

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

**CHAPTER I
ESTABLISHMENT AND OPERATION**

Section 1 Establishment of Court.

This Ordinance is adopted pursuant to the authority vested in the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians under Article VII §1(s) of the Constitution of the Match-E-Be- Nash-She-Wish Band of Pottawatomi Indians, which hereby establishes a Tribal Court System. The Tribal Court system shall be composed of a court of general jurisdiction (referred to as the “Tribal Court”), an appellate court (referred to as the “Tribal Court of Appeals”) and such lower courts as the Tribal Council may establish upon written recommendation from the Tribal Judiciary.¹

Section 2 Appropriations.

(a) The Tribal Council shall appropriate and authorize the expenditure of Tribal funds for the operation of the Tribal Court. The amounts to be appropriated shall be consistent with the needs of the Tribal Courts for proper administration of justice within the Reservation and for the Tribe as determined by the Tribal Council.

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

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

(d) The Tribal Court shall also be funded through filing fees, penalties, and assessment for costs to persons before the Court; from federal appropriations or grants; and from other sources of revenue as the Court and the Tribal Council deem appropriate.

Section 3 Tribal Designation.

Wherever the formal designation “Community” appears in this Judicial Ordinance, such designation shall also refer to Match-E-Be-Nash-She-Wish Band

¹ Legislative History – Enacted by Tribal Council Resolution 09-525 (June 9, 2009); Amended by Tribal Council Resolution 12-733 (September 27, 2012).

of Pottawatomi Indians, also known as the Gun Lake Tribe. Any reference to “Tribal Ordinance” shall mean the Match-E-Be- Nash-She-Wish Band of Pottawatomi Indians Tribal Code.

CHAPTER II JURISDICTION

Section 1 Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians Tribal Court Jurisdiction.

The civil and criminal jurisdiction of the Tribal Court shall extend to:

(a) The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians reservation, including all land held in trust by the United States for the benefit of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians and such other lands as may be acquired by the Department of the Interior or the Community for the Tribe’s use.

(b) All persons within any geographical area referred to in Subsection (a) above who are subject to the jurisdiction and governmental power of the Tribe, to the extent not prohibited by federal law.

(c) Violations of the MBPI Criminal Code by MBPI Citizens and other Native Americans.

(d) Violations of the MBPI Civil Infraction Ordinance.

(e) All members of the Tribe, wherever located, exercising tribal rights pursuant to federal, tribal, or state law.

(f) All persons and property outside the exterior boundaries of the Reservation or MBPI tribal trust land that may be subject to the jurisdiction of the Tribe to the maximum extent authorized by federal or tribal law, including but not limited to any person who personally or through an agent does any of the following insofar as a cause(s) of action arises from the doing of such act:

(1) The transaction of business on the Reservation or MBPI tribal trust land or the entry of any consensual relationship with the Tribe or its members, wherever located;

(2) The commission of a tortuous act on the Reservation or MBPI tribal trust land;

(3) Contracting to insure any person, property or risk located on the Reservation or MBPI tribal trust land at the time of contracting;

(4) A child conceived on the Reservation or MBPI tribal trust land;

(5) Conduct that threatens or has some direct effect on the political integrity, economic security or the health and welfare of the Tribe.

(g) Suits involving the Tribe and Tribal Officials where an express waiver was adopted consistent with the following:

(1) The Courts of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians shall have exclusive original and appellate jurisdiction in all matters in which the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians or its officers or employees are parties in their official capacities.

(2) Nothing contained in the preceding paragraph or elsewhere in this Judicial Ordinance shall be construed as a waiver of the sovereign immunity of the Tribe or its officers or any of its agencies, instrumentalities and or enterprises. Waivers may only be valid if unequivocally expressed by formal resolution of the Tribal Council or entity of the Tribe and through any procedures established by the Tribal Council, tribal agency, or instrumentality of the Tribe.

(f) The jurisdiction invoked by this Ordinance over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same of the Courts of the United States, any state, or any political subdivision thereof; provided, however, this Ordinance does not recognize, grant, or cede jurisdiction to any other political or governmental entity in which jurisdiction does not otherwise exist in law.

Section 2 No Acceptance of State Jurisdiction.

Nothing in this Ordinance shall be deemed to constitute acceptance of or deference to the jurisdiction of the State of Michigan over any civil matter, where such jurisdiction does not otherwise exist.

Section 3 Court of Appeals.

(a) The Court of Appeals shall consist of three (3) Judges, each appointed by majority vote of the Tribal Council at a meeting at which a required quorum plus one additional Tribal Council member is present. At least two (2) of those Judges shall be attorneys who are or have been licensed to practice law before the courts of a state in the United States and who have not been disbarred from practicing law in any tribal, federal, or state court, provided, however, that if a person has been disbarred but later reinstated, such person shall be eligible. The other Judge shall be either a registered voter of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians or an attorney who is, or has been, licensed to practice law before the courts of a state in the United States and who has not been disbarred

from practicing law in any tribal, federal, or state court, provided, however, that if a person has been disbarred but later reinstated, such person shall be eligible. No Court of Appeals Judge may sit simultaneously as a Tribal Court Judge. Each Court of Appeals Judge shall be at least twenty-five (25) years of age.

(b) The Court of Appeals shall have jurisdiction to hear all appeals arising from Tribal Court decisions or proceedings. Decisions of the Court of Appeals on all matters within its jurisdiction shall be final and shall not be subject to appeal to the Tribal Council.

(c) The Court of Appeals shall have the power to issue any writs or orders necessary and proper to the exercise of its jurisdiction.

Section 4 Suits Against the Tribe.

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

(b) Tribal Action Not Waiver of Sovereign Immunity. No enforcement action taken pursuant to this Ordinance, including the filing of an action by the Tribe or any agency of the Tribe in the Tribal Court, shall constitute a waiver of sovereign immunity from suit of the Tribe, or any elected Tribal Council member or tribal official with respect to any action taken in an official capacity, or in the exercise of the official powers of any such office, either as to any counterclaim, regardless of whether the counterclaim arises out of the same transaction or occurrence, or in any other respect.

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

Tribe or any agency of the Tribe other than property specifically pledged or assigned therein.

Section 5 Inclusion of Language from other Laws.

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

Section 6 The Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians Tribal Court shall have authority to issue declaratory judgments regarding violations of this Ordinance, and any action taken by the Tribal Council not substantially in accordance with this Ordinance shall be declared null and void; provided, however, that the Court shall have no jurisdiction to hear challenges to Tribal Council action based solely on violations of Chapter III, Section 9 of this Ordinance. Except to the extent that this Chapter provides for judicial review by the Tribal Court, the Tribal Council does not waive the sovereign immunity of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians, or that of any of its departments, agencies, instrumentalities or entities, from unconsented lawsuit.

**CHAPTER III
JUDGES**

Section 1 Number of Judges.

There shall be a Tribal Court consisting of a Chief Judge and such Associate Judges deemed necessary by the Tribal Council. By resolution, the Tribal Council shall designate the number of Associate Judges, and may increase or decrease the number of Associate Judges from time to time.

Section 2 Initial and Succeeding Terms of Office.

(a) Except as provided in subsection 2(d), the initial term of office for the first Chief Judge appointed following adoption of this Ordinance shall be four (4) years and that for the Associate Judge shall be two (2) years. The initial terms of the initial Appellate Judges appointed following adoption of this Ordinance shall be one (1) year for one Judge, two (2) years for one Judge, and three (3) years for one Judge. The Tribal Council shall designate the term for each of the initial Judges of the Court of Appeals.

(b) Terms of office for all Judges of the Tribal Court and Court of Appeals, after expiration of the initial terms described in subsection (a) above, shall be four (4) years subject to renewal.

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

(d) In the event that the Tribal Council has appointed any Judge to the Tribal Court prior to the adoption of this Ordinance, such Judge shall continue to serve for a one-year term commencing with the adoption of this Ordinance.

Section 3 Election.

All Judges of the Tribal Court shall be elected by the membership, with the Chief Judge specifically elected to that office. In the event there are no qualified judges participating in an election, the Tribal Council shall appoint a Chief Judge pursuant to an affirmative vote of five (5) of six (6) Tribal Council members (excluding the Tribal Chairman)

Section 4 Qualifications.

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

(a) Education of a Juris Doctorate from an accredited law school.

(b) Member in good standing of the Michigan State Bar Association.

(c) A minimum of five (5) years experience as a tribal Judge in a tribal justice system exercising both civil and criminal jurisdiction.

(d) Must be well-versed in concepts of federal Indian law, tribal law and principles of tribal sovereignty, and jurisdiction.

(e) Must not have been convicted of a felony or a crime involving dishonesty nor ever been permanently disbarred by any jurisdiction.

(f) Must have outstanding interpersonal skills and experience supervising other legal professionals required.

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

(h) Ability to discern legal issues, define problems, collect data, establish facts and draw valid legal conclusions and develop timely solutions. Ability to interpret

and follow tribal law and court procedures. Ability to think and write in clear and logical terms.

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

(j) No person shall be qualified as the Chief Judge or Associate Judge who has been convicted of a felony. Special considerations may be extended to a potential candidate if the felony he or she is convicted of was to protect the sovereign rights of Indians.

Section 5 Salary.

The Chief Judge and the Associate Judge(s) shall be paid either a salary to be determined by the Tribal Council or pursuant to the terms of a contract approved by resolution of the Tribal Council. The salary of any Chief Judge or Associate Judge shall not be reduced during his/her term of office.

Section 6 Conflicts of Interest.

No judge shall officiate in any proceeding in which she/he has any personal interest, or in which any party, witness or counsel is related to her/him by blood or marriage, within the third degree, or in which any party, witness or counsel stands in the relationship to the Judge of ward, attorney, client, employer, employee, landlord, tenant, business associate, creditor or debtor. In the event that a conflict of interest has arisen, an alternate Judge will be asked to preside over the proceeding.

Section 7 Oath of Office.

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

“I swear (or affirm) that I will support and defend the Constitution, By-laws, and laws of the Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians and the Constitution of the United States, and that I will faithfully and diligently perform the duties of (Chief Judge, Associate Judge, Deputy Judge, Appellate Justice, as applicable) of the Tribal Court, to the utmost of my ability, with impartiality and without improper favor, to the end that justice may be fully served.”

Section 8 Removal from Office.

The Tribal Council may remove any Judge or Justice of the Tribal Court for cause based upon any of the following grounds:

(a) Misconduct or incompetence in the performance of his/her duties as Judge.

(b) Personal conduct involving moral turpitude, whether or not related to judicial duties, or conduct which brings the prestige of his/her office or that of the Tribe into public disrepute.

(c) Habitual neglect of his/her duties as Judge or Justice.

(d) Persistent illness or other disability which renders her/him incapable or otherwise unable to regularly perform his/her duties as Judge or Justice.

Any Judge guilty of neglect of duty, misconduct in office, or an offense involving dishonesty may be removed from the bench by the Tribal Council by a unanimous vote of the members of the Tribal Council voting, with a quorum present, provided such Judge is first given twenty (20) days notice in writing by the Tribal Council Secretary or Chairperson, and an opportunity to be heard and present evidence on his/her behalf.

The Tribal Council, pursuant to the above, shall set forth in writing the reasons for seeking removal of the petitioned Judge and shall provide the same such written notice to said Judge at least 20-days prior to the meeting at which the Judge is to address the Tribal Council on such petition.

CHAPTER IV COURT ADMINISTRATOR

Section 1 Salary and Discharge.

The Court Administrator shall be appointed by the Tribal Chief Judge and the Hiring Committee overseen by the Chief Judge in accordance with the standard hiring procedures as outlined in the Policy and Procedures of the Match-E-Be-Nash-She-Wish Band of Pottawatomí Indians. The Tribal Judiciary may hire assistants for the Court Administrator. The Tribal Council shall prescribe the salaries of the Judges, Court Administrator and any assistants which shall be paid by the Tribe. Any person serving as Court Administrator may be discharged from that position pursuant to two-thirds vote of the Tribal Council.

Section 2 Duties.

The Court Administrator shall be responsible for the administration of the Tribal Court, and for such other administrative and ministerial duties as may be prescribed by this Ordinance or assigned to her/him by the Tribal Council or the Chief Judge. The duties of the Court Administrator shall include but shall not be limited to the following:

(a) Maintaining records of all Tribal court proceedings to include identification of the title and nature of all cases, the names of the parties, the substance of the complaints, the names and addresses of all witnesses, the dates of hearings and

trials, names and addresses of all parties and witnesses appearing at all hearings and trials, all Tribal court rulings and jury decisions, findings, orders and judgments, and any other facts or circumstances decided by the Judges of the Tribal courts or deemed of importance by the Court Administrator.

(b) Maintaining all pleadings, documents, and other materials filed with the Tribal Court.

(c) Maintaining all evidentiary materials, transcripts, and records of testimony filed with the Tribal Court.

(d) Collecting and accounting for fines and other monies and properties taken into custody by the Tribal Court. Monies are then deposited into the appropriate Court accounts.

(e) Preparing and serving notices, summons, subpoenas, warrants, rulings, findings, opinions, and orders as prescribed by this Ordinance and as may be designated by the Judges of the Tribal Court.

(f) Administering oaths and witnessing execution of documents.

(g) Maintaining a supply of blank forms to be prescribed by the Tribal court for use by all persons having business before the Tribal Court.

(h) Providing copies of documents in Tribal court files to other persons upon request, and upon receipt of a charge therefore to be prescribed by the Court Administrator to cover the costs of such services; provided, however, there shall be no charge for such service to the Judges of the Tribal court, and provided further, no copies of documents or material shall be provided from files which are to be kept confidential or unavailable for public inspection pursuant to any provisions of this Ordinance or other ordinance of the Tribal council, or if prohibited by any court order.

(i) Providing security for all files, documents, and materials filed with or in the custody of the Tribal court, and insuring that they are not removed from the offices of the Court Administrator and the Tribal courts except upon the specific instructions of a Judge of the Tribal Court.

(j) Maintaining a library of laws, regulations, orders, opinions, and decisions of the United States and its administrative agencies and courts, the Tribal Council and the Courts of the Tribe, and the various states, insofar as they may be pertinent to the administration of justice for the Tribe, and within the Reservation. The acquisition of such materials shall be subject to appropriations of funds therefore by the Tribal council. Materials in the library shall be available for use in the office of the Court Administrator during normal working hours by any

person subject to the jurisdiction of the Tribal court, and his/her authorized representative.

(k) Shall be responsible annually for the timely filing of grants in support of ongoing tribal functions.

(l) At no time shall the Court Administrator provide any legal advice to any persons.

(m) Performing such other duties related to the operation of the court, other than those specifically performed by a Judge, as the Tribal council shall designate.

CHAPTER V COUNSEL

Section 1 Legal Representation.

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

Section 2 Tribal Licensing of Professional Attorneys.

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

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

(b) Filing with the Court Administrator an affidavit that the applicant has studied and is familiar with the Constitution and Bylaws of the Tribe, this Ordinance, all other Ordinances of the Tribe, Title 25 of the United States Code, and Title 25 of the Code of Federal Regulations.

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

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

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

I will maintain the respect due to the Tribal Court and its judicial officers;

I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly valid or debatable under the law;

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

I will employ in the conduct of my duties the highest degree of ethics and moral standards with which my profession is charged, and I will be guided at all times by the quest for truth and justice;

In the conduct of my duties as an attorney, I will not impugn the morals, character, honesty, good faith, or competence of any person, nor advance any fact prejudicial to the honor or reputation of any person, unless required by the justice of the cause with which I am charged.”

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

Section 3 Revocation of Professional Attorney’s Tribal License.

A license issued pursuant hereto may be revoked or suspended by the Tribal Court. Such action may be taken on its own motion or upon sworn complaint by any member of the Tribe. Revocation or suspension shall be ordered only after written notice to the licensee of the motion or complaint and after a hearing before all judges of the Tribal Court unless a conflict of interest prohibits such participation. Following a hearing, the Tribal court may revoke or suspend the license upon a finding that the licensee has been disbarred or suspended from the practice of law by any court of the United States, any State, Tribal court or has filed a false affidavit with the Court Administrator to obtain his/her license, or has violated his/her oath made before the Court Administrator or has engaged in misconduct or unethical conduct in the performance of his/her duties as an attorney, has violated his/her oath or has been found in contempt of court by the Tribal Court.

CHAPTER VII GENERAL COURT PROCEDURES

Section 1 Assignment of Cases to Judges.

Subject to the provisions of this Ordinance for jurisdiction of the Children's Court, the Chief Judge shall be responsible for assignment of cases and other matters for determination or disposition to the respective Judges of the Tribal Court.

Section 2 Court Rules and Procedures.

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

Section 3 Sessions of Court.

The Tribal Court shall hold regular sessions of Court commencing at such time as designated by the Court Administrator in consultation with presiding Judge(s) for that day. Such regular sessions shall be held at a designated Courtroom of the Tribe. The Chief Judge shall provide notice to the public by appropriate method as to the days so assigned. Special sessions of the Tribal Court may be called by the Chief Judge at any time or, in his/her absence by an Associate Judge. Individual Judges may conduct trials or other proceedings for individual cases assigned to them at such times as they may designate, and such trials or proceedings may be recessed and reconvened from time-to-time by the Judges until they are completed.

Section 4 Means to Carry Jurisdiction into Effect.

When jurisdiction is vested in the court, all the means necessary to carry such jurisdiction into effect are also included; and in the exercise of its jurisdiction, if the course of proceedings is not specified in this Ordinance *per* the rules promulgated by the court pursuant to this Ordinance, the court may adopt any suitable process or mode of proceeding which appears to the court to be fair and just and most consistent with the spirit of Match-E-Be-Nash-She-Wish Band of Pottawatomi Indians.

Section 5 BIA Relations with the Court.

No employee of the Bureau of Indian Affairs shall obstruct, interfere with, or control the functions of the court, nor shall he/she influence such functions in any manner.

Section 6 Law Applicable in Civil Actions.

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

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