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The Saint Regis Mohawk Tribal Commission on
Judicial Conduct**

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Rules and Procedures of The Saint Regis Mohawk Tribal Commission on Judicial Conduct

I. SCOPE AND PURPOSE

A. What do these rules and procedures apply to and what is their purpose?

These rules and procedures apply to any complaint against any judge of the Saint Regis Mohawk Tribal Court or any judge, who resigns, is dismissed or retires with respect to any act committed while he was a judge.

Their purpose is to ensure the simple, flexible and expeditious processing of complaints and related hearings, in keeping with the principles of justice for the judge and the complainant.

II. DEFINITIONS

A. “Commission” mean the members of the Judicial Oversight Commission on Judicial Conduct appointed pursuant to the Saint Regis Mohawk Tribal Judicial Oversight Commission Ordinance including any amendments thereto.

B. “Complainant” means a person who files a complaint against a judge.

C. “Judge” means a judge employed or formerly employed by the St. Regis Mohawk Tribe to serve on any of the Saint Regis Mohawk Tribal Courts.

D. “Special Prosecutor” means an attorney in good standing who is licensed and admitted to practice law in any state who may be retained to prosecute cases initiated by the Commission.

E. “Tribal Council” means the Tribal Council of the Saint Regis Mohawk Tribe.

III. FILING OF COMPLAINTS

A. What is the process for filing a complaint against a judge?

The Commission shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge and may determine that a judge be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance and conduct, on or off the bench, prejudicial to the administration of justice, or that a judge be retired for mental or physical disability preventing the proper performance of judicial duties.

B. For what reasons, can someone file a complaint against a judge?

Any person may lodge a complaint with the Commission against a judge for the following:

1. Conduct constituting a violation of the Saint Regis Mohawk Tribal Code of Judicial Conduct and

the conduct, qualification, fitness to perform , or performance of official duties of any judge.

2. Misconduct in office, persistent failure to perform his duties, habitual intemperance and conduct, on or off the bench, prejudicial to the administration of justice, or that a judge be retired for mental or physical disability preventing the proper performance of judicial duties

C. Is there a time limit for complaints?

The right to lodge a complaint with the Commission is two years after the date of the conduct but if the conduct involves a pending legal proceeding, then the two year limitation begins after any right of appeal from a decision has expired.

D. How is a complaint completed and filed?

The complaint shall be in writing on the Complaint Form of the Commission available on the website of the Saint Regis Mohawk Tribe or at the Office of the Office of the General Counsel of the Saint Regis Mohawk Tribe. The complainant shall provide contact information for the complainant and for the witnesses and include a statement of facts for the complaint along with copies of any supporting documents

The complaint shall be notarized and filed with the Commission at the address provided on the complaint form and the complainant will be provided with a copy of the complaint stamped with time and date and initial of the recipient of complaint.

E. What are the responsibilities of the complainant after filing the complaint?

The complainant shall provide any changes in contact information for the complainant and any witnesses listed on the complaint form.

The complainant and witnesses must available to meet with the Commission.

IV. COMPLAINT PROCESS OF THE COMMISSION

A. What happens after the complaint is filed?

Upon receipt of a complaint the Commission shall send a letter to the complainant with a copy to the judge who is the subject of the complaint outlining the next steps in the process. The Commission may indicate that it will:

1. Conduct an investigation of the complaint, or
2. Dismiss the complaint if it determines that the complaint on its face lacks merit.

The Commission shall notify the complainant of its determination regarding the complaint in writing to the complainant with a copy to the judge who was the subject of the complaint.

V. INVESTIGATION PROCESS

A. Can the Commission institute an investigation without a formal complaint?

In addition to the investigation of a filed complaint, the Commission may, on its own motion,

initiate an investigation of a judge with respect to his or her qualifications, conduct, fitness to perform or the performance of his or her official duties.

Prior to initiating any such investigation, the Commission shall file as part of its record a written complaint, signed by the Chair of the Commission, which complaint shall serve as the basis for such investigation.

In cases where a complaint is initiated by the Commission, a special prosecutor may be retained to prosecute the particular case for its duration.

B. Can a judge be suspended pending an investigation?

The Commission shall notify the Tribal Council of an investigation of a judge and the Tribal Council may suspend the judge pending the determination of Commission with or without salary.

C. How does the Commission do their investigation?

The Commission may subpoena witnesses, compel testimony and require the production of any books, records, documents or other evidence that it deems relevant or material to an investigation subject to the requirements for the appearance of the judge who is the subject of the complaint.

D. What is the process for receiving evidence from the subject judge during an investigation?

In the course of an investigation, the Commission may require the appearance of the judge involved before it, in which event the judge shall be notified in writing of his or her required appearance, either personally, at least three days prior to such appearance, or by certified mail, return receipt requested, at least five days prior to such appearance.

In either case a copy of the complaint shall be served upon the judge at the time of such notification.

The judge shall have the right to be represented by counsel during any and all stages of the investigation in which his appearance is required and to present evidentiary data and material relevant to the complaint.

A transcript shall be made and kept with respect to all proceedings at which testimony or statements under oath of any party or witness shall be taken, and the transcript of the judge's testimony shall be made available to the judge without cost.

Such transcript shall be confidential except as otherwise permitted by these regulations.

The Commission may end the investigation with reasons in writing or determine that a hearing on the complaint be conducted.

E. May the Commission delegate the investigative responsibility to one Commissioner or a staff person?

Yes; provided however, only a Commissioner may compel the production of evidence or

subpoena a witness.

VI. HEARING

A. Will a hearing be conducted?

If the Commission determines that a hearing is warranted; it shall direct that a formal written complaint signed and verified by the Chairman be drawn and served upon the judge involved, either personally or by certified mail, return receipt requested.

B. When is the answer to the complaint due?

The judge shall file a written answer to the complaint with the Commission within twenty (20) days of such service.

C. Will the Commission hold a prehearing conference?

The Commission may hold a prehearing conference in the presence of the judge or by conference call to identify the questions to be argued at the hearing, examine the possibility of admitting certain facts, examine the possibility of an agreement and plan the course of the hearing.

D. How will the judge be notified of a hearing?

If, upon receipt of the answer, or upon expiration of the time to answer, the Commission shall direct that a hearing be held with respect to the complaint, the judge involved shall be notified in writing of the date of the hearing either personally, at least twenty (20) days prior thereto, or by certified mail, return receipt requested, at least twenty-two (22) days prior thereto.

E. When will the Commission's evidence be provided to the judge?

Upon the written request of the judge, the Commission shall, at least five (5) days prior to the hearing or an y adjourned date thereof, make available to the judge, without cost, copies of all documents which the Commission intends to present at such hearing and any written statements made by witnesses who will be called to give testimony by the Commission.

The Commission shall, in any case, make available to the judge at least five (5) days prior to the hearing or any adjourned date thereof any exculpatory evidentiary data and material relevant to the complaint.

The failure of the Commission to timely furnish any documents, statements and/or exculpatory evidentiary data and material provided for herein shall not affect the validity of any proceedings before the Commission provided that such failure is not substantially prejudicial to the judge.

F. Will the complainant participate in the hearing?

The complainant may be notified of the hearing and unless he shall be subpoenaed as a witness by the judge, his presence shall be within the discretion of the Commission.

G. Will the hearing be public?

The hearing shall not be public unless the judge involved shall so demand in writing.

H. How will the hearing be conducted?

At the hearing the Commission may take the testimony of witnesses and receive evidentiary data and material relevant to the complaint.

The judge shall have the right to be represented by counsel during any and all stages of the hearing and shall have the right to call and cross-examine witnesses and present evidentiary data and material relevant to the complaint.

A transcript of the proceedings and of the testimony of witnesses at the hearing shall be taken and kept with the records of the Commission.

I. What are the rules of evidence at the hearing?

The Commission may accept all evidence that it deems relevant to the complaint, including hearsay evidence provided that it offers reasonable guarantees of credibility and subject to the Commission's right to determine the relative weight of the evidence.

J. Can a hearing be reopened?

Where the Commission has taken a matter under advisement, it may, of its own authority or upon request by a party and until such time as it gives its decision, order the hearing reopened for such purposes and on such conditions as it may determine, in particular to hear any evidence that it considers to be reliable and relevant or to ensure justice.

K. When should a Commissioner recuse himself or herself from participating in the Commission's determinations?

A Commissioner must recuse himself or herself in cases of a conflict of interest; a close personal or family relations with one of the parties or a reasonable fear that the Commissioner could not be impartial.

L. Will all three Commissioners make the determination on individual Complaints?

Absent a recusal, all Commissioners will participate in the Commission's decision-making.

M. Can a hearing be waived?

Subject to the approval of the Commission, the judge may agree on a statement of facts and may stipulate in writing that the hearing shall be waived. In such a case, the Commission shall make its determination upon the pleadings and the agreed statement of facts.

N. Can a formal written complaint issued by the Chairman be dismissed?

If, after a formal written complaint has been served, or during the course of or after a hearing, the Commission determines that no further action is necessary, the complaint shall be dismissed and the complainant and the judge shall be so notified in writing.

O. What must the Commission do if a complaint is dismissed?

If the complaint is dismissed, the Commission shall notify the complainant. If the Commission has notified the judge of the complaint, it shall also notify the judge if the complaint is dismissed.

P. What action may the Commission take against a judge?

After a hearing, the Commission may determine that a judge be admonished, censured, removed or retired.

Q. Will the complainant be notified when the Commission decides the complaint?

Yes.

R. What steps shall the Commission take if it determines that a judge should be admonished, censured, removed or retired?

The Commission shall transmit its written determination, together with its findings of fact and conclusions of law and the record of the proceedings upon which its determination is based, to the Tribal Council who shall cause a copy thereof to be served either personally or by certified mail, return receipt requested, on the judge involved.

Upon completion of service, the determination of the Commission, its findings and conclusions and the record of its proceedings shall be made public and shall be made available for public inspection at the principal office of the Commission (or at the Tribal Clerk's office.)

If the Commission has determined that a judge be admonished, censured, removed or retired, the Commission shall thereupon admonish or censure him in accordance with its findings.

If the Commission determines that a judge should be removed or retired, the Commission shall recommend such to the Tribal Council.

S. May the judge be suspended pending proceedings before the Commission?

The Tribal Council may suspend a judge or justice from exercising the powers of his office while there is pending a determination by the Commission for his removal or retirement, or while he is charged in any jurisdiction with a felony by an indictment. The suspension shall continue upon conviction and, if the conviction becomes final, he shall be removed from office.

The suspension shall be terminated upon reversal of the conviction and dismissal of the accusatory instrument.

T. Will a suspended judge continue to receive his or her salary?

A judge or justice who is suspended from office by the court shall receive his judicial salary during such period of suspension, unless the Tribal Council directs otherwise.

If the Tribal Council has so directed and such suspension is thereafter terminated, the court may direct that he shall be paid his or her salary for such period of suspension.

If actions in addition to, or instead of, admonishment, censure, removal or retirement are required, what further actions may the Commission take?

If during the course of or after an investigation or hearing, the Commission determines that the complaint or any allegation thereof warrants action, other than in accordance with the provisions of this Ordinance, within the powers of:

1. A person having administrative jurisdiction over the judge involved in the complaint or
2. The Tribal Council; or

3. An applicable district attorney's office or other prosecuting agency, the Commission shall refer such complaint or the appropriate allegations thereof and any evidence or material related thereto to such person, agency or court for such act i on as may be deemed proper or necessary.

U. Who will be able to access the records on an individual complaint?

Except as provided below, all complaints, correspondence, Commission proceedings and transcripts, other papers and data and records of the Commission shall be confidential and shall not be made available to any person except as permitted under this section.

The Commission and its designated staff personnel shall have access to confidential material in the performance of their powers and duties.

The judge who is the subject of a complaint may request in writing that the Commission make available for inspection and copying to the public, or to any person, agency or body designated by such judge, copies of the complaint, the transcripts of Commission hearings and the Commission's dispositive action on the complaint. Any reference to the identity of any person who did not participate in the Commission hearing shall be deleted, except the names of the subject judge and complainant.

If the complainant consents, an applicant for a judicial appointment may request the Commission to provide the following to any person designated by the applicant:

1. The record of any Commission proceeding in which a formal written complaint was issued and the applicant's misconduct was established;
2. Any pending complaint against an applicant; and
3. The record of any pending proceeding in which a formal written complaint was issued.

The Commission shall respond within fifteen (15) days of a request for the information under this subsection.

VII. GENERAL

A. Will all three Commissioners make the determination on complaints?

Absent a recusal of a commissioner, a quorum of three commissioners is required for any Commission decisions.

B. How is service of writings done?

Service of any writings for the investigation and hearings may be made by facsimile, regular mail, registered or certified mail, email or by any other means that proves the date of receipt.