

JUDICIAL BRANCH ORDINANCE

AUTHORITY

The Yurok Tribal Council is the duly elected and authorized Governing body of the Yurok Tribe; a federally recognized Indian Tribe which is eligible for all rights and privileges afforded to a federally recognized Indian Tribe and, as such, enacts this ordinance by the power and authority granted under the Yurok Tribal Constitution, article VII authorizing that "(t)he judicial power of the Yurok Tribe shall be vested in such Tribal Court(s) as may from time to time be established by ordinances enacted for that purpose." Further the Yurok Tribal Council is the governing body of the Tribe whose existence pre-dates federal recognition and whose existence is independent of any such recognition either in the past or the future. The Tribal Council enacts this Ordinance pursuant to its inherent sovereign rights and responsibilities.

PURPOSE

The purpose of this Ordinance is to create a judicial system sanctioned by tribal government for the purpose of the resolution of disputes, which may arise from time to time within the jurisdictional boundaries of the Yurok Tribe. From time immemorial discord has had occasion to arise among the people, those belonging to the Tribe and those who are under the jurisdiction of the Tribe for various reasons. It has always been the intention of the people to resolve disputes and return all the people to harmony. This Ordinance seeks to formalize a uniform process designed to resolve those disputes, which arise within the jurisdiction of the Yurok Tribe. This Ordinance will establish the Court's jurisdiction and structure.

SECTION 1: JURISDICTION

1.1 TERRITORY

The jurisdiction of the Yurok Tribal Court and the effective area of this Ordinance shall minimally include, but not necessarily be limited to, all territory within the Yurok Indian Reservation, as defined by Article 1 of the Yurok Tribal Constitution, including but not necessarily limited to, all real property including fee patents, allotments, assignments; all roads, waters, and bridges used or maintained for Tribal purposes, and existing and future lands outside the boundaries of the currently federally recognized Reservation owned or controlled by the Yurok Tribe for the benefit of its members.

1.2 PERSONAL

The Yurok Tribal Court shall have jurisdiction over persons who are members of the Tribe and over non-Yuroks whose actions and/or presence have placed them within the jurisdiction of the Tribe or whose presence responsibly requires the Tribe to exercise jurisdiction for the protection of said individuals and/or the integrity of the Tribe. Non-Yuroks, including other sovereigns, are subject to the jurisdiction of the Courts of the Tribe when they have consented by contract or impliedly consented to the jurisdiction of the Courts by entering the Reservation or where jurisdiction is consistent with the sovereign responsibilities of the Tribe.

1.3 SUBJECT MATTER JURISDICTION

- (a) Constitution – The Courts of the Yurok Tribe shall have exclusive jurisdiction to construe and enforce provisions of the Constitution and by-laws of the Yurok Tribe;
- (b) Traditional Law – The Courts of the Yurok Tribe shall have the exclusive jurisdiction to construe or enforce any traditional or cultural prerogative of the Yuroks' if said tradition or cultural prerogative is appropriately before the Court;
- (c) Cultural Practices – The Courts of the Yurok Tribe may apply cultural practices to the resolution of any and all disputes which are before the Courts;
- (d) Indian Civil Rights Act of 1968 (ICRA), 25 U.S.C §§ 1301-1303, - all actions arising pursuant to this Act must be filed in the Courts of the Tribe, consistent with the provisions of the Act as interpreted by the Courts of the Yurok Tribe.
- (e) Ordinances/Statutes – The Courts of the Yurok Tribe shall have the exclusive jurisdiction to construe and enforce the provisions of all of the ordinances and statutes of the Tribe.
- (f) Common Law – All actions arising from disputes or concerns between members, between members and non-members, that impact the integrity of the Tribe whether or not specifically authorized by the laws of the Tribe.

- (g) EXCEPTIONS: The Court will not exercise jurisdiction over matters related to the Hoopa-Yurok Settlement Act (HYSA) or any suit arising out of the distribution of the Yurok Fund. The Court will not exercise jurisdiction over the personnel matters of the Yurok Tribe. The Yurok Tribal Council will make all final determinations in each of these matters.

1.4 SOVEREIGN IMMUNITY/WAIVER

No Court of any Nation shall have jurisdiction over any suit brought against the Tribe for money judgments without the specific consent of the Tribe. Nothing contained within this Ordinance shall be deemed to constitute a waiver or renunciation of the sovereign immunity of the Tribe, or any official or other representative acting in an official capacity, to suit. Nothing contained in this Ordinance shall be deemed a waiver of sovereign immunity to suits seeking punitive damages. However, such immunity does not extend to the granting of declaratory and injunctive relief by the Yurok Tribal Court.

1.5. STANDARD OF REVIEW

The legal standard by which the Tribal Court shall review Tribal Council decisions shall be as set forth in the Supreme Ordinance.

SECTION 2: CONCURRENT JURISDICTION

Except as otherwise provided herein, the jurisdiction invoked by this Ordinance over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same person or subject matter as that of the courts of the United States, any state, or any political subdivision thereof, or any tribe; provided, however, this Ordinance does not recognize or cede jurisdiction to any other political or governmental entity in which jurisdiction does not otherwise exist in law.

SECTION 3: ESTABLISHING OF THE COURT

3.1 JUDGES SELECTION, QUALIFICATIONS AND TERMS

- (a) Administration of the Court System – The Chief Judge will have the responsibility of administering the court system. The court system will consist of a trial division and an Appellate Court which shall be the highest judicial body of the Tribe. The Chief Judge will have the responsibility of making judicial assignments, including constituting all of the Court's hearing panels. The Chief Judge may from time to time appoint additional administrative judges with limited scope of responsibility that will be set out at the time of appointment.
- (b) Number of Judges – the Court may, if necessary and at a time in the future, have a total of nine judges. The Chief Judge shall make all judicial assignments; except that no judge having heard a trial court matter may act as a voting member of the

panel hearing the appeal of that trial matter for the Appellate Court.

- (c) Appointment of Cultural Advisor – the Chief Judge or any trial judge may appoint a cultural advisor to assist in the deliberations of the Court. Said advisor will be presented with a list of questions, they may answer those questions in writing or in a hearing as the advisor prefers. Any party or the Court may ask questions of clarification of the Cultural Advisor. The Cultural Advisor shall be a Yurok Tribal member with a knowledge of Yurok culture and history
- (d) Qualifications of Judges – Whenever possible, the Chief Judge may be an enrolled member of the Yurok Tribe. Non-Yuroks may be appointed to the Court, but no more than two non-Yuroks may be appointed to serve at any one time. At least two of the judicial officers must be over the age of 55. All candidates for judicial appointment must:
 - i. agree to submit to a background investigation which shall be conducted by Tribal Law enforcement;
 - ii. be at least 25 years of age;
 - iii. have not suffered a conviction for a crime that would cause doubt on the suitability of said person to act as a judicial officer;
 - iv. have knowledge of or willingness to gain a working understanding of the laws applicable to the Courts of the Yurok Tribe, as well as a knowledge of Yurok history;
 - v. demonstrate a commitment to uphold the sovereignty of the Yurok Tribe and the integrity of the Courts of the Tribe.
 - vi. must possess good moral character and adhere to the high moral standard expected of those in such a position.
- (e) Term of Appointment – The Chief Judge’s appointment shall be for the term of three (3) years. All other judges shall be appointed for the term of three (3) years. Judges may be appointed for consecutive terms.
- (f) Appointment – all regularly constituted judges, not including administrative hearing officers, shall be presented to the Tribal Council by the recommendation of the Chief Judge. If the office of Chief Judge is vacant then the Tribal Council must act to fill that office pursuant to rules they enact. The Chief Judge must certify to the Tribal Council that the applicant has satisfied the requirements of this ordinance. Once the Council approves the appointment of a Judge, and that Judge is sworn into office the Judge will assume all the responsibilities of their office.

(g) Conflicts of Interest – A judge should disqualify herself or himself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances where:

- i. the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;
- ii. the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;
- iii. the judge knows that he or she, individually or as a fiduciary, or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;
- iv. the judge or the judge's spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person:

(A) is a party to the proceeding, or an officer, director, or trustee of a party;

(B) is acting as a lawyer in the proceeding;

(C) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(D) is to the judge's knowledge likely to be a material witness in the proceeding.

(h) Removal from Office – A judicial officer may be removed from office for cause by the recommendation of the Chief Judge if the recommendation is approved by two-thirds of the elected Tribal Council. The Chief Judge may be removed from office by two thirds of the elected Tribal Council. A judge subject to a removal vote may ask for a hearing prior to the vote. A removal vote is final.

3.2 BONDING

Before taking office, each judge of the Tribal Court shall, at tribal expense, post bond in an amount determined by the Tribal Council, or shall be covered by the Tribe's blanket bond.

3.3 COMPENSATION

Each judge shall be compensated pursuant to a written contract with the Yurok Tribal Council. Under no circumstances may any judges' compensation be reduced during his or her current term of office. Compensation shall be according to the following schedule:

(1) The Chief Judge shall be compensated pursuant to a written contract with the Yurok Tribal Council. An additional amount shall be appropriated annually for training and travel for all tribal judges. To the extent it is not inconsistent with his or her duties as a Tribal judge, the Chief Judge may engage in the practice of law or any other type of employment.

(2) All other Judges shall be compensated pursuant to a written contract with the Chief Judge, except that such contract must reflect the budget set by the Tribal Council or if not within the budget of the Council said contracts must be approved by the Council.

(3) Cultural Advisors shall be compensated pursuant to a written contract with the Chief Judge, so long as the amount does not exceed the funds allotted to the Tribal Court by the Council, the amount may be included as a line item or taken from other appropriate categories of the budget.

(4) All contracts for court personnel are public records.

SECTION 4: OTHER OFFICES OF THE COURT

Tribal Council may act at their discretion to include programs or offices within the Court, once those programs or offices are placed in the Court it will be the responsibility of the Chief Judge to supervise those programs or offices.

SECTION 5: SUBSTANTIVE LAW AND PROCEDURAL RULES

1.1 THE FORMATION OF SUBSTANTIVE LAW AND PROCEDURAL RULES

The Court will work with the Tribal Council and applicable tribal departments to draft the laws and rules that will come to govern the Yurok Nation. It shall be the responsibility of the Court to interpret the laws of the Nation and guide the Nation in a fashion consistent with the sovereign authority and responsibility of the Yurok people. It shall be the sole responsibility of the Court to draft and implement the rules of the court or to establish said rules by usage as is required to insure the administration of justice.

1.2 RECUSAL BY A JUDGE OR A YUROK CULTURAL ADVISOR

Any Judge or Cultural Advisor may decline to participate in any court hearing if they feel they can not be fair to all parties to an action. If any party feels a Judge or Cultural Advisor can not be fair the party may ask the Judge or Cultural Advisor to decline to participate in that party's matter. If the Judge or Cultural Advisor elects to continue to hear the matter the party may seek a hearing with the Chief Judge. The Chief Judge may remove the Judge or Cultural Advisor from hearing, said decision is final. Except that if the challenged party is the Chief Judge of the Yurok Court the hearing shall be before the Presiding Judge of the Supreme Court, or if no such Presiding Judge is then acting the Tribal Chairperson will appoint an Associate Judge to hear this matter.

The decisions in these matters will be guided by the cultural precepts that have from time immemorial guided decision making within the Yurok Tribe, including but not necessarily limited to the historic practice of having known parties act as decision makers and mediators in disputes. When in place or feasible, and upon the request and mutual agreement both parties, the Court will give preference to assigning cases to known parties for the purposes of traditional Yurok dispute resolution.

C*E*R*T*I*F*I*C*A*T*I*O*N

THE FOREGOING ORDINANCE, ENTITLED THE YUOK TRIBE JUDICIARY BRANCH ORDINANCE, WAS PASSED AT A REGULARLY SCHEDULED MEETING OF THE YUOK TRIBAL COUNCIL ON MARCH 26th , AT WHICH A QUORUM WAS PRESENT AND THAT THIS ORDINANCE WAS APPROVED BY A VOTE OF 8 FOR, 0 OPPOSED, WITH NO ABSTENTIONS.

DATED THIS 26th DAY OF MARCH, 2008



Maria Tripp, Chair
Yurok Tribal Council

Attest:



Cynthia McKernan
Executive Assistant