

ORDINANCE 2013-01

An ordinance of the Keweenaw Bay Indian Community adopted under the authority of the Constitution and By-Laws of the Keweenaw Bay Indian Community for the purposes of updating Title One-General Provisions of the Tribal Code.

Keweenaw Bay Indian Community
TRIBAL CODE TITLE ONE
GENERAL PROVISIONS

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TITLE ONE GENERAL PROVISIONS

CHAPTER 1.1 — TRIBAL COURT

§1.101 The Tribal Court; Creation and Existence.

The Tribal Court of the Keweenaw Bay Indian Community has been created and exists pursuant to the provisions of the Corporate Charter and Constitution of the Keweenaw Bay Indian Community.

Except as otherwise provided by applicable Federal Law, the Tribal Court shall be an independent branch of the government of the Keweenaw Bay Indian Community co-equal with the executive and legislative branches thereof.

§1.102 Territorial Jurisdiction.

The territorial jurisdiction of the Tribal Court shall encompass all areas within the exterior boundaries of the L'Anse Indian Reservation, Michigan, as well as all areas within the exterior boundaries of any other lands or waters which now or hereafter shall be held in Trust by the United States of America for the Keweenaw Bay Indian Community or any of its members.

Further, and for the purpose of enforcement of approved tribal hunting, trapping, gathering, farming, and fishing regulations enacted to regulate treaty protected off-reservation hunting, trapping, gathering, farming, and fishing activities, such territorial jurisdiction shall extend to all areas where such treaty rights shall exist.

§1.103 Tribal Court Jurisdiction; Persons and Entities.

- A. The Tribal Court shall have jurisdiction over any person who shall be a member of the Keweenaw Bay Indian Community or any other federally recognized tribe, band, or comparable entity who shall be found within the territorial jurisdiction of the Tribal Court.
- B. The Tribal Court shall have jurisdiction over any persons or entities for which the United States Congress, the United States Supreme Court, or federal law provides jurisdiction.
- C. The Tribal Court shall have jurisdiction over any person or entity who shall consent to the exercise of such jurisdiction.
- D. The Tribal Court shall have jurisdiction to the maximum extent permitted by applicable law, over any person or entity who has a consensual relationship with the Keweenaw Bay Indian Community, or whose activity or conduct threatens the Keweenaw Bay Indian Community or members thereof.

§1.104 Divisions of the Tribal Court.

The Tribal Court shall be comprised of two divisions, the Trial Division and the Appellate Division.

§1.105 Composition of Trial Division.

The Trial Division of the Tribal Court shall consist of two judges, one of whom shall be the Chief Judge and one of whom shall be the Associate Judge.

The Chief Judge shall be the presiding judge of the Tribal Court and shall have full responsibility for the administration of the Court, promulgation of Court rules, assignment of cases, and communications with the Tribal Council or other entities.

The Associate Judge of the Tribal Court shall have the same judicial powers as shall be possessed by the Chief Judge, except those specifically assigned to the Chief Judge above.

§1.106 Assumption of Chief Judge’s Duties by Associate Judge.

In the event of the death, incompetence, or actual inability to act as the Chief Judge, the Associate Judge shall assume the specific duties and powers assigned to the Chief Judge as provided in §1.105, until such time as a successor Chief Judge shall assume office. Further, upon the extended absence of the Chief Judge the Chief Judge may, by administrative order, assign the specific duties of the Chief Judge to the Associate Judge for the duration of his absence.

§1.107 Utilization of other Tribal Court Judges.

In the event that both judges of the Trial Division of the Tribal Court shall be, or shall anticipate becoming, deceased, incompetent, actually unable to act, or disqualified from acting, the Chief Judge, if able, shall have the power and authority to appoint a judge from a Tribal Court of another federally recognized tribe to preside over the judicial business of the Keweenaw Bay Tribal Court to the extent, and for the period of time required.

In the event that the Chief Judge shall be unable to so act, such power shall be assumed by the Associate Judge.

In the event that the Associate Judge shall be unable to act, such power shall be assumed by the Tribal Chairman of the Keweenaw Bay Indian Community.

§1.108 Election of Trial Division Judges.

Trial Division Judges, both the Chief Judge and the Associate Judge, shall be elected to those offices for staggered terms which shall be arranged so as to expire during different years. At the first election at which tribal judges shall be elected, subsequently to the approval of this Code, the Associate Judge shall be elected for a term of office which shall be one year shorter than that for which the Chief Judge shall be elected to bring about such staggered terms. Thereafter, all Tribal Judges shall be elected for terms as provided in §1.109.

Tribal Judges shall otherwise be elected in accordance with the same election rules as shall apply to the election of Tribal Council members. All rules and regulations governing the nomination, election, and removal from office of Tribal Council members shall apply in the same manner and fashion to the Chief Judge and Associate Judge unless specifically provided to the contrary herein.

§1.109 Term of Office.

The Chief Judge and Associate Judge shall be elected to hold office for a period of three (3) years.

In the event of the removal, resignation, or permanent incapacity or inability to act as a trial division judge, a successor shall be appointed within thirty (30) days of such

removal, resignation, or permanent incapacity or inability by the Tribal Council in accordance with §22.505. Such successor shall serve in that office until the next General Election, when a successor shall be elected at the General Election for the unexpired term in accordance with §22.505.

§1.110 Qualifications for Judicial Service.

No person shall be eligible for election as the Chief or Associate Judge unless he or she shall be twenty-five (25) years of age or older on or before the date when his or her term is to commence; shall not have been convicted of a criminal offense in any jurisdiction for which the maximum term of incarceration was one (1) year or less, excluding traffic offenses, within one (1) year prior to the commencement of his or her term; shall not have been convicted of an offense in any jurisdiction for which a period of incarceration in excess of one (1) year could have been imposed at any time; and shall have graduated from high school or attained an equivalency degree.

§1.111 Disqualification of Trial Division Judges.

a. Basis for Disqualification.

A Trial Judge shall be disqualified to act as judge in any case or controversy in which he or she shall have a direct or indirect benefit or interest in the outcome; in which he or she shall be, or has been, a witness; or in which he or she shall be related to any party or attorney, either by blood or marriage, in the first or second degree.

b. Method of Disqualification.

A Trial Judge may on his or her own motion declare his or her disqualification from hearing any case or controversy, and shall not be required to state the reason for such disqualification. Such a judge may also be disqualified upon the motion of a party when after hearing thereon he or she shall be convinced that cause for disqualification as defined above has been shown.

c. Appealability of Disqualification.

A Trial Division judge's refusal to disqualify himself or herself upon motion properly made shall be appealable to the Appellate Court.

During the pendency of any such appeal the judge whose non-disqualification decision is appealed shall conduct no further proceedings with respect to the matter in which his or her disqualification was sought.

This provision shall not bar another Trial Division judge from conducting any such proceedings.

§1.112 Tribal Court Rules.

Rules of judicial procedure not prescribed by the Tribal Code shall be promulgated by the Tribal Council upon the recommendation of the Chief Judge of the Trial Division. Such rules shall be effective immediately upon promulgation by the Tribal Council and shall govern the manner of conducting all judicial proceedings then pending or thereafter commenced.

It shall be the duty of the Chief Judge of the Trial Division to periodically make recommendations to the Tribal Council for the enactment or amendment of such Court

rules as shall be required, in his or her own judgment, for the prompt and fair administration of justice.

§1.113 Pre-eminence of Tribal Code over Court Rules.

The Tribal Code is intended to define the rights and privileges of persons and entities who shall be subject to it, as well as types of conduct which shall be unlawful.

The Tribal Court Rules are intended to set forth procedures by which judicial proceedings and other business of the Court shall be conducted.

To the extent that any Court rule shall conflict with any provision of the Tribal Code, the Tribal Code shall be pre-eminent.

§1.114 Jurisdiction of the Appellate Division.

The Appellate Court shall have the jurisdiction to hear and decide appeals, both final and interlocutory, from any order, sentence or judgment, whether civil or criminal in nature, of the Trial Division of the Tribal Court. The Appellate Court shall be the Supreme Court of the Keweenaw Bay Indian Community and its decisions shall be final in any matter brought before it, including the interpretation of the Tribal Constitution and By-Laws, and the interpretation of the provisions of this Code or the rules governing judicial proceedings.

§1.115 Eligibility to Serve as a Justice.

- A. The following persons are eligible to serve as justices of the Appellate Division:
 - 1. Any current or former judge of a court of another federally recognized Indian tribe;
 - 2. Any former judge of the Trial Division, or
 - 3. Any lawyer in good standing and admitted to practice in the highest court of any federally recognized Indian tribe, any State, or any territory of the United States.
- B. A justice of the Appellate Division shall be a citizen or legal resident of the United States and shall be at least thirty (30) years of age.
- C. A justice of the Appellate Division shall not have been convicted of a felony.

§1.116 Composition of the Appellate Division.

- A. The Appellate Division shall consist of one (1) Chief Justice and two (2) Associate Justices.
- B. A person qualified to serve as a justice of the Appellate Division may be appointed to serve as a justice of the Appellate Division by the President, subject to the approval of the appointment by the Tribal Council.
- C. The justices of the Appellate Division shall each serve for a three (3) year term, provided, however, that the first justice appointed shall serve a term of one (1) year, the second justice appointed shall serve a term of two (2) years and the third justice appointed shall serve a term of three (3) years. Thereafter, each justice shall serve a term of three (3) years, except that upon retirement or removal of a justice, the next justice appointed to the Appellate

Division, and approved by the Tribal Council, shall serve out the remainder of the term of the justice who retired or was removed.

- D. A chief justice shall be selected by majority vote of the justices.
- E. Each justice shall receive compensation, which shall not be diminished during their terms of service, as an independent contractor, and not as an employee, of the Community pursuant to the terms and conditions of a contract with the Community.
- F. A justice may be removed from the Appellate Division for good cause only by the Tribal Council.
- G. In the event that the Chief Judge notifies the President that a justice of the Appellate Division is not able to participate in a decision on any particular case or cases on appeal due to illness, temporary disability or disqualification, the President shall appoint, subject to the approval of the appointment by the Tribal Council a person, qualified to serve as a justice to the Appellate Division, to serve as a substitute justice of the Appellate Division for the purposes of hearing such cases as may be necessary due to such illness, temporary disability or disqualification.

§1.117 Appeals as of Right.

Any party to an action or suit shall have the right to appeal a final order, sentence, or judgment of the Trial Division. All other appeals shall be taken by leave of the Appellate Division.

§1.118 Time for Appeal.

An appeal shall be filed within fourteen (14) days of the date of entry of an order, sentence, or judgment of the Trial Division.

§1.119 Filing of Notice of Appeal.

An appeal shall be taken by filing a notice of appeal with the Clerk of the Trial Division, who for the purposes of the appeal shall act as the Clerk of the Appellate Division. At the time of filing the appeal, the person filing the notice of appeal shall pay the filing fee for the appeal as established by the justices of the Appellate Division from time to time. Failure to file a timely notice of appeal shall result in dismissal of the appeal. Appeals may be consolidated by order of the Appellate Division upon its own motion or upon the motion of a party. The person filing the appeal is referred to as the “appellant” and the other parties to the appeal are referred to as the “appellee”.

§1.120 Contents of the Notice of Appeal.

- A. The notice of appeal shall, at a minimum, include:
 - 1. The names, addresses, and telephone numbers of the party or parties taking the appeal and their counsel, if any; and the names, addresses, and telephone numbers of the other party or parties to the proceeding in the Trial Division.
 - 2. A reference to the Trial Division and the case number of the proceeding in the Trial Division.

3. The identification of the order, sentence, or judgment of the Trial Division which is being appealed. A copy of the order, sentence, or judgment of the Trial Division from which the appeal is taken shall be attached to the notice of appeal.
- B. An appeal shall not be dismissed for defects of form or title so long as the appeal is timely.

§1.121 Serving the Notice of Appeal.

The appellant shall serve a copy of the notice of appeal on each party to the proceeding before the Trial Division and shall file a proof of service thereof with the Clerk.

§1.122 Effect of Filing the Notice of Appeal.

- A. The filing of a notice of appeal shall not automatically stay the order, sentence, or judgment of the Trial Division.
- B. An application for a stay of the order, sentence, or judgment may be made to the Trial Division.
- C. The Trial Division may require the appellant to post a bond or other security as a condition of granting a stay of the order, commitment, or judgment.

§1.123 Contents of the Record on Appeal.

Appeals to the Appellate Division are heard on the original record of the Trial Division. The record on appeal shall include the original or certified copies of all papers and pleadings filed in the Trial Division in the case appealed, including the:

- A. Complaint, including all amended complaints;
- B. Answers, counterclaims, cross-claims, and replies, and all amendments thereto;
- C. Pretrial order;
- D. Stipulations;
- E. Jury instructions to which exceptions were taken;
- F. Exhibits received into evidence;
- G. Verdict or findings of fact and conclusions of law;
- H. Opinion or memorandum of decision;
- I. Judgment or order appealed from; and
- J. Transcript of the Trial Division proceedings.

§1.124 Transcript of the Trial Division Proceedings.

Within ten (10) days after filing the notice of appeal, the appellant shall order a transcript of the Trial Division proceedings and serve a proof of service thereof on all parties to the case appealed and the Clerk. When the transcript is complete, the appellant shall serve a copy of the transcript on the parties in the case on appeal and file a copy of the transcript with the Clerk for inclusion in the record on appeal. Unless otherwise directed by the Trial Division, the appellant shall pay the cost of preparing the transcript.

§1.125 Preparation of Record on Appeal.

- A. Upon receipt of the notice of appeal, the Clerk shall compile the record on appeal.
- B. When the record on appeal is complete:
 - 1. The Clerk shall serve notice of preparation of the record on appeal, identifying each item included, on each of the parties; and
 - 2. Serve a copy of the record on appeal on the appellee if requested by and at the cost of the appellant.
- C. Within twenty-one (21) days after the appellant receives the notice of the preparation of the record on appeal from the Clerk, the appellant shall serve a copy of the record on appeal upon each of the appellees, at the cost of the appellant, however, copies of documents in the appellee's possession need not be provided.
- D. The Appellate Division shall not act on any appeal until the proof of service on appellees of the record on appeal has been filed with the Clerk.

§1.126 Brief of Facts, Legal Arguments and Authorities.

- A. Within thirty (30) days of receiving the notice of preparation of the record on appeal, the appellant shall file with the Appellate Division four (4) copies of appellant's brief of the facts, legal arguments and legal authorities in support of appellant's appeal.
- B. Within thirty (30) days of receiving the appellant's brief, the appellee shall file with the Appellate Division four (4) copies of its brief in support of appellee's opposition to the appeal.
- C. Within fifteen (15) days of receiving appellee's brief in opposition to the appeal, appellant may file with the Appellate Division four (4) copies of a reply brief.

§1.127 Pre-Argument Conference.

At any time prior to oral argument on an appeal or consideration of the appeal for a decision by the Appellate Division, the Appellate Division may direct the parties, and their respective legal counsel, to participate in a settlement discussion by appearing before the court in person or by telephone. If a case is scheduled for a pre-argument conference, participation in the conference is mandatory, however the court may exempt the case from participation in the pre-argument conference on a motion for good cause shown if it finds that a conference in that case would be inappropriate or non-productive.

§1.128 Oral Argument.

Oral arguments on the appeal may be requested by either party or scheduled upon the order of the Appellate Division.

§1.129 Finality of Decisions.

All decisions of the Appellate Division are final.

§1.130 Supplemental Rules of the Appellate Division.

MCR Sections 7.203, et seq., of the Michigan Rules of Court (MCR) may be used in an appeal to the Appellate Division to supplement the procedural rules for appeals to the Appellate Division that are provided for herein. In the event that there is any conflict between the MCR and the rules for appeals to the Appellate Division that are provided for herein, the rules for appeals to the Appellate Division that are provided for herein shall control. The Appellate Division shall use its discretion in the application of MCR so as to prevent manifest injustice in any case and to assure that the application of MCR do not result in form superseding substance in any case on appeal.

§1.131 Disqualification of Appellate Division Justices.

The provisions of §1.111 of this Chapter shall apply with respect to the disqualification of any justice of the Appellate Division to act in any case or controversy on appeal to the Appellate Division. For the purposes hereof, §1.111 shall be read by substituting the words “justice of the Appellate Division” for the words “Trial Judge”, “judge” and “Trial Division judge” in §1.111.

CHAPTER 1.2 — OFFICERS OF THE COURT

§1.201 Tribal Court Clerk; Qualifications.

The Tribal Court Clerk shall be subject to the Tribal Personnel policies and shall be hired in accordance with normal tribal hiring practices.

Anything to the contrary therein notwithstanding, no person shall be qualified to serve as clerk of the Tribal Court unless he or she is at least twenty-one (21) years of age; has never been convicted of an offense in any jurisdiction for which the maximum penalty is one (1) year incarceration or more; has not been convicted of an offense in any jurisdiction within the past year; and can be bonded in the amount of \$5,000.00 as a collector and custodian of fines and other monies which shall come into the possession of the Court.

§1.202 Tribal Court Clerk and Deputy Court Clerks; Duties.

In addition to such other duties as shall from time to time be assigned by the Chief Judge, with the consent of the Tribal Council, the duties of the Tribal Court Clerk and Deputy Tribal Court Clerks shall include the following:

- A. Collecting fines and other monies required to be paid to or through the Tribal Court; keeping accounts and records with respect to the collection and disposition of the same; and insuring that such monies are properly deposited or remitted in accordance with tribal policy.
- B. In the absence of, or at the direction of, the Chief or Associate Judge, setting bail in accordance with a Bond Schedule developed by the Chief Judge.
- C. In connection with speeding offenses only, accepting pleas of an admission of responsibility, guilty or no contest, and setting and collecting fines in accordance with a Fine Schedule prepared by the Chief Judge.

- D. Scheduling all proceedings which shall come before the Court for prompt hearing, and notifying all parties, and the tribal prosecuting attorney or tribal Appellate Court, when appropriate, of such hearings.
- E. Insuring that all proceedings of the Court are recorded; protecting and preserving such recordings in accordance with Court policy; and transcribing such recordings upon an appeal or when otherwise required by Court rules or Court order.
- F. Insuring that all docket entries are properly made; that all Court process is properly prepared and issued; and that all Court records are properly kept.

§1.203 Tribal Prosecuting Attorney; Qualifications.

The Tribal Prosecuting Attorney shall be and shall remain in good standing of the Michigan Bar Association.

The Tribal Prosecuting Attorney shall serve in that capacity upon the appointment of, and at the pleasure of, the Tribal Council. Any acting or substitute Tribal Prosecuting Attorney shall have the same qualifications.

§1.204 Tribal Prosecuting Attorney; Duties.

The Tribal Prosecuting Attorney shall have the following duties in addition to such other duties as shall from time to time be imposed by the Tribal Council:

- A. To represent the Keweenaw Bay Indian Community in all civil proceedings to which it may be a party.
- B. To, on behalf of the people of the Keweenaw Bay Indian Community, institute criminal proceedings, including the preparation of any and all complaints, warrants, or other similar documents which may be required in connection therewith, and to prosecute all criminal violations within the jurisdiction of the Court in accordance with the best interests of justice. Which alleged criminal offense shall be prosecuted in any given situation, if any, shall be solely within the discretion of the Tribal Prosecuting Attorney.
- C. To act as the chief law enforcement official of the Keweenaw Bay Indian Community and in connection therewith to, when necessary in his opinion, initiate and direct criminal investigations by the tribal police.

§1.205 Substitute or Acting Prosecuting Attorney.

The Tribal Council shall have the power and authority to appoint substitute or acting prosecuting attorneys to assume all duties of the prosecuting attorney with respect to a particular proceeding, or with respect to all proceedings for a specific period of time, when the prosecuting attorney shall, by reason of conflict, incapacity, or absence be unable to perform his duties in a particular matter, or during a specified period of time.

It shall be the duty of the Tribal Prosecuting Attorney to notify the Tribal Council of the need for such appointment and to recommend to the Tribal Council persons appropriate for appointment.

§1.206 Substitute Service.

In any title of this Code where it is provided that service of a notice or other process must be by personal service the Court may, for good cause shown, permit service

by another method which is reasonably likely to provide the party to be served with actual notice.

“Good Cause” shall include evidence that the party to be served is actively attempting to avoid being served, is secreting himself, or after diligent search cannot be located.

§1.207 Officials of the Tribal Court.

A. Legal Representatives.

The Tribal Court of the Keweenaw Bay Indian Community (the “Tribal Court”) shall have the authority to define the terms and conditions and ethical standards under which persons may act as legal representatives before the Courts of the Tribe, subject to the duties and procedures established by ordinance of the Keweenaw Bay Indian Community Tribal Council (the “Tribal Council”).

B. Officials of the Court.

In addition to judges and court clerks, all other officials, including attorneys, advocates, spokespersons, and other officials deemed necessary to efficiently administer justice in the Tribal Court system, are subject to the supervisory authority of the Tribal Courts.

C. Rules Governing Officials of the Courts.

All rules promulgated by the trial courts governing ethical standards for officials of the Tribal Courts shall be contained in written rules adopted by the Tribal Council.

D. Entry of Appearance, Civil Actions.

Legal representatives eligible to appear shall enter an appearance in a civil action by signing the initial pleading filed on behalf of a party in the action or by filing a written entry of appearance showing the representative’s name, address, and telephone number. Except by leave of the Court, the Clerk of the Court, (the “Clerk”) shall not accept for filing any pleadings signed by a legal representative unless the legal representative is eligible to appear under the provisions of these Rules and has entered an appearance as provided herein. No entry of appearance shall be filed later than five (5) days prior to the date of the hearing on the merits.

E. Withdrawal of Legal Representatives.

Any legal representative may withdraw from a case as follows:

(1.) Upon the Legal Representative’s Request.

The request to withdraw must show the consent of each party represented by the legal representative. It must also show that there has been an appointment of another legal representative, or that the unrepresented party has agreed to appear pro se. The request must also include the mailing addresses and telephone numbers of the new legal representative or legal representatives, and of each unrepresented party.

(2.) Upon Order of the Court.

A written motion for withdrawal must be filed by the legal representative with proof of service on the party or parties represented by the legal representative and on all other parties to the action, and with notice to all

parties that they must serve and file written objections within fifteen (15) days from the date of receipt of service of the motion to withdraw. Failure to object within this time frame will be deemed non-opposition to the representative's withdrawal. After a legal representative has been authorized to withdraw, the party or parties previously represented by the legal representative shall be deemed to be appearing pro se until a new legal representative enters an appearance.

(3.) Upon Death or Incapacity of the Legal Representative.

When a legal representative dies, or is unable to act as a legal representative due to physical or mental disabilities, the Clerk or an adverse party shall by written notice notify the party or parties represented by the legal representative of the death or incapacity. Such notice must occur before any further proceedings involving the party or parties may occur. Such notice may be served upon such party or parties in person or by mailing to the last known address. If after fifteen (15) days from the date of receipt of service of such notice, another representative does not enter an appearance, the action shall proceed as if the party or parties were appearing pro se.

F. Appearance of Party.

Except by leave of the Court, a party who is represented in a case may not personally file documents or pleadings in the case or represent himself or herself in the case. Notice of appeal shall not be subject to this rule.

G. Representation of a Juvenile.

A parent, guardian, or other person appointed by the Court may appear on behalf of a juvenile in any judicial proceeding involving said juvenile.

H. Change of Address.

A legal representative of record or a party appearing pro se in a case before the Tribal Court shall have the continuing duty to notify the Clerk in writing of all changes in mailing address and telephone number.

§1.208 Rules Governing Legal Representatives.

A. Definitions.

The following terms are defined as such terms are used in these Rules:

1. "Advocate" means any person who has been admitted to practice regularly before the Tribal Court;
2. "Attorney" means any person who is a graduate of an accredited law school or college of law and who has been admitted to practice before the courts of any state or the District of Columbia;
3. "Court" or "Courts" means the trial divisions and the appellate division of the Keweenaw Bay Indian Community Tribal Court;
4. "Disbarment" means a prohibition against the practice of law in the Keweenaw Bay Indian Community Tribal Court;
5. "Exclusion" means an order of the Court requiring that a person or persons be removed from the presence of the Court when sitting in session;

6. "Advocacy Association" means the body of persons admitted to practice law or act as legal representatives before the Courts of the Keweenaw Bay Indian Community;
7. "Legal Representative" means a person who is engaged in the practice of law before the Tribal Court;
8. "Practice of Law" or "Practice" means the preparation of legal instruments, documents, pleadings, etc., for the use of another, or the representation in a legal capacity by written or oral means of any person other than oneself in connection with any proceeding in the Tribal Court.
9. "Practitioner" means attorney, advocate, or spokesperson;
10. "Spokesperson" means any person who has been asked to represent another person before the Tribal Court;
11. "Suspension" means a prohibition against the practice of law in the Tribal Court for a specified period of time, or indefinitely, as the Court may order;
12. "Tribunal" means the Tribal Council or any committee or board which sits in a decision making or adjudicative capacity under the laws of the Keweenaw Bay Indian Community.

B. Authority.

The Court, through the Chief Judge or, in his or her absence, the Associate Judge, possesses the authority to govern the conduct of persons who act as legal representatives before the Court. Such authority extends to, but is not limited to, the power:

1. To require standardized examination of person desiring to practice before the Court;
2. To require the payment of fees for the privilege of practicing before the Court;
3. To require continuing education in the law;
4. To require the performance, from time to time, of pro bono work in the advancement of justice, provided that such authority shall not extend to requiring a legal representative to assume the representation of a party or parties in a particular case; and
5. To regulate practitioners in their representation of persons before the Court or in their non-representational conduct when such conduct directly and seriously affects the dignity and integrity of the Court.

C. Certification.

Any person who desires to practice law before the Court as a legal representative of another person shall seek leave of the Court to practice. Attorneys and advocates shall be required to meet certification requirements before they are allowed to practice. Certifications shall be accomplished as follows:

1. Satisfactory completion of a bar examination of any tribe, state, or the District of Columbia;
2. Proof or affirmation under oath of:
 - a. for attorneys, admission to the bar of any state;
 - b. current criminal conviction record;

- c. record of any disciplinary action taken in any jurisdiction for acts or omissions while acting as an attorney, advocate, spokesperson, or legal representative.
 3. Payment of an initial fee and annual fees as required for attorneys and advocates; and
 4. If previously admitted to practice, proof of good standing.
- D. Grounds for Denial of Admission to Practice.**
- The Court shall deny permission to practice on the following grounds:
1. Current suspension or disbarment from practice in any jurisdiction.
 2. Falsification of any information on an application to practice; or
 3. Conviction of perjury or fraud in any jurisdiction.

E. Oath of Office.

Every person authorized by the Court to practice shall be required to take an oath as follows:

‘I, (name), do swear and affirm that I shall uphold the laws of the United States and the Keweenaw Bay Indian Community, and, to the extent that they are applicable, the laws of the State of Michigan, that I will show due respect to tribal officials and to the Courts of the Keweenaw Bay Indian Community, that I will faithfully and diligently execute the duties I hereby undertake as an officer of the Court, that I will observe rules of responsibility applicable to my office, and that I shall exercise the highest degree of ethical conduct in every matter for which I assume responsibility as a legal representative and as an officer of the Court.’

F. Limitations on Practice.

All legal representatives are subject to the supervision, regulation, and control of the Court. Practitioners before the Court are limited as follows:

1. Attorneys. Any person who is a member in good standing of the bar of any state may serve as an attorney in the Court if authorized under these Rules. Attorneys shall be required to disclose fee arrangements at the request of the Court. Attorneys receiving contingency fees may not charge in excess of one-third the value of any civil case. Attorneys may not contract on a contingent fee basis for any criminal case. Attorneys will be deemed to have given their consent to be held to the same standards in the Tribal Court as such attorneys would be held in the courts of the state or states in which they are admitted to practice. Disciplinary matters may be submitted to the state bar of the state in which the attorney is admitted to practice and/or the State Bar of Michigan for any additional discipline the state may require or impose.
2. Advocates. Any person who has completed all requirements for certification under these Rules may serve as an advocate before the Court. A person serving as an advocate shall be required to disclose fee arrangements at the request of the Court. Fee arrangements shall be subject to the same restrictions as those imposed for attorneys. Advocates must clearly identify their status as “advocates” on all pleadings and in any proceeding before the Court or a Tribunal in which the advocate acts as a legal representative. Advocates who are permitted to practice before

the courts of the United States or any state under rules allowing practice for one case only shall identify themselves as advocates not attorneys.

3. Spokespersons. Any person may serve as a spokesperson at the request of another person. A person serving as a spokesperson shall report any compensation received to the Court. No person may serve as a spokesperson and receive compensation for any two cases during any six month period. Any spokesperson who receives compensation for two or more cases in a six month period shall not be allowed to practice further unless he or she has been certified to practice as an advocate.

G. Duties of Persons Practicing before the Tribal Court.

A practitioner shall be required to fulfill the following duties:

1. To abide by the criminal and civil laws of the Keweenaw Bay Indian Community;
2. To comport with all requirements for admission and continuing membership in the advocacy association;
3. To abide by all applicable laws of the United States or any state;
4. To abide by the orders of the Court;
5. To act as an officer of the Court;
6. To submit to the disciplinary authority of the Court;
7. To report to the Court any criminal convictions or disciplinary action taken against him or her by any jurisdiction;
8. To maintain continuing contact with his or her client, and to attempt to procure the attendance of his or her client when a subpoena, summons, or court order has been issued requesting the client's attendance.

H. Powers of Persons Acting as Legal Representatives.

Certification to practice before the Court qualifies the Practitioner to the following powers:

1. Upon proper notice to the Court, the power to represent a person, classes of persons, or corporations before the Court, subject to such limitations which may exist under Tribal Law regarding legal representatives;
2. The right to have access to the codified laws of the Keweenaw Bay Indian Community, the Rules of the Court and any published opinions of the Court;
3. Upon appropriate arrangements with the detention facility, the power to consult with a client held in custody prior to the client's arraignment or any other Court proceeding involving the client;
4. Upon the payment of duplication costs, the right to receive true and correct copies of all pleadings and documents contained in the file retained by the Court relevant to a client represented by the practitioner, provided that either the informed, written consent of the persons implicated in the pleadings and documents is received, or an order of the Court for the release of the pleadings and documents is obtained.

I. Prohibitions.

Subject to the limitations set forth in these Rules, the following shall be grounds for suspension or disbarment of any Practitioner:

1. To make an allegation which the Practitioner knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a tribal official, judge, attorney, advocate, spokesperson, or law enforcement officer;
2. To intentionally draft or participate in the drafting or promulgation of any factually unsupported statement for someone else's signature which the Practitioner knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a tribal official, judge, attorney, advocate, spokesperson, or law enforcement officer;
3. To issue identification by oral or written means for the purpose of securing employment as an attorney, advocate, or spokesperson, at the scene of an accident, at a funeral, or at any location where medical attention is being administered, unless the issuance is at the request of the victim or the victim's immediate family;
4. To falsely state that a tribal official, judge, attorney, advocate, spokesperson, or law enforcement officer is subject to the special influence of the person making such statement;
5. To collect or attempt to collect payment for work not performed;
6. To fail to appear in Court without proper justification and without authorization from the Court;
7. To bring any action in Court;
 - a. For any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;
 - b. In which the claims, defenses, or other legal contentions are not warranted by existing law and no non-frivolous argument for the extension, modification, or reversal of existing law can be made; or
 - c. In which the allegations and factual contentions do not have evidentiary support.
8. To threaten to make a criminal complaint against a person in order to gain an advantage in a civil case involving the person;
9. To intentionally treat any Court employee in a disrespectful manner;
10. To disclose the secrets and confidences of a client without the informed consent of the client or as ordered by the Court;
11. To assess a fee or demand compensation which is excessive and disproportionate to the difficulty of or time involved in a given legal matter;
12. To commingle the assets of a client with one's own assets;
13. To make an ex parte communication with a judge of the Court;
14. To advocate the removal of any tribal official or employee by means other than those prescribed by law;
15. To make a threat against the witness in a criminal prosecution or a civil lawsuit regarding consequences attendant upon the witness's provision of testimony;
16. To perpetrate a fraud on the Court; or
17. To conceal the location of a party to a proceeding, or evidence, in order to gain or delay a judgment.

J. Penalties.

Subject to the procedures established by these Rules and after a hearing, or upon admission by a practitioner accused of violating provisions of these Rules, the Court may impose any or all of the following penalties:

1. Suspension. A practitioner may be suspended from practice before the Court for an indefinite period of time, or for a period prescribed by the Court. In the event that an indefinite suspension is imposed, the practitioner may petition the Court for readmission to practice after the passage of one (1) year from the date of the suspension;
2. Disbarment. Where the Court finds that the violation of these Rules was undertaken intentionally or in bad faith, or is coupled with a series of violations of these Rules, the Court may disbar the offending practitioner. A practitioner who has been disbarred may petition the Court for reinstatement to practice after the passage of three (3) years from the date of disbarment;
3. Payment of Costs and Fees. In addition to any other penalty imposed by the Court, or as an independent penalty, the Court may impose the requirement that the offending practitioner pay the costs and fees in the case in which the offense or offenses occurred and the reasonable attorney's fees of all parties involved;
4. Rehabilitative Education. In addition to any other penalties imposed by the Court, or as an independent penalty, the Court may impose the requirement that the offending practitioner participate in a rehabilitative course of studies approved by the Court; and
5. Other penalties as set forth in subsection 1.208(M)(8).

K. Admission Under Chapter Required.

No person, including any person previously admitted to practice, shall be admitted to practice before the Court unless such person has complied with the admission requirements of this Chapter.

L. Penalty for Misconduct at a Hearing of the Court.

Penalties for misconduct at a hearing shall be as follows:

1. Misconduct at a hearing before the Court shall be grounds for exclusion from the hearing;
2. Misconduct of an aggravated nature at a hearing before the Court shall, when engaged in by a Practitioner, be grounds for suspension or disbarment by the Chief Judge from further practice before the Court after due notice and a hearing.

M. Discipline.

Except as provided in subsection (L), the following procedures shall govern the discipline of practitioners before the Court:

1. The Chief Judge may order the suspension of any person from practice when it is shown that such person has been suspended or disbarred from practice in another jurisdiction. Such person shall be given notice that he or she shall be indefinitely suspended from practice unless he or she appears before the Court within ten (10) days and shows good cause why an order to that effect should not be entered;

2. Any judge who finds an attorney, advocate, or spokesperson to have committed any act in willful contravention of the Court's authority, or which tends to frustrate or impede the administration of justice, or to have willfully disobeyed the lawful orders of the Court, may, in addition to any other sanction imposed, order the person suspended from practice. Such person shall be given notice that he or she shall be sanctioned and/or indefinitely suspended from practice unless he or she appears before the Court within ten (10) days and shows good cause why an order to that effect should not be entered;
3. Any judge who finds that an attorney, advocate, or spokesperson has received notice of an action or Court proceeding and has failed to appear to represent his or her client may, in addition to any other sanction imposed, order the person suspended from practice. Such person shall be given notice that he or she shall be sanctioned and/or indefinitely suspended from practice unless he or she appears before the Court within ten (10) days and shows good cause why an order to that effect should not be entered;
4. Upon receiving a written complaint submitted under oath indicating that an attorney, advocate, or spokesperson, while functioning as a practitioner in any jurisdiction, has acted in an unethical or improper manner in violation of these Rules, the Chief Judge shall cause a copy of such complaint to be forwarded to the subject attorney, advocate, or spokesperson, together with notice that the subject attorney, advocate or spokesperson shall have ten (10) days from the date of receipt of the complaint in which to submit an answer. If no answer is submitted, the allegations of the complaint shall be taken as admitted, and the Court may suspend or disbar the person. If an answer denies allegations which are material to a determination of a violation of these Rules, the Court shall order the attorney, advocate, or spokesperson to appear at a disciplinary hearing to determine whether he or she should be disciplined under these Rules;
5. Any person who is subject to a disciplinary hearing shall have the following rights:
 - a. At his or her own expense, to be represented by an attorney, advocate, or spokesperson;
 - b. To have notice of the date and time of the hearing and of the nature of the allegations against him or her;
 - c. To cross-examine witnesses;
 - d. To subpoena witnesses; and
 - e. To submit evidence in support of his or her defense.
6. The Chief Judge, or in his or her absence or role as a witness, the Associate Judge, shall preside over the disciplinary hearing;
7. Upon a finding of clear and convincing evidence of misconduct, the Court may discipline the practitioner;
8. Depending upon the facts and circumstances of the case, the Court may impose the following disciplinary measures:

- a. The Court may order the practitioner to pay:
 - i. reasonable attorney's fees of any party adversely affected by the practitioner's misconduct;
 - ii. court costs; and
 - iii. an assessment not to exceed five hundred dollars (\$500.00) to be paid to the Advocacy Association Fund;
 - b. The Court may require rehabilitative education through a program of education approved by the Court;
 - c. The Court may require a public and written apology to be made to the persons or entities adversely affected by the practitioner's misconduct;
 - d. The Court may require restitution of legal fees collected by the practitioner in the case in which the violation or violations occurred;
 - e. The Court may publically or privately admonish the practitioner;
 - f. The Court may suspend the practitioner for a specified period of time or indefinitely, provided:
 - i. Where an indefinite suspension has been ordered, the practitioner may petition the Court for reinstatement after a period of one (1) year has passed;
 - ii. Upon a showing of rehabilitation or remorse or other good cause, the Court may reinstate the practitioner;
 - g. The Court may disbar the practitioner; and
 - h. The Court may impose a combination of any of the above disciplinary measures;
9. Every case involving the indefinite suspension or disbarment of a practitioner shall be certified for review by a Board comprised of three members of the Michigan Indian Judicial Association. Such Board shall not include any person who imposed the indefinite suspension or disbarment, or any person who was involved in the disciplinary proceedings as a witness or complainant;
 10. In cases involving discipline other than indefinite suspension or disbarment, review by the Board may be had upon petition by the sanctioned practitioner. Such petition must be filed in the Court within thirty (30) days of the date of imposition of the sanction;
 11. A practitioner sanctioned by the Court pursuant to these Rules may petition the Chief Judge of the Court for a stay of imposition of the sanction pending review by the Board;
 12. The Board may affirm, reverse, or remand the case for reconsideration, citing specific facts in the record which merit reconsideration.
- N. Immunity.
Any person who shall in good faith file a complaint against a practitioner alleging a violation or violations of these Rules shall be immune from criminal or civil prosecution for filing such complaint.
- O. Disability.
An attorney, advocate, or spokesperson may be suspended indefinitely from the practice of law before the Court on the basis of physical or mental disability if:

1. The condition is raised in bad faith as a defense or in an attempt to obtain a postponement in a disciplinary hearing;
2. The practitioner is declared mentally incompetent in a judicial proceeding in any jurisdiction;
3. The practitioner is involuntarily committed; or
4. The condition is raised in bad faith as a defense to a charge of contempt of court or for failure to appear to represent a client.

The practitioner may petition the Court for reinstatement upon the submission of a physician's or psychotherapist's statement. Any petition for reinstatement not accompanied by such a statement shall be rejected.

P. Fees.

No person shall be allowed to practice in any case unless all fees imposed by this Section are paid.

1. An initial fee shall be required of all persons who become admitted to practice before the Court. Such fee shall be established by resolution of the Tribal Council.
2. An annual fee shall be required of every person who has been admitted to practice before the Court, provided that any person may be placed on inactive status exempt from the payment of the annual fee and may return to active status upon the payment of the annual fee for the year in which reinstatement is requested. The annual fee shall be established by resolution of the Tribal Council.
3. A spokesperson shall be required to pay a fee for every case he or she undertakes before the Court. The payment of such fee by the client shall not constitute compensation to the spokesperson. Such fee shall be determined by the Court but shall not exceed twenty-five dollars (\$25.00).
4. The annual fee required of every person who has been admitted to practice before the Court shall be used for grants and scholarships to improve practitioner skills and knowledge.

Q. Tribunals of the Tribe.

Practitioners admitted to practice before the Court shall be subject to the same standards of conduct and shall be subject to the same disciplinary sanctions when they appear or practice before a Tribunal of the tribe as when they appear or practice before the Court.

R. Severability.

If any of the articles, sections, subsections, clauses, phrases, or words in these Rules are for any reason held to be unconstitutional or invalid, the validity of the remaining portions shall not be affected.

S. Effective Date.

These Rules shall be effective immediately upon passage by the Tribal Council.

CHAPTER 1.3 – EFFECTIVE DATE, SEVERABILITY AND REPEAL OF PRIOR CODES

§1.301 Repeal of Prior Codes

Title One, General Provisions of the 1996 edition of the Tribal Code is hereby repealed and replaced by this the 2013 version of Title One, General Provisions, of the Tribal Code.

§1.302 Effective date

This Code shall be in full force and effect according to its terms upon adoption by the Tribal Council.

§1.303 Severability

If any provision of this Title or its application to any person or circumstance is held invalid by a court of competent jurisdiction, the remainder of this Title will not be affected thereby.

Ayes 10 Nays 0 Abstained 1 Not Present _____
Adopted X [yes] _____ [No]

CERTIFIED by the Secretary of the Keweenaw Bay Indian Community, as of the _____ day of _____, 2013.

SIGNED by the President of the Keweenaw Bay Indian Community, as of the _____ day of _____, 2013.

Legislative History: Adopted March 9, 2013.