

# TRIBAL COURT OVERVIEW AND BASIC PROCEDURES OF THE NANTICOKE LENNI-LENAPE TRIBAL NATION

## OVERVIEW

The Nanticoke Lenni-Lenape Tribal Nation is made up of the original interrelated Lenape and Nanticoke families that remained in community in the area of the Delaware Bay and governed ourselves for over 200 years through a family clan style leadership based in tribal congregations until reorganizing into a formally elected tribal council and chief in the 1970s.

The Tribal Government is organized in accordance with the Constitution of the Nation and has sovereign powers over defining tribal citizenship and governing internal affairs. The government is charged to preserve the legacy of our ancestors, promote the interests of our people, affirm our tribal identity, establish justice, ensure domestic tranquility, defend the general welfare, exercise our governmental jurisdiction, protect our environmental, cultural and human resources, and secure our national sovereignty for future generations of our people.

The Tribal People are under the jurisdiction of, and pledge allegiance to, the Tribe and shall abide by any and all laws and rules of the Nanticoke Lenni-Lenape and its governing documents and will respect and comply with the decisions, policies, laws, and rulings of the Tribal Government.

### **Exercise of Sovereign Powers**

*...“Our tribal sovereignty was granted by the almighty Creator to our ancestors, was never surrendered by our tribal leadership to any other authority, and has continued from ancient times to the present. The Tribe shall exercise such authority as is inherent in any sovereign American Indian Nation.... The Tribe’s jurisdiction shall be exercised to the fullest extent consistent with this Constitution, the laws promulgated under this Constitution, and the inherent sovereign powers of the Tribe” (from Article 1 of The Nanticoke Lenni-Lenape Tribal Constitution).*

*“...From the earliest years of the Republic the Indian tribes have been recognized as 'distinct, independent, political communities' and, as such, qualified to exercise powers of self-government, not by virtue of any delegation of powers from the Federal Government, but rather by reason of their original tribal sovereignty” (Felix Cohen, US Federal Indian Law).*

*“Indigenous peoples and individuals have the right to belong to an indigenous community or nation, in accordance with the traditions and customs of the community or nation concerned. No discrimination of any kind may arise from the exercise of such a right” (Article 9 of the United Nations Declaration on the Rights of Indigenous Peoples).*

### **Powers and Duties of the Judiciary**

Article IV, Section 4 of the Tribal Constitution states, “...the Judiciary shall be charged with... Interpreting the Tribal Constitution, tribal statutes and official policies... Individual Associate Justices of the Supreme Court, and those judges presiding over inferior courts as established by law, shall also be charged with presiding over tribal court hearings aimed at mediating and resolving grievances between tribal citizens and ruling in matters of tribal law.”

Article IV, Section 5 of the Tribal Constitution states, “All enrolled citizens, adopted citizens, and those with non-native dependent status may request the mediation of disputes and resolution of grievances by the Tribal Judiciary, which may grant a hearing or assign a mediator at its discretion.”

Article IV Section 8 of the Tribal Constitution states, “Tribal officials must recuse themselves from situations involving conflicts of interest or be disqualified by their peers from participation in decisions or activities in which they may be prejudiced by personal fiscal or intimate familial involvement.”

Article IV Section 9 of the Tribal Constitution states, “The Tribal Council and Tribal Judiciary have the power to enact operational procedures to govern their respective functions.”

Article II, Section 6 of the Tribal Constitution states, “In accordance with tribal law citizens may have their citizenship privileges suspended or their enrollment revoked by the Tribal Council or Tribal Court if their conduct has proven to be detrimental to the Tribe or if it is determined that they have falsified information during the application process.”

Article II, Section 8 of the Tribal Constitution states, “Any enrolled citizen or non-enrolled protectorate may have such status declined, suspended, or revoked by the tribal government in accordance with the requirements of this article.”

### **Makeup of the Tribal Court System**

- **Supreme Court** - One Principal Justice and up to four Associate Justices appointed to 6 year terms
- **Tribal Lower Court** - Presided over by a Supreme Court Justice or Tribal Judge assigned on a case by case basis to hear complaints concerning matters of tribal law and policy, providing rulings and/or binding arbitration
- **Peace-Keeping Circles** - Presided over by a tribal “Peace-Keeper” assigned on a case by case basis to guide traditional dispute mediation and resolution

### **The Civil Rights of Tribal Citizens** *(from Article II of the Tribal Constitution)*

Article II, Section 9 of the Tribal Constitution states, “Nothing in this Constitution shall authorize or empower the governing body, while exercising its power of self-government, to violate the civil rights of tribal citizens. Tribal citizens have the right to:

- (a) the free exercise of religion, freedom of speech, freedom the press, freedom to peaceably assemble and to petition for a redress of grievances;
- (b) the right of the people to be secure in their persons, house, papers, and effects against intrusion by tribal officials or agents, unreasonable search and seizures;
- (c) freedom from being twice put in jeopardy before the Tribal Court for any single offense;

- (d) freedom from being compelled to be a witness against himself before the Tribal Court;
- (e) freedom from having private property seized for tribal use.”

Section 10 states, “: The Tribal Government is precluded from denying any person the equal protection of its laws or deprive any person of liberty or property without due process of law, nor the passing of any bill of attainder or ex post facto law.”

Section 11 states, “All citizens may request the mediation of disputes and resolution of grievances in the manner set forth by laws adopted under this constitution.”

### **ADMINISTRATIVE PROCEDURES FOR COURT PETITIONS AND RESPONSES**

Court procedures are intended to allow for all participants to represent themselves. If representative legal counsel is engaged by either the Petitioner (Plaintiff) or Respondent (Defendant) to act on their behalf, such counsel **must** have the prior approval of the Nation to participate in the court proceedings of the Nation. Counsel must apply to the Court in letter form, which – in addition to citing the name of the party they represent - shall include: name; address; telephone number; email address; affiliations; and, credentials of counsel. Approval of counsel is at the sole discretion of the Court, which will provide additional requirements to counsel, if necessary.

#### **A petition (complaint) can be filed by:**

- a. A citizen or dependent of the Nation, as defined in the laws of the Nation.
- b. An official or entity of the government or an arm of the Nation, acting in an official capacity\*
- c. A person or organization party to an agreement (contract, compact, covenant, treaty or other instrument) which is subject to the laws of the Nation.

*\* It should be noted that government officials or entities may request an advisory opinion or ruling on a point of law, that does not involve a complaint against a Respondent, without needing to file a petition; if acting in their official capacity, they can make a request in letter form.*

#### **A petition (complaint) can be against:**

- a. A citizen or dependent of the Nation, as defined in the laws of the Nation.
- b. A person or organization which is party to an agreement (contract, compact, covenant, treaty or other instrument) which is subject to the laws of the Nation.
- c. The Nation, its government, entities deemed to be “arms of the Nation,” and those acting in an official governmental capacity are protected under the inherent sovereign immunity of the Nation, **which may only be waived in limited form and only by official action of the Nation.**

#### **Filing Fees:**

The following fees for filing a petition\*\* must be paid by either certified check or money order and must be made out to **“Nanticoke Lenni-Lenape Government Affairs” ...**

- A citizen of the Nation - \$25.00\*\*\*
- A dependent of the Nation - \$25.00\*\*\*
- An Official or Entity of the Government or Arm of the Nation in their Official Capacity - \$0.00
- A person or entity that is party to an agreement subject to the laws of the Nation - \$50.00

*\*\* This fee is for the filing of the petition only, and does not include any potential court costs or fees for approval of counsel.*

*\*\*\*In the event of financial hardship, Petitioners can request to have the petition filing fee waived or reduced with a letter, included with their petition, explaining their need.*

The **original and two copies\*\*\*\*** of the petition and/or letter seeking approval for legal counsel must be mailed with any required fee to:

**Tribal Court  
Nanticoke Lenne-Lenape Tribal Nation  
18 E Commerce Street  
Bridgeton, New Jersey 08302**

*\*\*\*\* Those filing are responsible for keeping an additional copy for their own records.*

c. The petition will be stamped with the date upon which it is received.

### **Initial Review of a Petition**

Upon receipt of the petition, at the sole discretion of the Court, there will be an initial review by the Court to determine if the petition will be accepted and given a case number for further processing (*year + month + day of receipt, with an optional lower case letter issued if more than a single petition is processed with the same case number*). If accepted, the received Petitioner's filing with instructions for responding will be mailed by the Court to the Respondent by certified mail or other verified receipt of delivery. While the Court will endeavor to respond in a timely manner, the processing of the initial petition may take thirty (30) or more. Upon receipt of the Petitioner's filing the Respondent has up to thirty (30) days from the date of service to answer the Petition, unless otherwise indicated by the Court by writing. Service will be deemed the date of receipt by certified mail or verified receipt of delivery. The answer must be sent to the Petitioner and the Tribal Court by certified mail or other verified receipt of delivery. Failure to respond in a timely fashion may result in a summary judgement by the Court.

### **Review of the Petition and Response**

The Tribal Court will review the petition, response, and additional information to determine whether the case will be heard in court, assigned to arbitration/mediation, or dismissed. The Petitioner and Respondent will be notified of the Court's determination by mail or electronic means. If the Court decides to hear the case, the Petitioner and Respondent will be notified of the date, time, manner, and location of the hearing, all of which is at the Court's discretion.

### **Waiver of Right to Appear**

Please note that both the Petitioner and Respondent may choose to waive his or her right to appear before the Court in the manner determined for the hearing (either in person or through electronic means). If the Petitioner decides to waive this right, he or she should complete the attached Waiver and submit it with the Petition. The Court's decision will then be made on the written information provided. Both the Petitioner and Respondent will be given time to submit any additional evidence. **IF A WAIVER IS NOT COMPLETED THE PETITIONER AND RESPONDENT WILL BE EXPECTED TO APPEAR FOR THE HEARING WHEN SCHEDULED. FAILURE TO DO SO MAY RESULT IN EITHER A DISMISSAL OR A RULING BASED SOLELY ON THE WRITTEN STATEMENTS.**

## COURT PROCEDURES

### Hearings/Trials

Scheduled at the discretion of the Court, hearings/trials may take place at a location determined by the Court, which may or may not be on tribal property, and which may be through electronic means. If conducted in person, the setting should include furnishings (tables and chairs, etc...) as needed to accommodate all parties and court personnel.

Appropriate attire for the Justice or Judge for official hearings/trials shall include, but not be limited to: tribal ceremonial regalia, a ribbon shirt or similar garment, judge's robe, or other apparel as determined by the Judiciary.

Those not conducting themselves in a respectful manner may be ejected from the proceedings and may have a penalty imposed by the court. Hearings may be open or closed at the discretion of the presiding judge.

#### ***The process of the hearing/trial shall include:***

1. The solemn nature of the hearing/trial shall be explained to all present by court personnel. Suggested language may be... ***"All rise! Let all who assemble before this noble court of the Nanticoke Leni-Lenape Tribal Nation hear and take notice. These proceedings shall be conducting in accordance with the Constitution, laws, regulations, and traditions of the Nation and shall be respected by all who present themselves before this court. May the Creator strengthen and uphold this noble court..."*** In the event that a court officer shall introduce the presiding judge, the following may also be said, ***"...The honorable Judge/Justice [name] presiding."*** All may be seated following the rapping of the gavel.
2. The presiding judge shall open the proceedings with the rapping of a gavel, which shall also be used to summon all to appropriate order, at the call of a recess, and also following a final ruling.
3. Instructions (if any are required) will be given to the parties involved by the presiding judge.
4. The presiding judge will hear or review the claims of the Petitioner and may ask questions of the Petitioner and/or the Petitioner's witnesses or regarding any material placed into evidence.
5. The presiding judge will hear or review the defense of the Respondent and may ask questions of the Respondent and/or the Respondent's witnesses or regarding any material placed into evidence.
6. The presiding judge, at his or her discretion, may then allow the Petitioner and Respondent to provide additional testimony and evidence in response to the other's presentation for further examination by the Court.
7. At the conclusion of the testimony and presentation of evidence, the presiding judge may call a recess to review the information presented to allow for additional time prior to rendering a ruling to be provided at another time, or opt to provide an immediate ruling. The final ruling should indicate any court fees due and from which party.

8. All materials submitted to the court and the ruling of the presiding judge will be entered into the court record, with a copy of the ruling to be available to both the Petitioner and the Respondent within 30 days of the closing of the proceedings. The parties should be advised of their right of appeal to the Supreme Court.

### **Appeals**

Lower Court rulings may be appealed to the Supreme Court within sixty (60) days by filing a new petition and indicating that it is an appeal of a previous Lower Court ruling. A copy of the Lower Court ruling must be included with the petition along with the specific reasons the Petitioner asserts that they believe the ruling of the Lower Court should be reviewed and reversed. No appeal may violate a Respondent's right to not be twice put in jeopardy before the Tribal Court for any single offense. The hearing of appeals is at the sole discretion of the Supreme Court.

### **Arbitration**

Binding arbitration of disputes may be conducted by a Judge or an arbitrator appointed by the Court. The purpose of arbitration is to negotiate a resolution between the Petitioner and Respondent over the complaint and to bind the resolution with by a written agreement. Failure of the process to successfully arrive at a resolution does not guarantee that the matter will subsequently be heard by a court. Fees for arbitration shall be set by the referring Court.

### **Mediation through Peacekeeping Circles**

Mediation is conducted by a Judge or Peacekeeper appointed to conduct a traditional Peacekeeping Circle aimed at healing a broken relationship due to a dispute by coming to a consensus between the parties involved. Peacekeeping Circles are spiritual in nature and may include traditional ceremonial elements. A report on the Peacekeeping Circle shall be submitted to the referring Court and entered into the record. Failure of the process to successfully arrive at a resolution does not guarantee that the matter will subsequently be heard by a court.

### **Records**

An account of court proceedings / arbitration / mediation shall, at minimum, be kept in the form of filed documents bound with copies of court actions and final decisions. Court proceedings may, at the discretion of the court and with costs charged to the requesting party, be recorded by a stenographer or electronic means. Unless sealed by the court, such records are open to the government and citizens of the Nation, and to the parties involved in the case or their duly appointed and accepted representatives.

### **Court Fees**

Court fees will vary based upon the cost incurred in the process of adjudicating a case. Court fees may include, but not be limited to: administrative processing fees; judge's fee; space costs (if any); fees for security personnel (if needed); fees for stenographer and/or electronic recording costs (if required); or other appropriate costs incurred. Fees may be reduced or waived at the discretion of the court.

### **Penalties**

Penalties as determined by the Court may include the suspension or removal of tribal privileges or status, monetary fines with a reasonable payment schedule (if deemed necessary in the course of dispensing justice), or other measured and appropriate penalties in proportion to the infraction adjudicated and allowed by law.

## THE FORM OF DECISIONS AND ADVISORY OPINIONS ISSUED BY THE SUPREME COURT

### **Identified by:**

Type, Title and Number (Advisory Opinion or Decision + Title + Year-Month-Day)  
Abbreviated as “SCAO” or “SCD”

### **Structure:**

Divided into sections that fully identify the issue (“At Issue”); why it is a matter for the court and if the court will entertain it (“Jurisdiction and Acceptance”); present all of the constitutional, legal, procedural, regulatory and practical information regarding what is At Issue (“Background”); evaluate the matter in the light of the relevant portions of the constitution, laws, treaties, contracts, policies, and regulations (“Analysis”); and, based upon the Analysis, provides either a conclusion (“Opinion” for a SCAO) or “Ruling” (for a SCD). Rulings may include penalties or court orders to be carried out by those named in the order (such as a protection order against an aggressive party to be enforced by tribal security or cooperating law enforcement force of competent jurisdiction).

### **Citations:**

SCAOs and SCDs should cite relevant sections of the Tribal Constitution, Laws, Treaties, etc... An effort should be made to also cite the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which can be found at - [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

## THE FORM OF DECISIONS ISSUED BY A LOWER TRIBAL COURT

### **Identified by:**

Type, Title and Number (Decision + Title [*Who v. Who*] + Year-Month-Day)  
Abbreviated as “TCD” for “Tribal Court Decision”

### **Structure:**

Divided into sections that fully identify the parties involved (the Petitioner verse the Responder) and a brief summary of the complaint and the defense; present the constitutional, legal, procedural, regulatory and practical information pertaining to the matter and impacting the court’s decision; and, based upon the information provided, provides a Decision (TCD) which may be in favor of the Petitioner, the Respondent, or neither (a dismissal of the case). Decisions may include penalties or court orders to be carried out by those named in the order (such as a protection order against an aggressive party to be enforced by tribal security or cooperating law enforcement force of competent jurisdiction).

### **Citations:**

When possible, TCD’s should cite relevant sections of the Tribal Constitution, Laws, Treaties, etc... An effort should be made to also cite the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) which can be found at - [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)