

# Chapter I

## Bay Mills Tribal Court

101. CREATION OF THE COURT - There is hereby established the Bay Mills Tribal Court (aka "Tribal Court").<sup>1</sup>

102. JURISDICTION OF TRIBAL COURT

A. Criminal Jurisdiction - The Tribal Court shall have jurisdiction over all criminal offenses enumerated in the laws of the Bay Mills Indian Community when committed by any person within the exterior boundaries of the Bay Mills Indian Community.

B. Civil Jurisdiction - The Tribal Court shall have jurisdiction over:

1. All suits wherein the defendant is a member of the Bay Mills Indian Community residing within the exterior boundaries of the Bay Mills Reservation, or
2. All suits between a member(s) and a member(s) or a member(s) and nonmember(s), which are brought before the Tribal Court as arising out of the acts which create the following relationships:
  - a. The doing or causing any act to be done, or consequences to occur, within the exterior boundaries of the Bay Mills Indian Community resulting in an action for tort; or
  - b. The ownership, use, or possession of any real or tangible personal property located within the exterior boundaries of the Bay Mills Indian Community; or
  - c. Entering into a contract for services to be rendered or for materials to be furnished within the exterior boundaries of the Bay Mills Indian Community by the defendant.

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<sup>1</sup> The Bay Mills Tribal Court was originally a CFR Court until March 8, 1976, when it became a Court established by Bay Mills Ordinance.

3. All suits brought pursuant to a provision of this Tribal Code, as it may from time to time be amended.

**103. COMPOSITION OF TRIBAL COURT**

- A. Judges - The Tribal Court shall consist of one trial judge and three appellate judges.
- B. Selection of Judges and Qualifications
  1. The trial judge shall be elected by secret ballot under the provisions of the Election Ordinance of the Bay Mills Indian Community.
  2. The three appellate judges shall be elected by secret ballot under the provisions of the Election Ordinance of the Bay Mills Indian Community and shall serve staggered terms. Commencing with the November 2001 election, three (3) appellate judges shall be elected and one shall serve for a two-year term, another a four-year term and the third appellate judge a six-year term. During the November 2001 General Election, the appellate judge who garners the most votes will serve the six-year term, the judge with the second highest votes will serve a four-year term and the third judge will serve a two-year term. Commencing with the November 2003 General Election and each General Election thereafter (which is held every two years), one (1) appellate judge shall be elected for a six-year term to fill the vacancy of the appellate judge position whose term has expired.
  3. No person shall be eligible as a judge of the Bay Mills Tribal Court unless he or she:
    - a. Is at least twenty-five (25) years of age;
    - b. Is of good moral character and integrity;
    - c. Has never been convicted of an offense termed a felony by the laws of the State of Michigan, United States, or a federally recognized tribe;

- d. Is capable of preparing papers and conducting hearings incident to the office of judge; and
  - e. Has demonstrated knowledge of the laws of the Bay Mills Indian Community and understanding of other appropriate Federal and State laws.
- C. Trial Judge; Term of Office - A trial judge shall hold office for a period of six (6) years unless removed sooner for cause, or by reason of his or her resignation, death, or incapacitation. A trial judge shall be eligible for re-election.
- D. Compensation for Judges - The judges of the Tribal Court shall be compensated pursuant to a contract, the terms of which shall be established by the Bay Mills Executive Council.

**104. DISQUALIFICATION, REMOVAL, RESIGNATION, DEATH OR INCAPACITATION OF JUDGES AND APPOINTMENT OF REPLACEMENT OR RESERVE JUDGE**

- A. Basis for Disqualification - A trial judge or appellate judge shall disqualify himself/herself in a proceeding in which his/her impartiality might reasonably be questioned, including incidents in which:
1. The judge has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts;
  2. The judge within the last two years served as a lawyer, advocate, or personal representative (or in another fiduciary capacity) in the matter before the Court, or a person with whom the judge has been associated in a professional capacity served as a lawyer, advocate, or personal representative (or in another fiduciary capacity) concerning the matter;
  3. The judge knows that s/he individually (or any member of the judge's family who resides in his/her household) has a financial interest in the subject matter of the controversy or is a party to the proceeding, or has any other interest that could be substantially affected by the proceedings; or
  4. The judge or his/her spouse, or a person in a reasonably close family relationship to either of them, or the spouse of such a person:

- a. Is a party to the proceeding, or an officer, director, or trustee of a party; or
  - b. Is acting as a lawyer or lay advocate in the proceeding; or
  - 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 tribal judge's knowledge likely to be a material witness in the proceeding.
- B. Alternative to Disqualification – A judge disqualified pursuant to Section 104 (A) above may, instead of withdrawing from the proceeding, disclose on the record the basis of his/her disqualification. If based upon such disclosure the parties and lawyers or lay advocates, independent of the judge's participation, all agree in writing that the judge's participation is not prejudicial or that the judge's financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding.
- C. Removal, Resignation, Death or Incapacitation of Judges
1. A judge may be suspended from office upon charges brought for his/her removal by a two-thirds (2/3) vote of those individuals casting a ballot at a Special Election of the General Tribal Council called for such purpose. Prior to such a Special Election, the Bay Mills Executive Council by a majority vote taken by secret ballot must determine whether to proceed with such a Special Election.
  2. Upon the resignation, death, physical or mental incapacitation, or removal of a judge by the General Tribal Council, the Bay Mills Executive Council shall appoint an individual until the next tribal election at which time a person would be elected to fill the unexpired term.
- D. Reserve Judges/Appointment of Same
1. In the event a trial or appellate judge is unable to hear a case for whatever reason, the Bay Mills Executive Council may appoint a reserve judge to hear the case and a

Memorandum shall be placed in the court file accordingly. A reserve judge may include past or present Bay Mills appellate judges, the Chippewa-Ottawa Conservation Court Judge, or a judge from another Michigan Tribal Court.

105. RULES OF COURT - All rules of court procedure not prescribed by this Code, shall be established by the Tribal Court, subject to the approval of the Bay Mills Executive Council.

106. COURT ADMINISTRATIVE STAFF

A. Appointment - The Tribe shall hire clerks of court and other administrative personnel as may be required.

B. Duties:

1. Clerk - A clerk shall render assistance to the Court, to the tribal police, and to members of the Community in drafting complaints, subpoenas, warrants, notices of appeal, and other documents required by the Court; however, a clerk shall not be held responsible for any errors or omissions resulting in such assistance. A clerk shall attend and keep written records of all proceedings of the Court. A clerk is authorized to administer oaths to witnesses and to collect fees, fines, costs and other monies associated with Tribal Court proceedings. A clerk shall have the power to arraign and/or sentence person(s) charged with an offense under Chapters VI, VIII, XVI, and XVII of the Bay Mills Tribal Code (provided such Chapters grant such authority to the clerk), as well as any other section providing such authority to the Clerk pursuant to the Bay Mills Tribal Code of the Tribal Court which are promulgated under Section 105 of this Chapter. A clerk shall account to the Tribe for all monies collected and shall deposit such monies in a special account. Each clerk shall be bonded in an amount fixed by the Bay Mills Executive Council. In addition, a clerk shall perform all other functions as set forth in his or her job description.
2. Other Court Administrative Personnel - Such personnel shall perform his or her job duties as set forth in his or her job description.

107. PROSECUTING ATTORNEY - A prosecuting attorney may be appointed by the Bay Mills Executive Council to represent the Bay Mills Indian Community when occasion requires, on such terms and conditions as may be fixed by the Executive Council.
108. TRIBAL LEGAL ASSISTANCE PROGRAM - A Legal Assistance Program may be established by the Bay Mills Executive Council for purposes of making legal services available to tribal members.
109. OFFICERS OF THE TRIBAL COURT - Officers of the Tribal Court shall include all judges, clerks, prosecutors, tribal and non-tribal attorneys and other court personnel of the Tribal Court.

#### Certification

This is to certify that the above amended Chapter I Code was adopted at a meeting of the Bay Mills Indian Community General Tribal Council held at Bay Mills, Michigan on August 27, 2001 by acclamation.