

COURT CODE

CONFEDERATED TRIBES OF THE UMATILLA INDIAN RESERVATION

STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION
As Amended through Resolution No. 13-020 (July 1, 2013)

COURT CODE

TABLE OF CONTENTS

CHAPTER 1.	GENERAL PROVISIONS	1
SECTION 1.01.	Purpose.....	1
SECTION 1.02.	Maximum Jurisdiction	1
CHAPTER 2.	JUDICIAL APPOINTMENTS AND QUALIFICATIONS	1
SECTION 2.01.	Appointment of Judges	1
SECTION 2.02.	Eligibility	1
SECTION 2.03.	Compensation	1
SECTION 2.04.	Performance of Duties	2
SECTION 2.05.	Court of Appeals	2
CHAPTER 3.	RULE MAKING AUTHORITY	2
SECTION 3.01.	Rule Making Generally	2
SECTION 3.02.	Rules of Practice, Procedure and Evidence	3
CHAPTER 4.	JUDICIAL CONDUCT	3
SECTION 4.01.	A Judge Should Uphold the Integrity and Independence of the Judiciary	3
SECTION 4.02.	A Judge Should Avoid Imporpriety and the Appearance of Impropropriety in All Activities	3
SECTION 4.03.	A Judge Should Perform the Duties of the Office Fairly, Impartially and Diligently	3
SECTION 4.04.	A Judge May Engage in Extrajudicial Activities that are Consistent with the Obligations of Judicial Office	5
SECTION 4.05.	A Judge Should Refrain From Political Activity	5
APPENDIX A.	LEGISLATIVE HISTORY	

COURT CODE

CHAPTER 1. GENERAL PROVISIONS

SECTION 1.01. PURPOSE

The judicial power of the Confederated Tribes is constitutionally vested in the Tribal Court, which has general authority to adjudicate disputes and enunciate principles of law. Given this power, the Court is the most appropriate entity to establish civil and criminal rules of procedure, rules of evidence, rules of conduct for attorneys and court employees, and other matters of concern to the proper administration of the court system. This Code acknowledges and otherwise grants such powers to the Court, provided the rules adopted by the Court are not in conflict with the Constitution, codes, BOT resolutions, or the Indian Civil Rights Act. The Code also addresses judicial appointment and qualifications as well as standards of judicial conduct.

SECTION 1.02. MAXIMUM JURISDICTION

Notwithstanding any other enactment of law, the Court has jurisdiction to enforce all laws of the Confederated Tribes against all persons who violate those laws within the Indian country of the Confederated Tribes and against any tribal member exercising, or claiming to exercise, treaty rights or retained tribal rights outside of the Confederated Tribes' Indian country. In the event federal law prohibits the exercise of jurisdiction over a non-Indian criminal offense, the Court may exercise civil jurisdiction over the individual for actions that violate either the civil or criminal laws of the Confederated Tribes provided the act occurs within the Indian country of the Confederated Tribes or is in violation of a lawfully issued order of the Court or Board of Trustees.

CHAPTER 2. JUDICIAL APPOINTMENTS AND QUALIFICATIONS

SECTION 2.01. APPOINTMENT OF JUDGES

The Board of Trustees shall appoint, and for cause may remove, a Chief Judge for the Umatilla Tribal Court and one or more Associate Judges who shall also be empowered to act as Chief Judge in the absence or inability of the Chief Judge. The Chief Judge shall be an enrolled member of the Umatilla Indian Reservation.

SECTION 2.02. ELIGIBILITY

- A. Any person over 21 years of age shall be eligible to serve as a Chief or Associate Judge.
- B. All judges shall serve a probationary one year term. The Board of Trustees may appoint any person who has performed satisfactorily during the probationary period and who is otherwise qualified, to a term of ten (10) years.
- C. No candidate shall ever have been convicted of a felony or, within one year past, of a misdemeanor involving moral turpitude. An eligible candidate must be of high moral character and physically sound.
- D. Any judge presiding over a criminal trial shall be a member in good standing of any state bar and a graduate from an accredited law school.

SECTION 2.03. COMPENSATION

- A. The Chief Judge and all Associate Judges shall receive compensation at an annually or hourly rate to be established by the Board of Trustees based upon qualifications of each individual Judge. Compensation shall include a cost of living increase in the same amount as that allotted to tribal employees each year and an annual raise up to the amount allowed for tribal employees in a given year. All judges shall be paid from funds obtained by the Board of Trustees for this purpose.

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION
As Amended through Resolution No. 13-020 (July 1, 2013)***

- B. The Board of Trustees may increase the compensation provided for Judges herein, however, the compensation of a Judge may not be decreased during his term of office.

SECTION 2.04. PERFORMANCE OF DUTIES

- A. The Board of Trustees shall evaluate the quality of work performed and the suitability of the appointee. If the Board of Trustees is dissatisfied with the performance or deportment of a Judge during his probationary term, he may be removed summarily without cause.
- B. During their tenure in office, Judges may be removed for cause by the Board of Trustees. A written complaint recommending such removal shall be prepared by the Tribal business manager setting forth the facts and reasons for such proposed action with copies delivered to the Judge and Board of Trustees. Causes sufficient for such action shall include, but not be limited to: excessive use of intoxicants; immoral behavior; conviction of any offense other than minor traffic violations; use of official position for personal gain; desertion of office; blatant and repeated violations of civil rights of individuals; and any other serious violation of the standards of judicial conduct.
- C. A hearing shall be held by the Board of Trustees within ten days from their receipt of the written complaint. The accused Judge shall have the opportunity to answer charges made against him before that body. An adverse decision may be appealed to the General Council whose decision shall be final. An appeal to the General Council shall be heard and voted on no later than the second regularly scheduled meeting of that body after the decision of the Board of Trustees.
- D. The Chief Judge shall be in complete charge of the Court and shall have supervision over the Associate Judges, the Court Clerk and any other Court personnel.

SECTION 2.05. COURT OF APPEALS

- A. There is hereby established the Umatilla Tribal Court of Appeals.
- B. The Court of Appeals shall have jurisdiction to hear appeals from the final decisions of the Umatilla Tribal Court where permitted by law.
- C. Any ruling of the Court of Appeals shall be final and binding on the parties except for those matters where a review by a Federal Court is proper pursuant to 25 U.S.C. §1303.
- D. The Judges for the Court of Appeals shall be those persons designated as Judges for the Umatilla Tribal Court, excluding the Judge who issued the ruling being appealed, sitting together.

CHAPTER 3. RULE MAKING AUTHORITY

SECTION 3.01. RULE MAKING GENERALLY

- A. The Court may from time to time prescribe rules for the conduct of its business. Such rules shall be consistent with the laws and Constitution of the Confederated Tribes, as well as the Indian Civil Rights Act.
- B. Any rule prescribed by the Court shall be prescribed only after giving reasonable public notice and an opportunity for comment unless otherwise directly approved by Board resolution.
- C. A rule prescribed by the Court shall remain in effect unless otherwise modified or abrogated by the Court or the Board of Trustees.

SECTION 3.02. RULES OF PRACTICE, PROCEDURE AND EVIDENCE

- A. The Court shall have the power to prescribe general rules of practice, procedure, and rules of evidence for cases in the Umatilla Tribal Court and the Court of Appeals. Such rules shall not abridge any substantive right under the Constitution, laws of the Confederated Tribes, or the Indian Civil Rights Act. All other laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.
- B. The Court may authorize the appointment of volunteer committees to assist the Court by recommending rules to be prescribed under this Chapter. Each such committee shall consist of members of the bench and the professional bar, and trial and appellate judges.
- C. The Court shall transmit to the Board of Trustees a copy of any proposed rule prescribed under this Chapter not later than 30 days prior to the date upon which it is to take effect unless the rule is otherwise approved directly by Board resolution. A copy of the rule shall be made available to the public.
- D. The Court may fix the extent a rule shall apply to proceedings then pending, except that the Court shall not require the application of such rule to further proceedings then pending to the extent that, in the opinion of the Court, the application of such rule in would not be feasible or would work an injustice, in which event the former rule applies, if any.

CHAPTER 4. JUDICIAL CONDUCT

SECTION 4.01. A JUDGE SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

An independent and honorable judiciary is indispensable to justice. As such, a judge should maintain and enforce high standards of personal and professional conduct to preserve the integrity of the judicial system.

SECTION 4.02. A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary. To this end, a judge should not allow family, social, political, financial, or other relationships to influence judicial conduct or judgment. A judge should neither lend the prestige of the judicial office to advance the private interests of the judge or others nor convey or permit others to convey the impression that they are in a special position to influence the judge.

SECTION 4.03. A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE FAIRLY, IMPARTIALLY AND DILIGENTLY

The duties of judicial office take precedence over all other activities. In performing the duties prescribed by law, the judge should adhere to the following standards:

- A. **Adjudicative Responsibilities.**
 - 1. A judge should be faithful to, and maintain professional competence in, the law and should not be swayed by partisan interests, public clamor, or fear of criticism.
 - 2. A judge should hear and decide matters assigned, unless disqualified, and should maintain order and decorum in all proceedings.
 - 3. A judge should be patient, dignified, respectful, and courteous to litigants, jurors, witnesses, lawyers, and others with whom the judge deals in an official capacity. A judge should require similar conduct of those subject to the judge's control, including

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION
As Amended through Resolution No. 13-020 (July 1, 2013)***

court personnel and lawyers to the extent consistent with their role in the adversary process.

4. A judge should accord to every person who has a legal interest in a proceeding, and that person's lawyer, the full right to be heard according to law. Except as set out below, a judge should not initiate, permit, or consider ex parte communications or consider other communications concerning a pending or impending matter that are made outside the presence of the parties or their lawyers. If a judge receives an unauthorized ex parte communication bearing on the substance of a matter, the judge should promptly notify the parties of the subject matter of the communication and allow the parties an opportunity to respond, if requested. A judge may:
 - a. Initiate, permit, or consider ex parte communications as authorized by law;
 - b. When circumstances require it, permit ex parte communication for scheduling, administrative, or emergency purposes, but only if the ex parte communication does not address substantive matters and the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication;
 - c. Obtain the written advice of a disinterested expert on the law, but only after giving advance notice to the parties of the person to be consulted and the subject matter of the advice and affording the parties reasonable opportunity to object and respond to the notice and to the advice received; or
 - d. With the consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.
5. A judge should dispose promptly of the business of the court.
6. A judge should not make public comment on the merits of a matter pending or impending in any court. A judge should require similar restraint by court personnel subject to the judge's discretion and control. The prohibition on public comment on the merits does not extend to public statements made in the course of the judge's official duties, to explanations of court procedures, or to scholarly presentations made for purposes of legal education.

B. Administrative Responsibilities.

1. A judge should diligently discharge administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court personnel.
2. A judge should not direct court personnel to engage in conduct on the judge's behalf or as the judge's representative when that conduct would contravene this Chapter if undertaken by a judge.
3. A judge with supervisory authority over other judges should take reasonable measures to ensure that they perform their duties timely and effectively.

C. Disqualification.

1. A judge shall disqualify themselves in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:
 - a. The judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
 - b. The judge served as a lawyer or material witness in the matter in controversy;

***STATUTES of the CONFEDERATED TRIBES of the UMATILLA INDIAN RESERVATION
As Amended through Resolution No. 13-020 (July 1, 2013)***

- c. The judge knows they or their spouse or minor child residing in their household has an interest that could be affected substantially by the outcome of the proceeding;
 - d. The judge or the judge's spouse, or a person related to either within the third degree of relationship (parent, child, grandparent, grandchild, great grandparent, great grandchild, sister, brother, aunt, uncle, niece, or nephew), is:
 - i. A party to the proceeding, or an officer, director, or trustee of a party;
 - ii. Acting as a lawyer in the proceeding;
 - iii. Known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
 - iv. To the judge's knowledge likely to be a material witness in the proceeding;
 - e. The judge has served in governmental employment and in that capacity participated as a judge, counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.
2. Instead of withdrawing from the proceeding, a judge disqualified by this section may disclose on the record the basis of disqualification. The judge may participate in the proceeding if, after that disclosure, the parties and their lawyers have an opportunity to confer outside the presence of the judge, all agree in writing or on the record that the judge should not be disqualified, and the judge is then willing to participate. The agreement should be incorporated in the record of the proceeding.

SECTION 4.04. A JUDGE MAY ENGAGE IN EXTRAJUDICIAL ACTIVITIES THAT ARE CONSISTENT WITH THE OBLIGATIONS OF JUDICIAL OFFICE

A judge may engage in extrajudicial activities, including law related pursuits and civic, charitable, educational, religious, social, financial, fiduciary, and governmental activities, and may speak, write, lecture, and teach on both law-related and non-legal subjects. However, a judge should not participate in extrajudicial activities that detract from the dignity of the judge's office, interfere with the performance of the judge's official duties, reflect adversely on the judge's impartiality, or lead to frequent disqualification.

SECTION 4.05. A JUDGE SHOULD REFRAIN FROM POLITICAL ACTIVITY

- A. A judge should not act as a leader or hold any office in a political organization that is engaged in a tribal election.
- B. A judge should not make speeches for a political organization or candidate, or publicly endorse or oppose a candidate for a public office of the Confederated Tribes.
- C. With regard to a tribal campaign, a Judge should not solicit funds for, pay an assessment to, or make a contribution to a political organization or candidate, or attend or purchase a ticket for a dinner or other event sponsored by a political organization or candidate.
- D. A judge should resign the judicial office if the judge becomes a candidate in a tribal election.

APPENDIX A

LEGISLATIVE HISTORY

COURT CODE

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The Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation originally enacted this statute under the name "Court Code." See Board Resolution No. 13-020 (July 1, 2013). The purpose of the Code is to recognize the separation of powers between the Board of Trustees and the Court, establish judicial appointment and qualification requirements, set out a code of judicial conduct, permit the Court to issue rules governing matters and persons that may come before it, and strengthen the judicial system in its exercise of jurisdiction over all persons in criminal matters including non-Indians in a limited context authorized by the 2013 Violence Against Women Act.