

## **CHAPTER 16-8 TRIBAL PROSECUTOR**

### **16-8-1 Tribal Prosecutor.**

There is hereby created an Office of the Tribal Prosecutor, reporting to the Tribal Council.  
(Amended by PBP TC No. 2017-153, May 11, 2017)

### **16-8-2 Appointment.**

(A) The Tribal Council by majority vote of a quorum shall appoint a Tribal Prosecutor for a primary term not to exceed two (2) years, with eligibility for renewable appointment. The Tribal Council may also appoint special Tribal Court prosecutors to serve on a case-by-case basis in the event of conflict or unavailability of the Tribal Prosecutor. The Tribal Council shall establish rates of compensation of the Tribal Prosecutor and any special prosecutors.

(B) Before entering upon the duties of office, the Tribal Prosecutor and special prosecutors shall take the following oath of affirmation:

"I, \_\_\_\_\_, do solemnly swear (or affirm) that I will truly, faithfully and impartially discharge all duties of my office as prosecutor to uphold the laws of the Prairie Band Potawatomi Nation to the best of my abilities and understanding. So help me God."

(Amended by PBP TC No. 2017-153, May 11, 2017)

### **16-8-3 Qualifications.**

A person shall be eligible to serve as Tribal Prosecutor only if he/she:

(A) is a graduate of an ABA accredited law school and an attorney in good standing licensed to practice law

in the State of Kansas and is admitted, or eligible for admission, to practice in the Prairie Band Potawatomi

Nation Tribal Court;

(B) has at least two (2) years experience prosecuting or defending criminal actions in Tribal, state and/or

federal courts in order to have sufficient knowledge of criminal laws, policies, procedures and practices;

(C) Repealed.

(D) has demonstrated moral integrity and fairness in his or her business, public and private life;

(E) is twenty-five (25) years of age or older;

(F) has abstained from the excessive use of alcohol or any use of illegal drugs; and

(G) does not hold or is not a member of an appointed or elected position of this Nation during the term of service as Tribal Prosecutor.

(Amended by PBP TC No. 2017-153, May 11, 2017)

### **16-8-4 Duties.**

The Tribal Prosecutor shall:

(A) Repealed.

(B) be responsible for and have the discretion to prosecute violations of the Tribe's criminal and civil code and ordinances in Tribal Court. The Prosecutor is also responsible for handling the following types of cases: care and treatment, evictions, and other cases as may be required.

(C) work closely with the Tribal Court Administrator and Tribal Judges to improve the delivery of services within the Tribal Court and to assist the Court in case management and docket preparation.

(D) serve as presenting officer in the Nation's Juvenile Court, shall represent juveniles in court where parents or guardian are charged by neglect, abuse or abandonment.

(E) review and approve all charges and complaints of violations of Tribal criminal codes and ordinances, determine what charges to bring and whom to charge, and shall be authorized to dismiss any criminal complaint that is not supported by sufficient evidence or is improvidently brought.

(F) review requests for arrest warrants and search warrants to determine if all constitutional requirements are satisfied prior to approval or authorization.

(G) establish an effective working relationship with local, state and federal jurisdictions, the public, news media, Tribal officials and members, and establish a protocol for coordinating criminal investigations and prosecutions with such local, state and federal jurisdictions.

(H) meet with and provide regular and special reports, upon request, to the Tribal Council on all aspects of the Tribal Prosecutor's activities.

(I) periodically review the Nation's criminal laws, its law enforcement policies and operating procedures, and consult with the Nation's Tribal Police, in order to make recommendations from time to time to the Tribal Council on the administration of justice on the Nation's Reservation.  
(Amended by PBP TC No. 2017-153, May 11, 2017)

#### 16-8-6 Special Responsibilities of Tribal Prosecutor.

The Tribal Prosecutor represents the sovereign Prairie Band Potawatomi Nation and therefore has responsibilities above and beyond those required of an attorney in private practice. Therefore, the Tribal Prosecutor should use restraint in the discretionary exercises of governmental powers, and in the performance of the duties of the office shall follow these guidelines:

(A) refrain from prosecuting a charge that the Tribal Prosecutor knows is not supported by probable cause;

(B) ensure that the accused has been advised of the right to counsel and has been given reasonable opportunity to obtain counsel;

(C) not seek to obtain from an unrepresented accused a waiver of important pretrial rights;

(D) make timely disclosure to the defense of all evidence or information known to the prosecutor that tends to negate the guilt of the accused or mitigates the degree of the offense, and, in connection with sentencing, disclose to the defense and to the Court all underprivileged mitigating information known to the Tribal Prosecutor, except when the Tribal Prosecutor is relieved of this responsibility by a protective order of this Court; and

(E) during the course of participating in or being associated with the investigation of a criminal matter, not make or participate in making any extra-judicial statement that a reasonable person would expect to be disseminated by means of public communication and that does more than state without elaboration the information contained in a public record, that the investigation is in progress, the general scope of the investigation including a description of the offense, and if permitted by law, the identity of the victim, a request for assistance in apprehending a suspect or assistance in other matters and the information necessary to the request for assistance; or, a warning to the public of any dangers.

(F) exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the Tribal Prosecutor in a criminal case from making an extra-judicial statement that the Tribal Prosecutor would be prohibited from making.

(G) refrain from public and private criticism of other officers of the Court except as set out in these rules as being their responsibility. Tribal prosecutors shall not engage in discussions whose sole purpose or main thrust shall be the criticism of any officers of the Court, i.e., judges, lay advocates, attorneys, or law enforcement officers, in public or in private, except that constructive criticism delivered in a forum conducive to the purpose and designed to improve the performance of the individual may be given.

(H) study the applicable law and facts of each case in order to make prosecutorial decisions based only on these factors and not be dissuaded from making difficult or unpopular decisions.

(I) only engage in political activity that is consistent with the support of the community's jurisdictional rights. Tribal prosecutors will refrain from all political activities or actions which could be interpreted in the community as supporting any political position except that the Tribal community has the right and the responsibility to govern its own members and its own territory. All actions should be consistent with this belief and supportive of this community standard. This prohibition does not mean that Tribal Prosecutors cannot, if they choose, engage in activities of electoral politics at the local, state, national or Tribal level. This prohibition is specific as to politics adversely affecting the jurisdictional rights of the Tribal community.

(J) avoid financial and business dealings that tend to reflect adversely on his or her impartiality, interfere with the performance of his or her prosecutorial duties, exploit the prosecutor's position, or involve him or her in frequent transactions with lawyers and others likely to be involved in the opposing side in Tribal Court cases. The Tribal Prosecutor may, however, hold other employment or participate in the operation of a business.

(K) disqualify himself or herself from acting as prosecutor in any proceeding in which his or her impartiality might reasonably be questioned, including instances where the Tribal Prosecutor has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts, where the Tribal Prosecutor served as lawyer, advocate, or personal representative in the matter before the Court, or a person with whom the Tribal Prosecutor has been associated in a professional capacity served as a lawyer, advocate or personal representative concerning the matter, or where the Tribal Prosecutor knows that he or she individually or a member of his or her family or household, has

a financial interest in the subject matter in controversy or is a party to the proceeding, or has any other interest that could be substantially affected by the proceedings.

(Enacted by PBP TC No. 97-30, June 17, 1997; amended by PBP TC No. 98-55, July 21, 1998; amended by PBP TC No. 99-68, May 12, 1999; amended by PBP TC No. 2003-023, February 13, 2003; amended by PBP TC No. 2008-153; enacted by PBP TC No. 2008-044, February 7, 2008; amended by PBP TC No. 2017-153, May 11, 2017)