

**BEFORE THE TRIBAL JUDICIARY
FOR THE
GRAND TRAVERSE BAND OF OTTAWA AND CHIPPEWA INDIANS**

**ORDER FORMALLY ADOPTING SUBCHAPTER 4.800 (ELECTION CASES)
OF GTB TRIBAL COURT RULES,
AND RECOGNIZING THAT SUBCHAPTER'S PRECEDENCE UNDER LAW**

It recently came to the GTB Tribal Court Rules Committee's¹ attention, through inquiries by legal counsel for a party to a case before the Tribal Court, that Subchapter 4.800 of the Court Rules of the Grand Traverse Band of Ottawa and Chippewa Indians Tribal Court (hereinafter "GTBCR 4.800") lacked documentation of its formal adoption by the Tribal Judiciary. It is known that the proposed GTBCR 4.800 was reviewed by the Tribal Judiciary on March 28, 2011.² It is further known that a draft of the proposed GTBCR 4.800 was posted for the mandatory 30 day review and comment period on or about April 12, 2011. The draft passed the review and comment period unscathed, and was noted as "approved" by the Tribal Court Rules Committee on June 24, 2011.³ Moreover, the Hon. Quinton Walker was cited for his explicit approval by the Hon. Mary Roberts.⁴ The aggregate exchange of emails, and the information included therein, provided for the implicit approval of GTBCR 4.800 by Judges Roberts, Singel and Thompson. Unfortunately, this process included an oversight wherein either a document providing for GTBCR 4.800's formal Order of Adoption was completed but misplaced; or simply was not completed at all, where everyone believed that someone else had prepared the appropriate document.

¹ The Tribal Court Rules Committee consists of both the GTB Trial and Appellate Judiciary.

² See, Memorandum from Hon. Mary Roberts to Acting Chief Judge Holly Thompson, dated July 7, 2011.

³ See, July 7, 2011 email from Judge Thompson to Court Clerk Sherri Vezina noting GTBCR Rule 4.800's approval by the Rules Committee; asking her to insert GTBCR 4.800 into the Court's copies of Court Rules; and distribute additional copies to the GTB Election Board and GTB Legal Department. The Court Clerk completed distribution of the "06/24.11 approved Court Rule" by: attachment to a July 19, 2011 email to Tanya Wanageshik, Elizabeth Cook, Mary Shomin, Zeke Fletcher, Jon Kubiak, and (by then) GTB Judge *Pro Tem* Bill Brott; and, on the same date, by inter-office email to the GTB Election Board.

⁴ FN 2, *ibid.*

Regardless, GTBCR 4.800 has since been applied by the GTB Tribal Judiciary in a number of election cases. *See, for example, Berry v. GTB Election Board, 2012-2040-CV-CV* (GTB App.Ct. , May 2012) (*en banc*). The Rule's application establishes binding precedent, which is defined as "[t]he making of law by a court in recognizing and applying new rules while administering justice." BLACK'S LAW DICTIONARY, 1195 (7th ed., 1999). In other words, the GTB Tribal Judiciary has recognized and applied GTBCR 4.800, and the rule therefore stands as legally binding precedent in the GTB Tribal Courts.


THEREFORE, IT IS HEREBY ORDERED:

That Subchapter 4.800 of the Court Rules of the Grand Traverse Band of Ottawa and Chippewa Indians Tribal Court is formally adopted as an ongoing GTB Court Rule in recognition of its history of deliberation by the GTB Tribal Court Rules Committee; and its application in the making of GTB tribal law in GTB Tribal Courts.

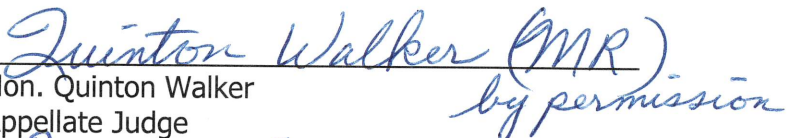
Dated: 7/19/13


Hon. Gregory W. Blanche
Interim Appellate Judge

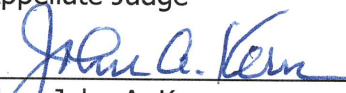
Dated: 7-22-13


Hon. Mary Roberts
Appellate Judge


Dated: 7-22-13


Hon. Quinton Walker
Appellate Judge

Dated: 7.19.13


Hon. John A. Kern
Chief Judge

Dated: 7-19-13


Hon. Michael Long
Associate Judge

Subchapter 4.800 Election Cases

Rule 4.801 Scope and Purpose. This subchapter shall govern election cases brought under Article VII, Section 5(c) of the Grand Traverse Band of Ottawa and Chippewa Indians Constitution. This subchapter is intended to provide guidance and procedural safeguards to ensure a fair and timely resolution of these unique cases. The general civil court rules shall apply, except as modified within this subchapter.

Rule 4.802 Time is of the Essence. Election cases shall be resolved as quickly and efficiently as possible while still ensuring the parties receive their respective rights to due process and the procedural safeguards provided by the court rules. The Tribal Judiciary may elect at any stage in an election case brought under this subchapter, to hear the matter *en banc* in order to expedite the proceeding. The Tribal Judiciary and/or the Chief Judge may in their discretion require shorter time frames than would normally be provided under the general civil court rules for filing of pleadings, discovery, filing of briefs, etc. The parties shall make every effort to resolve election cases quickly. The Chief Judge and/or Tribal Judiciary may sanction a party if the party is found to be intentionally delaying the resolution of an election case, up to and including default or dismissal with prejudice.

Rule 4.803 Definitions.

(A) "Election case" for purposes of this subchapter is defined as any action or case brought before the Tribal Judiciary pursuant to Article VII, Section 5(c) of the Grand Traverse Band of Ottawa and Chippewa Indians Constitution.

(B) "Tribal Judiciary or Tribal Judiciary *en banc*" is defined as the Chief Judge and Associate Judge of the Tribal Court, and Chief Appellate Judge, and Appellate Judges of the Tribal Appellate Court, appointed pursuant to Article V, Section 3 of the Grand Traverse Band of Ottawa and Chippewa Indians Constitution.

Rule 4.804 Limited jurisdiction. The Tribal Judiciary in election cases may only consider allegations of impropriety by the Election Board consistent with Article VII, Section 5(c) of the Grand Traverse Band of Ottawa and Chippewa Indians Constitution. The Tribal Judiciary review shall not be in the nature of appellate review of the Election Board's decisions.

Rule 4.805 Time for Filing Election Case. All election cases must be filed with the Tribal Judiciary within five (5) business days of any act of impropriety alleged against the Election Board.

Rule 4.806 Complaint Requirements.

(A) In addition to the general requirements outlined in this Chapter, any complaint filed in an election case must state the following with particularity:

- (1) The basis upon which Plaintiff believes the Tribal Judiciary has jurisdiction to hear the election case.
- (2) The facts and/or law upon which the plaintiff alleges impropriety by the Election Board.

- (3) The relief requested by the plaintiff, including whether the plaintiff is seeking to stay the holding of an election or the certification of an election already held.
- (B) The complaint must include an attestation or affidavit by the plaintiff that the allegations stated in the complaint are true to the best of the plaintiffs' knowledge, information and belief.
- (C) Any documentation relied upon by the Plaintiff in support of their complaint shall be attached to the complaint.
- (D) The Tribal Judiciary may dismiss any complaint that fails to meet the above requirements.

Rule 4.807 Service of Summons and Complaint on Election Board. Service of the summons and complaint and any supporting documents shall be made within five (5) business days of issuance of the summons, and must be made in a manner consistent with Subchapter 4.100 above upon the Election Board Chairman or any other person authorized by the Election Board to accept service. Failure to serve the summons and complaint upon the Election Board in a timely manner consistent with this court rule, without good cause demonstrated as to why service was not timely made, shall be grounds for dismissal of the complaint with prejudice.

Rule 4.808 Requests for Preliminary Injunction/to Stay Election.

- (A) Any complaint or motion requesting that the Tribal Judiciary issue a preliminary injunction or stay against the holding of an election or against the certification of an election already held must be made at the time of the filing of the complaint in an election case.
- (B) Unless there is good cause demonstrated, a hearing on whether a preliminary injunction should be issued shall be heard by the Chief Judge or Judiciary *en banc* no later than 10 (ten) business days from the date of the filing of the election case.
- (C) The burden of proof shall be on the moving party to demonstrate by clear and convincing evidence that the Election Board committed impropriety that will affect or has affected the outcome of an election.

Rule 4.809 Preliminary Procedural Issues.

- (A) Any preliminary procedural issues, including but not limited to, the scheduling of hearings, motions for a preliminary injunction, motions in limine, motions for summary disposition, etc., may be heard and decided by the Chief Judge (or Associate Judge if the Chief Judge is unable to hear the case) on behalf of the Tribal Judiciary.
- (B) Motions for Reconsideration. Any party may file a motion for reconsideration of a decision made by the Chief Judge (or Associate Judge if the Chief Judge is unable to hear the case), which shall be heard by the Tribal Judiciary *en banc*. A motion for reconsideration must be served and filed within five (5) business days after entry of an order in an election case. There shall be no oral argument unless otherwise directed by the Tribal Judiciary.

Rule 4.810 Motions to Intervene. Any candidate affected by the potential outcome of an election case may file a motion to intervene in an election case consistent with GTBCR 4.209.

Rule 4.811 Discovery. After commencement of an election case, parties may obtain discovery as provided in subchapter 4.300 of these rules.

Rule 4.812 Consolidation. The Tribal Judiciary, on motion of a party or *sua sponte*, may consolidate one or more election cases for the convenience of the judiciary in order to promote quick resolution of these matters and/or to promote judicial economy.

Rule 4.813 Trial. Any trial in an election case shall be a bench trial heard by the Tribal Judiciary *en banc*. The Chief Judge shall direct the proceedings and shall rule on any evidentiary issues that arise during the evidentiary hearing, subject to a motion for reconsideration by the Tribal Judiciary as a whole.

Rule 4.814 Decision of Tribal Judiciary is Final. Any decisions issued by the Tribal Judiciary *en banc* shall be final. No appeal from decisions of the Tribal Judiciary *en banc* shall be heard or considered.