

**IN THE TRIBAL COURT
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS**

ADMINISTRATIVE ORDER 2019-1

**ORDER CONCERNING ADOPTION OF SUBCHAPTER 8.500 SDVCJ JURY, RIGHTS, AND
POOL**

- WHEREAS, The Grand Traverse Band of Ottawa & Chippewa Indians (“GTB”) became federally recognized as an Indian Tribe having a government-to-government relationship with the United States, effective May 27, 1980 (*see* 45 Fed. Reg. 18321-322 (March 25, 1980)); and,
- WHEREAS, The GTB is organized under a Tribal Constitution, approved by the Secretary of the Interior on March 29, 1988; and,
- WHEREAS, Article V of the Tribal Constitution describes the Tribal Judiciary; and,
- WHEREAS, Article V, Section 1 of the Tribal Constitution vests the judicial power of the GTB in a tribal court system “composed of a court of general jurisdiction [the “Tribal Court], an appellate court [the “Tribal Appellate Court”], and such lower courts as the Tribal Appellate Court may establish; and,
- WHEREAS, Article V, Section 7 defines the practice and procedure of the Tribal Judiciary and provides that “[t]he Tribal Judiciary shall by general rules establish, modify, amend, or simplify the practice and procedure in all courts of the Grand Traverse Band”; and,
- WHEREAS, The Tribal Court and the Tribal Appellate Court construe the aforementioned Tribal Constitutional provisions and the phrase “Tribal Judiciary” to be a combined body composed of the Tribal Court, the Tribal Appellate Court, and any such lower courts as the Tribal Appellate Court may establish; and,
- WHEREAS, The Tribal Council has amended the GTB Domestic Violence Ordinance at Title 9, Chapter 3, which expands the Tribe’s criminal jurisdiction to include non-Indians that commit domestic violence crimes within the Tribe’s Indian County pursuant to Federal laws generally known as Special Domestic Violence Criminal Jurisdiction (SDVCJ) (*see federal laws at* Pub. L. No 113-4, 127 Stat. 54 (2013));
- WHEREAS, The federal and Tribal laws recognize and reaffirm the inherent sovereign authority of the Tribe to exercise criminal jurisdiction over non-Indians who violate protection orders or commit dating violence or domestic violence against Indians within the Tribe’s Indian Country;
- WHEREAS, Passage of Tribal Laws implementing SDVCJ compel the Tribal Judiciary to approve and enact Tribal Court Rules ensuring non-Indians appearing in the Tribal Court under SDVCJ charges are afforded the protections required under federal and Tribal laws;

WHEREAS, The Court Rules affording non-Indians protections required under federal and Tribal laws are embodied in Subchapter 8.500 that provides:

SUBCHAPTER 8.500 SDVCJ JURY, RIGHTS, AND POOL

SDVCJ Rules – Generally

Rule 8.501. SDVCJ Court Rules. *The following court rules apply to all Special Domestic Violence Criminal Jurisdiction (SDVCJ) cases. All other court rules contained within the GTBCR apply unless expressly provided for herein.*

Judges

Rule 8.502. Trial Court Judges. *Trial court judges presiding over SDVCJ cases will be law-trained and licensed by a tribal, federal, or state jurisdiction in the United States. In the event the presiding judge is not a licensed attorney, the Court will appoint a specially appointed SDVCJ Judge that is law trained and licensed by a tribal, federal, or state jurisdiction in the United States to preside over the SDVCJ case.*

Indigent Defense Counsel

Rule 8.503. Right to Court-Appointed Attorney in SDVCJ Cases; Eligibility at 150% of Federal Poverty Level. *Defendants in SDVCJ cases are entitled to counsel for their defense under GTBCR 6.005. Those convicted of a SDVCJ crime are entitled to an attorney to prosecute their appeal. Eligibility for a Public Defender will be based on 150% of the federal poverty level for any given year.*

Rule 8.504. Reservation of Rights. *The Tribal Court reserves the right to appoint a public defender to any SDVCJ criminal defendant even if they exceed income qualifications.*

Rule 8.505. Arraignments. *The Tribal Court will endeavor to have a public defender available to SDVCJ defendants at all arraignments even if the defendant has not yet asserted his/her right to hire his/her own attorney, request a public defender, or represent him/herself*

Recordings, Retention and Transcripts

Rule 8.506. Recordings. *All SDVCJ criminal proceedings are electronically recorded.*

Rule 8.507. Record Retention. *All SDVCJ recordings will be retained by the Tribal Court for a minimum of 10 years.*

Rule 8.508. Recordings on Appeal; Transcripts. *All SDVCJ criminal defendants that appeal their case to the Tribal Appellate Court, and who qualify for a public defender, are entitled to a copy of the trial court recording and a transcript of the proceedings at no cost.*

Right to Jury Trial

Rule 8.509. SDVCJ Criminal Cases. Any person accused of a Special Domestic Violence Criminal Jurisdiction (SDVCJ) crime is entitled to a trial by jury upon demand.

Jury Pool

Rule 8.5010. Jury Pool. To represent a cross-section of the community (25 USC § 1304(d)(3)), each SDVCJ jury member must be either:

(A) An enrolled member of the Grand Traverse Band of Ottawa and Chippewa Indians and a resident of the six-county primary service area of the Tribe; or

(B) A non-Tribal Member that is:

- (1) An employee of the Grand Traverse Band government (per the personnel policy);
- (2) An employee of the Grand Traverse Band Economic Development Corporation (per the personnel policy); or
- (3) Residing in Grand Traverse Band Public Housing (as described in the lease).

Rule 8.5011. Age. Each SDVCJ juror must be at least eighteen (18) years of age.

Rule 8.5012. Questionnaires. Annual SDVCJ jury questionnaires will be mailed to an appropriate number of potential jury pool candidates. The total number of appropriate SDVCJ jury pool candidates will be derived from the persons described in GTBCR 8.5010. Persons receiving the questionnaire must respond within the time provided in the notice or be subject to a contempt citation under GTBCR 8.5024.

Rule 8.5013. Random Selection. A random selection process will be used to identify potential SDVCJ jurors.

Rule 8.5014. Mailing of Questions. Each potential SDVCJ juror selected by the random draw will be mailed a jury questionnaire by regular mail.

Rule 8.5015. Filing Deadline. Each person who receives a jury questionnaire will complete it and be required to return it to the Tribal Court office within fourteen (14) days.

Rule 8.5016. Access to Jury Questionnaires. The only persons allowed to examine completed SDVCJ jury questionnaires will be:

- (A) presiding judges of the Court;
- (B) Tribal Court staff;
- (C) parties to the action in which the jurors are called to serve and their attorneys;
and
- (D) any other person(s) expressly authorized access by other Court rules or by written order of the Court.

Rule 8.5017. Annual Pool. Each person who is part of the SDVCJ jury pool will remain in the pool for the remainder of the calendar year.

Rule 8.5018. Exemption. *Members of the Tribal Council and the Tribal Court and Tribal Court staff will be exempt from jury duty.*

Rule 8.5019. Previous Service. *Any person who serves on a SDVCJ jury will be exempt from further SDVCJ jury service for the remainder of the calendar year.*

Rule 8.5020. Pool Replenishment. *The SDVCJ jury pool may be replenished if necessary, by random selection.*

Jury Service

Rule 8.5021. Jury Summons Process. *When a SDVCJ jury trial is requested, the Court Clerk will summon thirty (30) members of the jury pool for the jury selection process. Summoned persons must appear at the time and date stated in the notice or be subject to a contempt citation under GTBCR 8.5024, unless excused under GTBCR 8.5022.*

Rule 8.5022. Excuse from Jury Duty. *The Court may excuse any person from jury duty if such duty would cause extreme financial or health related hardship, or for good cause.*

Rule 8.5023. Compensation. *Each SDVCJ juror who is called and reports for SDVCJ jury duty or serves on a SDVCJ jury will be entitled to a fee set by the Court. Applicable fees are posted in the Tribal Court office.*

Rule 8.5024. Contempt of Court. *The following acts or omissions are punishable by the Court as contempt of court:*

- (A) *failing to properly complete and return the SDVCJ jury questionnaire under GTBCR 8.5015;*
- (B) *failing to attend court when called for SDVCJ jury duty, or as otherwise directed by the Court at times specified without prior excuse of the Court;*
- (C) *refusing to take an oath or affirmation;*
- (D) *offering, promising, paying, or giving money or anything of value to, or taking money or anything of value from a person to evade jury service or to be wrongfully discharged;*
- (E) *tampering with a SDVCJ jury list, SDVCJ jury selection box, or any other SDVCJ selection apparatus; and,*
- (F) *doing any act designed to subvert the purposes of these Court rules.*

Appeal and Habeas Corpus

Rule 8.5025. Appeals to Tribal Appellate Court. *All SDVCJ Defendants that have been convicted have the right to appeal his/her case to the Tribal Appellate Court. For appeals, please see GTBCR Chapter 9.*

Rule 8.5026. Habeas Corpus. *All SDVCJ defendants have the right to file a habeas corpus petition in the federal courts to test the legality of his/her detention pursuant to federal law. 25 USC § 1303.*

Rule 8.5027. Stays. All SDVCJ defendants have the right to file a stay of his/her detention in the trial court if he/she has filed a habeas corpus petition. 25 USC § 1304(e).

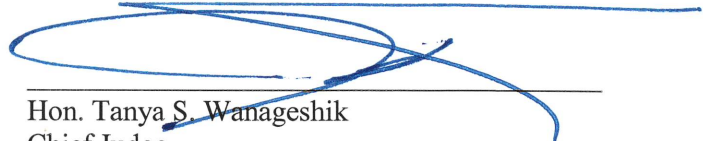
- WHEREAS, The Tribal Judiciary is empowered to implement Court Rules without public notice or comment pursuant to GTBCR 4.011(b), which allows the Tribal Judiciary to “modify or dispense with the notice requirements of this rule if it determines that there is a need for immediate action or if the proposed amendment would not significantly affect the delivery of justice.” ;
- WHEREAS, The Tribal Judiciary finds there is a need for immediate action and the proposed Court Rules at Subchapter 8.500 would not significantly affect the delivery of justice;
- WHEREAS The Tribal Judiciary finds that immediate passage of Subchapter 8.500 would, in fact, further the delivery of justice for non-Indians appearing in the Tribal Court for SDVCJ cases; and,
- WHEREAS, The Tribal Judiciary met *en banc* on March 29, 2019, and based on the foregoing, the Tribal Judiciary herein authorizes the Tribal Court’s Chief Judge to enter Administrative Order 2019-1.

NOW THEREFORE IT IS HEREBY ORDERED:

Pursuant to the authority of GTBCR 4.011(b), the Tribal Judiciary herein enacts Subchapter 8.500 – SDVCJ Jury, Rights and Pool as part of the Tribal Court Rules.

On behalf of the Tribal Judiciary,

Date: 4/19/19



Hon. Tanya S. Wanageshik
Chief Judge