



# St. Regis Mohawk Tribe

Chief Mark H. Garrow  
Chief Randy Hart  
Chief Ron LaFrance Jr.  
Sub-Chief Stacy A. Skidders  
Sub-Chief Shelley Jacobs  
Sub-Chief Michael L. Conners

## Tribal Council Resolution

2011 - 44

### RESOLUTION OF THE ST. REGIS MOHAWK TRIBE TO ESTABLISH A JUDICIAL OVERSIGHT COMMISSION

**WHEREAS**, The St. Regis Mohawk Tribe (the "Tribe") is a federally recognized Indian tribe eligible for the special programs and services provided by the United States to Indians because of their status as Indians and is recognized as possessing powers of self-government; and

**WHEREAS**, the Tribal Council of the Tribe is the duly recognized governing body of the Tribe and is a federally recognized Indian tribal government; and

**WHEREAS**, pursuant to TCR 2007-01, the Tribal Council has authorized the full implementation of the Tribe's Tribal Court system and recognized the Tribal Court as an independent entity with independent judicial authorities; and

**WHEREAS**, in order to ensure compliance with established standards of judicial behavior of Judges presiding in our Tribal Court system its necessary to establish and appoint a Judicial Oversight Commission; and

**WHEREAS**, the Judicial Oversight Commission will be empowered to enforce the obligation of judges to observe high standards of conduct while safeguarding their right to decide cases independently; and

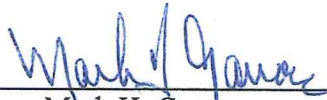
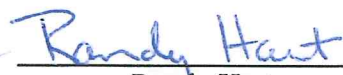
**WHEREAS**, by offering a forum for Tribal members with conduct-related complaints, and by disciplining those judges who transgress ethical constraints, the Judicial Oversight Commission will promote public confidence in the integrity and honor of our Tribal Court system; now, therefore, be it

**RESOLVED**, That the Tribal Council hereby adopts the attached Judicial Oversight Commission Ordinance; and



**RESOLVED**, That the Tribal Council shall adopt all other laws necessary for the effective functioning of the Judicial Oversight Commission, including the Code of Judicial Conduct, prior to the effective date of this Ordinance; and

**RESOLVED**, That the Tribal Council shall make the necessary appointments to the Judicial Oversight Commission within ninety (90) days hereof.

**THE ST. REGIS MOHAWK TRIBAL COUNCIL**

 _____ Mark H. Garrow, Tribal Chief	 _____ Randy Hart, Tribal Chief	_____ Ron LaFrance, Jr. Tribal Chief
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**CERTIFICATION:** This is to certify that the St. Regis Mohawk Tribal Council pursuant to the authority vested therein duly passed the above resolution.

 _____ Corleen Jacco, Tribal Clerk	 _____ Date
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## SAINT REGIS MOHAWK TRIBE JUDICIAL OVERSIGHT COMMISSION ORDINANCE

### I. PURPOSE

The Judicial Oversight Commission's objective shall be to enforce the obligation of judges to observe high standards of conduct while safeguarding their right to decide cases independently. The Judicial Oversight Commission will not act as an appellate court. It will not review judicial decisions or alleged errors of law, nor will it issue advisory opinions, give legal advice or represent litigants.

By offering a forum for members with conduct-related complaints, and by disciplining those judges who transgress ethical constraints, the Judicial Oversight Commission seeks to insure compliance with established standards of ethical judicial behavior, thereby promoting public confidence in the integrity and honor of the judiciary.

### II. DEFINITIONS

For the purposes of this Ordinance the following terms have the following meanings:

"Commission" or "Tribal Commission" means the Saint Regis Mohawk Tribal Commission on Judicial Conduct.

"Judge" means a judge or justice of any court of the Saint Regis Mohawk Tribe.

"Special Prosecutor" means an attorney in good standing who is licensed and admitted to practice law in any state, who may be retained by the Saint Regis Mohawk Tribe to prosecute cases initiated by the Commission.

### III. TRIBAL COMMISSION ON JUDICIAL CONDUCT; ORGANIZATION

A. A Tribal Commission on Judicial Conduct is hereby established. The Commission shall consist of three (3) members appointed by Tribal Council. At least one (1) member of the Commission shall be an attorney in good standing, who is licensed and admitted to practice law in any state, with at least ten (10) years experience practicing law. These appointments shall be made within ninety (90) days of the Effective Date of this Ordinance.

- B. The members of the Commission shall elect one of their members to serve as chairperson during his or her term of office or for a period of two years, whichever is shorter.
- C. The persons first appointed by the Tribal Council shall serve the following terms:
  - 1. One (1) person shall be appointed for a three (3) year term;
  - 2. One (1) person shall be appointed for a two (2) year term; and
  - 3. One (1) person shall be appointed for a one (1) year term.

Appointments thereafter shall be for a term of three (3) years. Membership shall also terminate if a member attains a position which would have rendered him ineligible for appointment at the time of his appointment. A vacancy shall be filled by the Tribal Council for the remainder of the term vacated and shall be filled within ninety (90) days.

- D. A Commission Member may be removed for cause upon submission of a written complaint by an eligible voter, including any members of the Commission, to the Tribal Council who shall have the sole discretion to rule on the removal, which decision shall not be subject to appeal. For purposes of this Ordinance, "cause" means the Commissioner's fraud, dishonesty, willful misconduct or gross negligence in the performance of his/her duties hereunder.
- E. Each member of the Commission shall be compensated at the normal rate established by the Tribal Council for service on other similar Tribal Commissions and shall be entitled to receive actual and necessary expenses incurred in the discharge of his or her duties.
- F. For any action taken three (3) members of the Commission shall constitute a quorum of the Commission and the concurrence of two (2) members of the Commission shall be necessary.

#### IV. QUALIFICATIONS

In order to be eligible to serve as a member of the Commission, one must:

- 1. Be at least 35 years of age;
- 2. Not be a member of the Tribal Court Staff;
- 3. Be of good moral character;
- 4. Possess a Bachelor's degree in a related field.
- 5. Demonstrate knowledge of Tribal law and Indian issues.

6. In addition to the requirements listed above, at least one (1) member of the Commission shall be an attorney in good standing, who is licensed and admitted to practice law in any state, with at least ten (10) years experience practicing law.

#### **V. FUNCTIONS; POWERS AND DUTIES**

The Commission shall have the following functions, powers and duties:

- A. To conduct hearings and investigations, administer oaths or affirmations, subpoena witnesses, compel their attendance, examine them under oath or affirmation and require the production of any books, records, documents or other evidence that it may deem relevant or material to an investigation; and the Commission may designate any of its members or any member of its staff to exercise any such powers, provided, however, only a member of the Commission shall exercise the power to subpoena witnesses or require the production of books, records, documents or other evidence.
- B. To request and receive from any court, department, division, board, bureau, Commission, or other agency of the Tribe such assistance, information and data as will enable it properly to carry out its functions, powers and duties.
- C. To report at least annually, and at such other times as the Commission shall deem necessary, to the Tribal Council and the Tribal membership at a regular Tribal Monthly Meeting, with respect to proceedings which have been finally determined by the Commission. The contents of the annual report and any other report shall conform to the provisions of this Ordinance relating to confidentiality.
- D. To adopt, promulgate, amend and rescind rules and procedures, not otherwise inconsistent with law, necessary to carry out the provisions and purposes of this ordinance.
- E. To do all other things necessary and convenient to carry out its functions, powers and duties expressly set forth in this article.

#### **VI. COMPLAINT; INVESTIGATION; HEARING AND DISPOSITION**

- A. The Commission shall receive, initiate, investigate and hear complaints with respect to the conduct, qualifications, fitness to perform, or performance of official duties of any judge, and may determine that a judge be admonished, censured or removed from office for cause, including, but not limited to, misconduct in office, persistent failure to perform his duties, habitual intemperance and conduct, on or off the bench, prejudicial to the administration of justice, or that a judge be retired for mental or physical disability preventing the proper performance of his judicial duties. A complaint shall be in writing and signed by the complainant and notarized. Upon receipt of a complaint the Commission shall (a) conduct an investigation of the complaint; or (b) may dismiss the complaint if it determines that the complaint on its face lacks merit. If the complaint is dismissed, the Commission shall so notify the complainant. If the Commission shall have

notified the judge of the complaint, the Commission shall also notify the judge of such dismissal.

- B. The Commission may, on its own motion, initiate an investigation of a judge with respect to his qualifications, conduct, fitness to perform or the performance of his official duties. Prior to initiating any such investigation, the Commission shall file as part of its record a written complaint, signed by the Chairman of the Commission, which complaint shall serve as the basis for such investigation. In cases where a complaint is initiated by the Commission, a special prosecutor may be retained to prosecute the particular case for its duration.
- C. In the course of an investigation, the Commission may require the appearance of the judge involved before it, in which event the judge shall be notified in writing of his required appearance, either personally, at least three days prior to such appearance, or by certified mail, return receipt requested, at least five days prior to such appearance. In either case a copy of the complaint shall be served upon the judge at the time of such notification. The judge shall have the right to be represented by counsel during any and all stages of the investigation in which his appearance is required and to present evidentiary data and material relevant to the complaint. A transcript shall be made and kept with respect to all proceedings at which testimony or statements under oath of any party or witness shall be taken, and the transcript of the judge's testimony shall be made available to the judge without cost. Such transcript shall be confidential except as otherwise permitted by this Ordinance.
- D. If in the course of an investigation, the Commission determines that a hearing is warranted it shall direct that a formal written complaint signed and verified by the Chairman be drawn and served upon the judge involved, either personally or by certified mail, return receipt requested. The judge shall file a written answer to the complaint with the Commission within twenty (20) days of such service. If, upon receipt of the answer, or upon expiration of the time to answer, the Commission shall direct that a hearing be held with respect to the complaint, the judge involved shall be notified in writing of the date of the hearing either personally, at least twenty (20) days prior thereto, or by certified mail, return receipt requested, at least twenty-two (22) days prior thereto. Upon the written request of the judge, the Commission shall, at least five (5) days prior to the hearing or any adjourned date thereof, make available to the judge without cost copies of all documents which the Commission intends to present at such hearing and any written statements made by witnesses who will be called to give testimony by the Commission.

The Commission shall, in any case, make available to the judge at least five (5) days prior to the hearing or any adjourned date thereof any exculpatory evidentiary data and material relevant to the complaint. The failure of the Commission to timely furnish any documents, statements and/or exculpatory evidentiary data and material provided for herein shall not affect the validity of any proceedings before the Commission provided that such failure is not substantially prejudicial to the judge. The complainant may be notified of the hearing and unless he shall be subpoenaed as a witness by the judge, his presence thereat shall be within the discretion of the Commission. The hearing shall not

be public unless the judge involved shall so demand in writing. At the hearing the Commission may take the testimony of witnesses and receive evidentiary data and material relevant to the complaint. The judge shall have the right to be represented by counsel during any and all stages of the hearing and shall have the right to call and cross-examine witnesses and present evidentiary data and material relevant to the complaint. A transcript of the proceedings and of the testimony of witnesses at the hearing shall be taken and kept with the records of the Commission.

- E. Subject to the approval of the Commission, the judge may agree on a statement of facts and may stipulate in writing that the hearing shall be waived. In such a case, the Commission shall make its determination upon the pleadings and the agreed statement of facts.
- F. If, after a formal written complaint has been served pursuant to this Ordinance, or during the course of or after a hearing, the Commission determines that no further action is necessary, the complaint shall be dismissed and the complainant and the judge shall be so notified in writing.
- G. After a hearing, the Commission may determine that a judge be admonished, censured, removed or retired. The Commission shall transmit its written determination, together with its findings of fact and conclusions of law and the record of the proceedings upon which its determination is based, to the Tribal Council who shall cause a copy thereof to be served either personally or by certified mail, return receipt requested, on the judge involved. Upon completion of service, the determination of the Commission, its findings and conclusions and the record of its proceedings shall be made public and shall be made available for public inspection at the principal office of the Commission (or at the Tribal Clerk's office.) If the Commission has determined that a judge be admonished, censured, removed or retired, the Commission shall thereupon admonish or censure him in accordance with its findings.
- H. Suspension pending investigation
  - 1. The Tribal Council may suspend a judge or justice from exercising the powers of his office while there is pending a determination by the Commission for his removal or retirement, or while he is charged in any jurisdiction with a felony by an indictment. The suspension shall continue upon conviction and, if the conviction becomes final, he shall be removed from office. The suspension shall be terminated upon reversal of the conviction and dismissal of the accusatory instrument.
  - 2. A judge or justice who is suspended from office by the court shall receive his judicial salary during such period of suspension, unless the Tribal Council directs otherwise. If the Tribal Council has so directed and such suspension is thereafter terminated, the court may direct that he shall be paid his salary for such period of suspension.

3. Nothing in this subdivision shall prevent the Commission from determining that a judge or justice be admonished, censured, removed, or retired pursuant to this Ordinance.

- I. If during the course of or after an investigation or hearing, the Commission determines that the complaint or any allegation thereof warrants action, other than in accordance with the provisions of this Ordinance within the powers of: (a) a person having administrative jurisdiction over the judge involved in the complaint or; (b) the Tribal Council; or (c) an applicable district attorney's office or other prosecuting agency, the Commission shall refer such complaint or the appropriate allegations thereof and any evidence or material related thereto to such person, agency or court for such action as may be deemed proper or necessary.
- J. The Commission shall notify the complainant of its disposition of the complaint.

#### **VII. CONFIDENTIALITY OF RECORDS**

- A. Except as hereinafter provided, all complaints, correspondence, Commission proceedings and transcripts thereof, other papers and data and records of the Commission shall be confidential and shall not be made available to any person except pursuant to section VI. of this Ordinance. The Commission and its designated staff personnel shall have access to confidential material in the performance of their powers and duties. If the judge who is the subject of a complaint so requests in writing, copies of the complaint, the transcripts of hearings by the Commission thereon, if any, and the dispositive action of the Commission with respect to the complaint, such copies with any reference to the identity of any person who did not participate at any such hearing suitably deleted therefrom, except the subject judge or complainant, shall be made available for inspection and copying to the public, or to any person, agency or body designated by such judge.
- B. Notwithstanding any provision in this section, the Commission, with the consent of the person who brought the complaint, shall provide the record of any proceeding pursuant to a formal written complaint against an applicant for judicial appointment in which the applicant's misconduct was established, any pending complaint against an applicant, and the record to date of any pending proceeding pursuant to a formal written complaint against an applicant for judicial appointment to any person designated to receive such information by the applicant. The Commission shall respond within fifteen (15) days of a request for the information provided for in this subdivision.

#### **VIII. BREACH OF CONFIDENTIALITY OF COMMISSION INFORMATION**

Any staff member, employee or agent of the Commission who violates any of the provisions of section VII of this Ordinance shall be subject to a reprimand, a fine, suspension or removal by the Commission, in addition to any sanctions proscribed by the Tribe's Personnel Policy.

#### **IX. RESIGNATION NOT TO DIVEST COMMISSION OF JURISDICTION**



The jurisdiction of the Commission pursuant to this Ordinance shall continue notwithstanding that a judge resigns from office after a determination of the Commission that the judge be removed from office has been made. Any determination by the Commission that a judge who has resigned should be removed from office shall render such judge ineligible to hold any other judicial office. The Tribal Council shall give written notice to the Commission of the resignation of any judge who is the subject of an investigation within five days after its receipt thereof.

**X. SEVERABILITY**

The provisions of this Ordinance are severable and if any part or provision shall be held void by any court of competent jurisdiction, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Ordinance.

**XI. AMENDMENT**

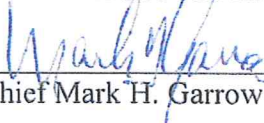
This Ordinance may be amended upon the approval and adoption of such amendments by the majority of Tribal Council.

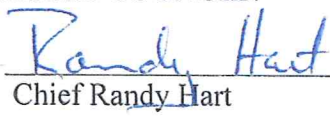
**XII. EFFECTIVE DATE**

This Ordinance shall become effective ninety (90) days from its enactment by Tribal Council.

**ENACTED BY** the Saint Regis Mohawk Tribal Council on this 12 day of September, 2011.


**SAINT REGIS MOHAWK TRIBAL COUNCIL:**

  
Chief Mark H. Garrow

  
Chief Randy Hart

  
Chief Ron LaFrance, Jr.

**CERTIFICATION:** This is to certify that the above Ordinance was duly adopted by the Saint Regis Mohawk Tribal Council on September 12, 2011, pursuant to the authority vested therein.

  
Corleen Jacco, Tribal Clerk

12/13/11  
Date