interests of the parties;
- 14) Upon motion by a party in a civil case, or on its own motion, the Court may convene a status conference or hearing during the pendency of the stay.

**D) Admission Procedure in Juvenile Delinquency Cases**

**1) Informal Adjustment**

- a) A juvenile who is charged with an offense that involves either the illegal possession, use, or abuse of alcohol or other substances, or which involves behavior stemming from such possession, use, or abuse will be referred to the HTWC Case Manager for a determination as to whether the case is appropriate for an informal adjustment;
- b) At the initial meeting of the juvenile and the juvenile's parents or guardians, the HTWC Case Manager, shall advise the juvenile of the availability of the Penobscot Nation Juvenile Healing to Wellness Court (JHTWC) program and, if it is a matter appropriate to be treated as an informal adjustment, of the possibility that the matter can be handled as an informal adjustment on the condition that the juvenile successfully complete the JHTWC program;
- c) A juvenile considering applying for admission to the JHTWC shall be entitled to consult with legal counsel prior to admission;
- d) In order to be considered for admission to the program, the juvenile and his or her parent(s) or guardian(s) must complete a Petition for Admission into the JHTWC and file it with the Clerk of Courts;
- e) Upon receipt of such Petition for Admission, the Clerk of Courts shall forward a copy of the Petition to the HTWC Case Manager;

- f) Within three (3) business days of receiving the application, the HTWC Case Manager shall meet with the juvenile and his or her parent(s) or guardian(s), conduct an intake interview, and perform or caused to be performed assessments to determine the juvenile's status as a substance abuser and for appropriateness for the program;
- g) As soon as possible after the completion of the assessments, the HTWC Case Manager shall prepare a written report for submission to the Tribal Court and the JHTWC multidisciplinary team containing: the intake information, outcome of assessments; determination of the juvenile's program eligibility and recommendation as to whether the juvenile should be admitted to the JHTWC Program;
- h) Within seven (7) business days, the JHTWC Team shall convene either in person or by telephone or video-conference to review the juvenile's application and the Case Manager's report and, if at all possible, make a determination by consensus as to whether the juvenile should be admitted to the JHTWC Program;
- i) In the event the JHTWC team determines that the juvenile is an appropriate candidate for admission to the program, the Case Manager shall inform the Court, in writing, of the decision and the Clerk of Courts shall promptly schedule a hearing before the Tribal Court and provide notice to the juvenile, juvenile's legal counsel, and the juvenile's parent(s) or guardian(s);
- j) At the hearing on the juvenile's Petition for Admission to the JHTWC Program, the presiding judge shall confirm on the record that the juvenile has had the opportunity to confer with legal counsel and after doing so, knowingly and voluntarily agrees to the terms of the JHTWC Program Participant Order and shall inquire of the juvenile's parent(s) or guardian(s) and certify their consent for their child to participate in the program;
- k) After the juvenile and the juvenile's parent(s) or guardian(s) sign the Petition; the case will be returned to the HTWC Case Manager for informal adjustment.

## 2) **Formal Adjudication and Disposition**

- a) A juvenile who is charged with an offense that involves either the illegal possession, use, or abuse of alcohol or other substances, or which involves behavior stemming from such possession, use, or abuse will be referred to the HTWC Case Manager for a determination as to whether a formal juvenile delinquency petition should be filed with the Tribal Court;
- b) At the initial meeting of the juvenile, the juvenile's parents or guardians, the HTWC Case Manager, shall advise the juvenile of the availability of the Penobscot Nation Juvenile Healing to Wellness Court (JHTWC) program and, of the possibility that a deferred disposition of matter may be entered by the Court on the condition that the juvenile successfully completes the program;
- c) The juvenile may petition for admission to the JHTWC in accordance with the procedures set forth in Section 4(a)(i-ix) herein.
- d) At the hearing on the juvenile's Petition for Admission to the JHTWC Program, the presiding judge shall confirm on the record that the juvenile has had the opportunity to confer with legal counsel and after doing so, knowingly and voluntarily agrees to the terms of the JHTWC Program Participant Agreement and shall inquire of the juvenile's parent(s) or guardian(s) and certify their consent for their child to participate in the program;
- e) After the juvenile and the juvenile's parent(s) or guardian(s) sign the agreement; and enters an admission to the charge or charges and waives his or her right to an adjudicatory hearing; the presiding judge shall enter an Order of Admission and a deferred disposition

of a determinate period of time and order the admission of the defendant into the JHTWC program as conditions of the deferred disposition.

## VIII. SMALL CLAIMS PROCEDURE

### **RULE 51. ADOPTION OF MAINE RULES OF SMALL CLAIMS PROCEDURE**

In the absence of a Penobscot Nation rule, the Maine Rules of Small Claims Procedure and amendments are to be followed in the Tribal Court with the following exceptions:

- A) **Venue; Removal.** All hearings shall be held in the Tribal Court. No change of venue or removal to other courts shall be permitted.
- B) **Jury Trials.** There shall be no right to a jury trial nor jury trial de novo for small claims.
- C) **Appeals.** There shall be no appeals to any court other than the Penobscot Nation Court of Appeals.

## IX. PROBATE PROCEDURE

### **RULE 52. ADOPTION OF MAINE RULES OF PROBATE PROCEDURE**

In the absence of a Penobscot Nation Rule, the Maine Rules of Probate Procedure and amendments are to be followed in the Tribal Court with the following exceptions:

- A) **Venue; Removal.** All hearings shall be held in the Tribal court. No change of venue or removal to other courts shall be permitted.
- B) **Jurisdiction.** The Tribal Court shall have probate jurisdiction over matters involving Tribal Members wherever those members are located.
- C) **Appeals.** There shall be no appeals to any court other than the Penobscot Nation Court of Appeals.
- D) **Register of Probate.** The Register of Probate for all matters shall be the Clerk of Courts.

## X. APPEALS

### **RULE 53. APPELLATE JUSTICES; COURT OF APPEALS**

- A) **Appellate Justices.** The Penobscot Nation Court of Appeals shall consist of no less than five (5) nor more than seven (7) justices of which any three (3) shall review a matter that has been appealed from the Penobscot Nation Tribal Court. The appellate decision shall be returned to the Clerk of Courts. The Clerk shall notify the Chief Judge, counsel of record, and the parties, if not represented by counsel, of the appellate decision. The majority ruling of the Appellate Justices shall prevail.

- B) **Appellate Procedures.** The Rules of Appellate Procedure of the Penobscot Nation shall apply in matters of procedure for any appeal.

#### **RULE 54. TAKING AN APPEAL**

- A) **Filing of the Notice of Appeal.** An appeal to the Court of Appeals may be taken by a party after an adverse decision only by filing a written Notice of Appeal with the Clerk of Courts within twenty-one (21) calendar days after entry of final judgment on the docket.
- B) **Appeal Fee.** A party filing an appeal must pay a non-refundable \$150.00 appeal fee within the prescribed twenty-one (21) calendar day period in order to perfect the appeal. No appeal fee shall be required in any appeal from an order of incarceration where the defendant has been determined indigent.

#### **RULE 55. RECORD ON APPEAL**

- A) **Composition of the Record of Appeal.** The Tribal Court Clerk's record shall include copies of the following: the complete docket entries; the relevant pleadings, motions and actions thereon; reproductions of documentary exhibits; a list of retained tangible object exhibits; the opinion; the final judgment or verdict appealed from; the findings of fact and conclusions of law, if any, and the notice of appeal. In a criminal appeal, no memoranda of law shall be included in the clerk's record.
- B) **Transcript of Proceedings; Duty of Appellant to Order; Notice to Appellee if Partial Transcript Ordered.**
  - 1) Within 10 days after filing the notice of appeal the appellant shall order, in writing, from the Clerk a transcript of such parts of the proceedings not already on file.
  - 2) The Clerk shall order a transcript of all proceedings. In the event a partial transcript is ordered by the appellant, notice of such order shall be provided by the appellant to the appellee. Upon receipt of notice of the ordering of a partial transcript or an electronic recording, the appellee may order, at their own cost, such additional portions of the transcript be prepared as the appellee deems necessary.
  - 3) At the time of ordering, a party must take satisfactory arrangements with the Clerk for payment of the cost of transcript.
- C) **Agreed Statement as the Record of Appeal.** In lieu of the record on appeal as defined in subdivision (A) of this rule, the parties may prepare and sign a statement of the case showing how the issues presented by the appeal arose and were decided in the Tribal Court and setting forth only so many of the facts as were averred and proved or sought to be proved as are essential to a decision of the issues presented. If the statement conforms to the truth, it, together with such additions as the Court may consider necessary fully to present the issues raised by the appeal, shall be approved by the Tribal Court and shall be certified to the Court of Appeals as the record on appeal and transmitted thereto by the Clerk within the time provided by subsection (D) of this rule. Copies of the agreed statement may be filed as an appendix to the brief of the appellant.
- D) **Correction or Modification of the Record.** If any difference arises as to whether the record truly disclosed what occurred in the Tribal Court, the difference shall be submitted to and settled by the

Court and the record made to conform to the truth. All other questions as to form and content of the record shall be presented to the Court of Appeals.

#### **RULE 56. APPELLATE RECORD AND BRIEFS; PROCEDURE**

- A) **Transcript and Record.** Upon the proper filing of the Notice of Appeal and fee, the Clerk shall prepare or cause to be prepared and submit to the appropriate justice the transcript and record on appeal as soon as practicable but no later than 30 days after filing of the notice of appeal unless otherwise permitted by the Chief Justice of the Court of Appeals.
- B) **Briefs.** Appellant shall submit a brief within twenty (20) business days after the notice of the transmission of the record on appeal is forwarded to the parties. Appellee or Amicus Curiae shall submit response within twenty (20) business days after the receipt of the Appellant's brief. The contents of the brief shall conform to Rule 39B of the Maine Rules of Criminal Procedure. An original and three copies of the brief must be filed with the Clerk. In addition, a copy of the brief must be served to each of the opposing parties.
- C) **Reply Brief.** The Appellant's reply brief, if any, must be filed within fourteen (14) days after service of the Appellee's brief. Any reply brief filed by the Appellant must be strictly confined to responding to new matters raised in the brief of the Appellee. No further responsive memoranda shall be filed except by leave of the Chief Justice of the Court of Appeals.
- D) **Amicus Curiae.** Amicus Curiae may file a brief on the date that the Appellee's brief is filed. Either party may voice objection to the submission of an Amicus Curiae brief to the Court of Appeals which shall make the final determination whether Amicus Curiae may submit.
- E) **Brief Covers.** Each brief must be preceded by a cover containing the following information: the name of the Penobscot Nation Court of Appeals, the case caption, the appellate and trial docket numbers, the title of the brief, the name of the party on whose behalf the brief is being filed and the name, address and telephone number of the attorney or party, if not represented by an attorney, submitting the brief.
- F) **Oral Argument.** There shall be no oral arguments on appeal without leave of the Chief Justice of the Court of Appeals.
- G) **Ex Parte Contact.** There shall be no ex parte contact between the Appellate Justices and the parties or their attorneys. This shall not prohibit discussions of the merits of appeal cases between the Appellate Justices.
- H) **Rendering of Decisions.** The Court of Appeals shall issue its opinion within forty-five (45) business days after the date on which the reply brief is filed or due, or the date of oral argument, if any, whichever is later, or as soon thereafter as is practicable.

#### **RULE 57. APPENDIX TO BRIEFS**

- A) **Optional Filing.** In every case, the Appellant may prepare and file an appendix to the opening brief which may contain any relevant portion of all other pleadings, jury instructions, findings and opinions. The appendix may contain any other parts of the record to which the parties wish to direct

the particular attention of the Court of Appeals. Except where they have independent relevance, memoranda of law in civil cases in the trial court should not be included in the appendix.

- B) **Time of Filing.** The Appellant shall serve and file the appendix with the Appellant's brief. The original and three copies of the appendix shall be filed with the Clerk and one copy shall be served on each party separately represented.
- C) **Appellee's Expansion of Appendix.** The parties are encouraged to agree as to the contents of the appendix. If the Appellee deems it necessary to direct the particular attention of the Court of Appeals to parts of the record not designated by the Appellant, the Appellee shall notify the Appellant and the Appellant shall include those parts designated.
- D) **Cost of Producing Appendix.** The cost of producing the appendix shall initially be paid by the Appellant. The Appellee shall advance the cost of including the additional parts of the record included in the appendix pursuant to section (C) above. In its discretion, the Court of Appeals may tax as costs the cost of reproducing all or any part of the appendix.

## XI. PENOBSCOT NATION RULES OF JUDICIAL CONDUCT

### PREAMBLE

The Penobscot Nation judicial system, as established by the General Meeting of the Penobscot Nation on September 27, 1979, is based on the principle that an independent, fair, and competent judiciary is essential to the administration of tribal justice. The Rules are intended to establish basic standards to govern the conduct of all Penobscot Nation judges. They are not intended as an exhaustive guide to conduct. Judges should also be governed in their judicial and personal activities by general ethical standards. The Rules are designed to provide standards for the regulation of judicial conduct through disciplinary proceedings where necessary. The Rules are intended to be applied consistent with applicable laws, rules of court, decisional law, tribal tradition and custom, common sense, and in the context of all relevant circumstances.

### SECTION I- APPLICABILITY OF RULES

Any person, whether or not an attorney, who is an officer of the Penobscot Nation Judicial System and is performing judicial functions is a judge for the purpose of 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 or custom to devote time to some other profession or occupation. A part-time judge:
  - 1) Is required to comply with these rules unless otherwise specified exempted;
  - 2) Shall not practice law either as an attorney or an advocate:
    - a) In the Penobscot Nation Tribal Court; or
    - b) In the Penobscot Nation Court of Appeals;
  - 3) Shall not act as an attorney or advocate in a proceeding in which he or she has served as judge or in any related proceeding.

- B) **Judge Pro Tempore.** A judge pro tempore is a person who is appointed to act temporarily as a judge. A judge pro tempore includes a Justice of the Penobscot Nation Court of Appeals temporarily serving as judge of the Penobscot Nation Tribal Court.
- 1) Is required to comply with these rules unless otherwise specified;
  - 2) Shall not appear as an attorney or advocate in a proceeding in which he or she has served as a judge or in related proceedings.

## **SECTION II- GUIDING PRINCIPLES**

### **PRINCIPLE 1**

#### **A judge should uphold the integrity and independence of the judiciary.**

An independent and honorable judiciary is essential to justice in the tribal community. A Penobscot Nation judge should help create and maintain such a judiciary, and should observe high standards of conduct toward achieving this goal.

- A) A judge shall maintain a separation between the judicial branch and other branches of tribal government, and shall avoid any contact or duty that violates such a separation.
- B) A judge shall not serve as any elected governmental official of the Penobscot Nation.

### **PRINCIPLE 2**

#### **A judge shall avoid impropriety and the appearance of impropriety in all his or her activities.**

A judge shall respect and comply with the laws, traditions, and customs of the Penobscot Nation and should at all times act in a manner that promotes public confidence in the honesty and impartiality of the Penobscot Nation judiciary.

A judge shall not allow family, social or other personal relationships to influence his or her judicial conduct. He or she shall not attempt to the prestige of his or her judicial office to advance the private interests of others; nor shall he or she convey the impression that anyone has special influence on him or her as judge.

### **PRINCIPLE 3**

#### **A judge shall perform the duties of the office impartially and diligently.**

The judicial duties of a judge shall take precedence over all other activities. The judicial duties of the judge include all the duties of the office prescribed by the Penobscot Nation law, traditions or custom. In the performance of these duties, the following standards apply:

## **RULE 58. ADJUDICATIVE RESPONSIBILITIES**

- A) A judge shall adhere to the laws, traditions and customs of the Penobscot Nation. He or she shall not be swayed by the partisan interests, public clamor, political pressure, or fear of criticism and

shall resist influences on the court by other tribal officials, governmental officials or any other attempting to improperly influence the court.

- B) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, attorneys, advocates, and others with whom he or she deals in his or her official capacity and should require similar conduct of other persons in court proceedings and those court personnel who are subject to the judge's direction and control.
- C) A judge shall give to every person who is legally interested in a proceeding, or his or her legal counsel, a full right to be heard according to tribal law and tradition.
- D) A judge shall refrain from all out-of-court or other communications with parties, witnesses, tribal officials, agents or others concerning a pending proceeding unless all parties to the proceeding are present or represented. A judge may initiate or consider any ex parte communication when expressly authorized by law. A judge may, however, obtain the advice of a disinterested expert on federal, state or tribal law, custom or tradition or on other sources of law applicable to a proceeding before the court if the request for advice is limited to points of law or tradition or custom or on other sources of law applicable to a proceeding before the court if the request for advice is limited to points of law or tradition or custom and does not involve the particular merits of the case. The parties shall be given a reasonable opportunity to respond to information provided by the expert.
- E) A judge shall maintain order in the court. He or she shall not interfere in the proceedings except where necessary to protect the rights of the parties or the dignity of the court. A judge shall not act as an advocate. A judge shall only rely on those proceedings which are prescribed by, or are consistent with, the laws, rules, traditions or customs of the Penobscot Nation.
- F) A judge shall dispose promptly of the business of the court.
- G) A judge shall not comment publicly on any proceeding pending in court and shall also prohibit other court personnel from making such public comment.

#### **RULE 59. ADMINISTRATIVE RESPONSIBILITIES**

- A) A judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice and shall maintain professional competence in judicial administration. A judge should cooperate with other judges and court officials in the administration of court business.
- B) A judge shall diligently perform his or her administrative responsibilities.
- C) A judge shall require his or her staff and court officials to observe high standards of honesty and diligence.
- D) A judge shall take appropriate disciplinary actions against an attorney for unprofessional conduct of which the judge may become aware including informing the Professional Responsibility Review Committee. A judge having knowledge that another judge has committed a violation of these Rules shall inform the Professional Responsibility Review Committee.

## **RULE 60. DISQUALIFICATION**

- A) A judge shall disqualify himself or herself on the judge's own initiative in any proceeding in which the judge has reason to believe that he or she could not act with complete impartiality. A judge acting under this subsection (1) need not state the grounds for disqualification.
- B) A judge shall disqualify himself or herself in a proceeding in which his or her impartiality might reasonably be questioned, including instances where:
  - 1) The judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts;
  - 2) The judge served as attorney, advocate or personal representative in the matter before the court, or a person with who the judge has been associated in a professional capacity served as a lawyer, advocate or personal representative concerning the matter;
  - 3) The judge knows that he or she individually (or any member of the judge's family) has a financial interest in the subject matter in controversy or is a party to the proceeding, or has any other interest that could be substantially affected by the proceedings; including that he or she:
    - a) Is a party to the proceeding, or an officer, director, or trustee of a party;
    - b) Is acting as an attorney or advocate in the proceeding;
    - c) Is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
    - d) Is to the judge's knowledge likely to be a material witness in the proceeding.

## **RULE 61. ALTERNATIVES TO DISQUALIFICATION**

- A) A judge disqualified by the terms of Rule 59(B)(2) or Rule 59(B)(3) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on such disclosure, the parties and attorneys, independently of the judge's participation, all agree in writing that the judge's participation is not prejudicial or that his or her financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and attorneys, shall be incorporated in the record of the proceeding.
- B) A judge may decline to disqualify himself or herself in any proceeding in which disqualification might otherwise be required under Rule 59(B)(2) or Rule 59(B)(3) of this section, if no other judge or court is available and disqualification will result in a failure of justice. In such a case, the judge shall disclose on the record the basis for disqualification and shall thereafter disqualify himself or herself if at any time it is possible to transfer the proceeding to another judge or court without a failure of justice.

### **PRINCIPLE 4**

**A judge may engage in activities to improve the law, the legal system,  
and the administration of justice.**

## **RULE 62. PERMISSIBLE ACTIVITIES**

- A) A judge may engage in the following activities, if in doing so, he or she does not cast doubt on his or her capacity to decide impartially any issue that may come before the court:
- B) The judge may speak, write, lecture, teach and participate in other activities concerning tribal law, tradition and custom, the legal system of the Penobscot Nation, and the administration of justice.
- C) The judge may appear at a public hearing before a tribal executive or legislative body or official on matters concerning the tribal legal system and the administration of justice, and he or she may otherwise consult with a tribal or executive or legislative body or official, but only on matters concerning the general administration of justice or the improvement of the law or the legal system.

### **PRINCIPLE 5**

**A judge shall regulate his or her extra-judicial activities to minimize the risk of conflict with judicial duties.**

## **RULE 63. EXTRA-JUDICIAL ACTIVITIES IN GENERAL**

A judge shall conduct all of the judge's extra-judicial activities so that they do not:

- A) Cast reasonable doubt on the judge's capacity to act impartially as a judge;
- B) Demean the judicial office; or
- C) Interfere with the proper performance of judicial duties.

## **RULE 64. AVOCATIONAL ACTIVITIES**

A judge may write, lecture, teach and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities of the Penobscot Nation if these activities do not interfere with the performance of his or her duties.

### **A) Civic and Charitable Activities.**

- 1) A judge may participate in civic, charitable and other tribal activities that do not reflect upon his or her impartiality or interfere with the performance of his or her judicial duties. A judge may participate in any tribal educational, religious, cultural, charitable or similar organization. A judge shall not participate in any activity if it is likely that the organization will be involved in proceedings which would ordinarily come before him or her or will be involved in proceedings in either the Penobscot Nation Tribal Court or the Penobscot Nation Court of Appeals.

- 2) A judge shall not use or permit the use of the prestige of judicial office for fund-raising or membership solicitation. A judge should not be a speaker or the guest of honor at an event held primarily for fund-raising, but a judge may attend such events.

**B) Financial Activities.**

- 1) A judge should avoid financial and business dealings that tend to reflect adversely on his or her impartiality, interfere with the performance of his or her judicial duties, exploit his or her judicial position, or involve him or her in frequent transactions with attorneys or others likely to come before the court on which he or she serves.
- 2) Except as allowed by the laws and traditions of the Penobscot Nation, neither a judge nor a member of his or her 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. A judge may accept:
  - a) A gift incident to a public testimonial, books, tapes and other resource materials supplied by publishers on a complimentary basis for official use, or an invitation to the judge and the judge's spouse or guest to attend a bar-related function or an activity devoted to the improvement of the law, the legal system or the administration of justice;
  - b) Ordinary social hospitality;
  - c) A gift from a relative or friend, for a special occasion, such as a wedding, anniversary or birthday, if the gift is fairly commensurate to the occasion and the relationship;
  - d) A gift, bequest, favor or loan from a relative or friend, if the relative or friend is one whose appearance or interest in a case would in any event require the disqualification of the judge under Rule 59(B)(3);
  - e) A loan from a lending institution in its regular course of business on the same terms and based on the same criteria applied to other applicants; or
  - f) A scholarship or fellowship awarded on the same terms and based on the same criteria applied to 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 such payments does not give the appearance of impropriety.
- 4) Income and honoraria shall not exceed a reasonable amount nor shall they exceed what a person who is not a judge would receive as a result of the same activity.
- 5) Expense, reimbursement, or payment shall be limited to the actual cost 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 shall be treated as an honorarium.

**C) Extra Judicial appointments.**

Unless allowed by tribal law or tradition, a judge should not accept appointment to any tribal 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 legal system or the administration of justice. A judge,

however, may represent the Penobscot Nation on ceremonial occasions or in connection with historical, educational, and cultural activities.

#### **PRINCIPLE 6**

**A judge shall refrain from political activity inappropriate to his or her judicial office.**

Unless authorized by tribal law or tradition, a judge shall not engage in any tribal political activity except on behalf of measures to improve the law, the tribal legal system, or the administration of justice.

## **APPENDICES**

**Appendix A** – Attorney’s Oath Upon Admission to Practice

**Appendix B** - Guidelines for Determination of Financial Eligibility for Court Appointed Counsel;  
Reimbursement for Court Appointed Counsel

**Appendix C** - Court Fees and Costs

APPENDIX A

Penobscot Nation  
Judicial System  
etali-təpəlómətimək



12 Wabanaki Way  
Indian Island, ME 04468  
Telephone (207) 817-7327  
Fax: (207) 827-9129

**ATTORNEY’S OATH UPON ADMISSION TO PRACTICE**  
**BEFORE THE PENOBSCOT NATION JUDICIAL SYSTEM**

I, \_\_\_\_\_ of \_\_\_\_\_ as a condition of my admission to practice before the Penobscot Nation Judicial System, I hereby solemnly swear to abide by the Rules of Court as established by the Penobscot Nation Tribal Court. I will at all times maintain the respect due the Penobscot Nation Tribal Court, Court of Appeals, and its Officers. I will maintain truth and honor while performing my duties within the Penobscot Nation Judicial System and I will never seek to mislead a judge or jury by false statements. If I fail to perform my duties in a manner consistent with this agreement, I will answer to the pains and penalties as prescribed by the Chief Judge and the Penobscot Nation Professional Responsibility Committee. If at any time I do not perform my duties as prescribed, this admission will be null and void and I will be prohibited from practice with the Penobscot Nation Judicial System.

Dated at Indian Island, Maine this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Counsel

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Chief Judge  
Penobscot Nation Tribal Court

\_\_\_\_\_  
Clerk of Courts  
Penobscot Nation Tribal Court

## APPENDIX B

### **GUIDELINES FOR DETERMINATION OF FINANCIAL ELIGIBILITY FOR COURT-APPOINTED COUNSEL**

**Definition of Income:** Income means actual available current annual total cash receipts before taxes of all persons who are resident members of, and contribute to, the support of a family unit. Income may include potential wages from seasonal employment when the applicant has a history of seasonal employment. Types of income include, but are not limited to wages: income from self-employment, rents, royalties, alimony, Social Security benefits, SSI benefits, TANF benefits, VA benefits, General Assistance cash benefits, unemployment compensation, workers compensation, insurance or pension benefits, strike benefits, interest, dividends, and military family allotments.

Income does not include in-kind assistance such as food stamps or vouchers. Penobscot Nation settlement trust fund per capita payments are not considered income. Child support payments are not included as income.

**Definition of Cash Assets:** Cash assets means cash on hand; money in savings, checking, IRA, certificates of deposit or other readily accessible accounts; stocks or bonds that can be sold; and cash bail unless another person has been designated as the owner of the cash.

**Definition of Other Assets:** Other assets include enough equity in real estate (excluding the defendant's current residence) to be able to obtain an equity loan; cash value of insurance policies; cash value of pension, retirement, or profit sharing plans to which the defendant has access; equity value of major items of personal property such as boats, snowmobiles and motor vehicles which are not needed for work or family transportation; valuable jewelry; antiques or collections; and any other property that could be sold, exchanged or used to obtain a loan.

**Definition of Court Appointed Counsel:** Court Appointed Counsel means the services of the Penobscot Nation Public Defender or other attorney appointed by the Court. A defendant desiring representation by an attorney other than the Public Defender, even though the Public Defender is available, must retain such other attorney at his or her own expense.

### **PROCEDURE FOR DETERMINING FINANCIAL ELIGIBILITY AND AMOUNT OF REIMBURSEMENT**

1. Determine gross income and assets of the defendant and all resident members of his or her household.
2. If the cash assets of the defendant's family unit exceed \$1,000.00 the defendant is ineligible for Court appointed counsel.
3. If the defendant has no cash assets or they are less than \$1,000.00, it is necessary to determine whether the defendant can convert other assets into cash so that the defendant can retain counsel. If the other assets are such that they can be used to reimburse counsel, the defendant is not eligible.

If the defendant is or has been making large down payment or similar item, this fact can be taken into consideration in determining eligibility.

4. If the defendant has no cash assets or they are less than \$1,000.00, and if the defendant's other assets cannot be used to reimburse counsel, compare the income of the defendant and family unit to the Income Table below. If the income of the defendant and his or her family unit is less than the appropriate amount in the Income Table, the defendant is eligible for appointed counsel.
5. In order to determine whether the defendant can reimburse the Court for some or all of the expense of the court-appointed counsel, it is necessary to compare the income and assets of the defendant with the defendant's expenses. If the defendant's income exceeds the defendant's necessary expenses for food, shelter (including rent and utilities), medical care, and expenses for work such as uniforms and transportation, then the excess can be used to reimburse the Court for an amount it determines as fair reimbursement.

### **Federal Poverty Guidelines**

#### **2014 – 2015 LIHEAP Income Eligibility Guidelines**

Number of Family Members	135% of Poverty Level Annual	135% of Poverty Level Monthly
<b>1</b>	\$15,755	\$1,313
<b>2</b>	\$21,236	\$1,770
<b>3</b>	\$26,717	\$2,226
<b>4</b>	\$32,198	\$2,683
<b>5</b>	\$37,679	\$3,140
<b>6</b>	\$43,160	\$3,597
<b>7</b>	\$48,641	\$4,053
<b>8</b>	\$54,122	\$4,510
<b>9</b>	\$59,603	\$4,967
<b>10</b>	\$65,084	\$5,424
<b>11</b>	\$70,565	\$5,880
<b>12</b>	\$76,046	\$6,337
<b>13</b>	\$81,527	\$6,794
<b>14</b>	\$87,008	\$7,251
<b>15</b>	\$92,489	\$7,707

For families with more than 15 members, add \$5,481 for each person.

APPENDIX C

**COURT FEES AND COSTS**

THE FEES OF THE TRIBAL COURT ARE AS FOLLOWS:

<b>ACTION</b>	<b>FEE</b>
Entry of a Family Matter Action	<b>\$60.00</b>
Entry of a Civil Action	<b>\$60.00</b>
Entry of a Forcible Entry and Detainer	<b>\$60.00</b>
Entry of a Small Claims Action	<b>\$50.00</b>
Entry of a Small Claims Disclosure per defendant	<b>\$15.00</b>
Petition for Protection from Harassment	<b>\$30.00</b> (\$20 w/waiver)
Petition for Protection from Harassment with an Allegation of Domestic Violence, Stalking, or Sexual Assault	<b>\$0</b>
Petition for Protection from Abuse	<b>\$0</b>
All Probate Matters (exempt from fees but costs charged)	<b>\$50.00</b> (costs taken out)
<b>OTHER MISCELLANEOUS FEES</b>	
All Writs	<b>\$15.00</b>
Attested Copy of Order	<b>\$10.00</b>
Written Transcript (upon request and subsequent order from Chief Judge)	<b>\$100.00 deposit</b> (cost per page determined by court reporter)
Witness Fee	<b>\$15.00</b> (Professional Fee)
Jury Trial Fee	<b>\$300.00</b>
<b>APPEALS</b>	
Entry of Notice of Appeal	<b>\$150.00</b>
<b>FINES FOR LATE PAYMENT</b>	
For original fines less than or equal to \$100.00	<b>\$25.00</b>
For original fines greater than \$100.00 but less than or equal to \$500.00	<b>\$50.00</b>
For original fines greater than \$500	<b>\$100.00</b>