

PENOBSCOT NATION TRIBAL LAWS

CHAPTER _____

TRIBAL LAW AND COURT OPINIONS PUBLICATION LAW

Section 1. Preamble

As a tribal traditional direct democracy, every adult member of the Penobscot Indian Nation has the right to participate in the creation and adoption of Penobscot tribal law. The most important component of the Penobscot Nation's inherent tribal sovereignty is the ability to make its own laws and to be governed by them. The Penobscot Nation Tribal Court, as established by the General Meeting, is responsible for interpreting, applying and enforcing Penobscot tribal law. Through the exercise of its power of self-government to establish laws and to adjudicate matters through its own Tribal Court, the Penobscot Nation reinforces its culture and values and protects its sovereignty. Nonetheless, laws cannot be understood, followed, and applied unless they are made known. In order for there to be trust in the tribal government and the Tribal Court, there must be transparency and accountability. This openness, however, must be balanced against the need to protect our most vulnerable tribal community members, especially our children. This law is adopted by the Penobscot Nation General Meeting to set forth the guidelines for making publicly available all tribal laws and certain legally significant tribal court opinions.

Section 2. Title

This chapter may be cited as the "Penobscot Nation Tribal Law and Court Opinions Publication Law."

Section 3. Definitions

As used in this Chapter, unless the context indicates otherwise, the following terms have the following meanings:

"Appellate Court" means the Penobscot Nation's appellate court.

"Chief Justice" means the Chief Justice of the Penobscot Nation Appellate Court.

"Chief Judge" means the Chief Judge of the Penobscot Nation Tribal Court.

"Clerks of Courts" means the Clerk of the Penobscot Nation Tribal Court and Penobscot Nation Appellate Court.

"General Meeting" means the assembly of active adult Penobscot Nation tribal members for the purpose of deciding tribal matters and/or adopting tribal law as set forth in Chapter 2, "General Meeting Law."

“Memorandum of Decision” means a written disposition of a matter by the Tribal Court which may be published under the circumstances set forth in Section 5.

“Opinion” means the written judgment and reasoning of the Appellate Court which is intended for publication as set forth in Section 5.

“Order” means a written disposition of a matter other than by an opinion or memorandum of decision and not intended for publication.

“Publication” is the distribution of tribal laws, opinions and memoranda of decisions for public reporting.

“Tribal Clerk” means the Clerk of the Penobscot Nation appointed by the Tribal Chief with the advice and consent of the Tribal Council.

“Tribal Council” means the Penobscot Nation Tribal Council.

“Tribal Court” means the Penobscot Nation’s trial level court.

“Tribal Law” means the principles or rules adopted by the Penobscot Nation General Meeting to govern the conduct of tribal members or regulate Penobscot Nation lands. “Tribal law” includes all provisions adopted by the General Meeting whether denominated as laws, codes, or ordinances.

Section 4. Publication of Penobscot Nation Tribal Laws

- A. **Public availability of laws.** All Penobscot Nation tribal laws shall be accessible to all tribal members and to the general public.
- B. **Publication Agreements Authorized.** The Penobscot Tribal Council is authorized to enter into agreements to publish the tribal laws and court decisions and opinions with non-profit and commercial publishers so long as such agreements conform to the following:
 1. Comply with the restrictions on publication of designated tribal laws and court opinions, memoranda of decision set forth in this Chapter;
 2. Ensure that the Penobscot Nation retains all copyright to the tribal laws, opinions and memoranda of decision;
 3. If a printed publication is to be produced, no less than twenty-four (24) complimentary copies shall be provided for distribution as follows: one (1) to the Office of the Tribal Clerk, twelve (12) to the Tribal Council, two (2) to the Office of the Tribal Chief and Vice-Chief, six (6) to the Tribal Appellate Court, two (2) to the Tribal Court, and one (1) to tribal in-house legal counsel

4. If a publication is only accessible by paid subscription to an online database, the publisher shall provide free access to the Tribal Clerk, the Tribal Chief and Council, the Tribal Court and to tribal in-house legal counsel to the Nation's tribal laws and/or tribal court memoranda of decision and opinions. No less than two (2) user names and passwords shall be provided to each entity.

C. **Duties of the Tribal Clerk.** As the official custodian of all tribal laws and records, the Tribal Clerk shall:

1. Upon final approval, provide certified copies of all new and amended tribal laws as required by any publication agreement approved by the Tribal Council, and
2. Upon the request of any tribal member, assist the member to access any subscription-only online database where tribal laws are posted pursuant to a publication agreement. The Tribal Clerk shall inform tribal members regarding the availability of free online tribal law databases and encourage their use.
3. Within 90 days of the Annual General Meeting at which time a law is added or changed, the Tribal Clerk will incorporate the changes into the Tribal laws available online and in written law documents.

Section 5. Publication of Tribal Appellate Opinions and Tribal Court Decisions

A. Appellate Opinions

1. All opinions rendered by the Penobscot Nation Appellate Court shall be published in the official legal reporters and legal research services for which the Penobscot Nation has a publication agreement.
2. Orders of the Appellate Court that do not contain a substantive discussion of the application of law shall not be published.

B. Tribal Court Decisions

1. A Tribal Court memorandum of decision shall not be published unless the Chief Judge determines that it has precedential value in that it does one of the following:
 - a. Resolves an important legal issue; or
 - b. Establishes, alters, modifies or clarifies a rule of law, or
 - c. Involves a legal issue not previously decided by the Penobscot Nation Appellate Court; or
 - d. Affects or criticizes, or reviews the history of, existing tribal law or decisional law; or

- e. Applies Penobscot Nation tradition or custom; or
- f. Involves a legal or factual issue of unique importance or broad public interest;
or
- g. Contributes significantly to legal literature or education.

C. Designation of Disposition

The disposition of the case shall contain in the caption the designation, “Opinion,” “Memorandum of Decision,” or “Order.”

D. Reporting of Decisions or Opinions in Confidential or Sensitive Proceedings

- 1. In cases involving children, adults in need of protection, or other confidential proceedings, neither the name of the child or the protected adult nor any identifying information regarding him or her, shall appear in the order, memorandum of decision, or opinion. The child or protected adult shall only be referred to by an appropriate designation that maintains the confidentiality of his or her identity. Use of detailed identifying information in the memorandum of decision or opinion should also be avoided.
- 2. In non-confidential cases or appeals involving sensitive subject matters, the presiding trial judge or the presiding Chief Justice may nonetheless direct that the name of the victim not be published, but rather the victim may only be referred to by an appropriate designation that maintains the confidentiality of his or her identity. Use of detailed identifying information in the memorandum of decision or opinion should also be avoided.

E. Duties of the Clerk of Courts. As the official custodian of all Tribal Court and Appellate Court records, the Clerk of Courts shall:

- 1. Transmit copies of each opinion and memorandum of decision selected for publication, as required by any publication agreement approved by the Tribal Council, and
- 2. Upon the request of any tribal member, assist the member to access any subscription-only online database where tribal opinions and memoranda of decisions are posted pursuant to a publication agreement. The Clerk of Courts shall inform tribal members regarding the availability of free online tribal opinion databases and encourage their use.