

## NOTICE OF COURT RULES AND PUBLIC COMMENT

*The Tribal Judiciary approved the Subchapter 8.500 SDVCJ JURY, RIGHTS, AND POOL on March 29, 2019 and enacted the Court rules on April 19, 2019 by Administrative Order 2019-1 under the authority GTBCR 4.011(B) that allows the Tribal Judiciary to “modify or dispense with the notice requirements of this rule if it determines that there is a need for immediate action or if the proposed amendment would not significantly affect the delivery of justice.” Notwithstanding the Tribal Judiciary’s rights to immediately pass Court Rules without public notice/comment, the Tribal Judiciary is also posting Subchapter 8.500 for public comment under the authority of GTBCR 4.011(a). Comments may be submitted in writing to the Tribal Court Administrator at 2605 N West Bay Shore Dr., Peshawbestown, MI 49682. In the event comments are received on Subchapter 8.500, the Tribal Judiciary will address all comment received with consideration for further amendments by the Tribal Judiciary. **Comments will be accepted through May 20, 2019.** In the event no comments are received and/or the Tribal Judiciary determines no modifications or amendments are required, Subchapter 8.500 will remain as set forth by Administrative Order 2019-1.*

### SUBCHAPTER 8.500 SDVCJ JURY, RIGHTS, AND POOL

#### SDVCJ Rules – Generally

**Rule 8.501. SDVCJ Court Rules.** The following court rules apply to all Special Domestic Violence Criminal Jurisdiction (SDVCJ) cases. All other court rules contained within the GTBCR apply unless expressly provided for herein.

#### Judges

**Rule 8.502. Trial Court Judges.** Trial court judges presiding over SDVCJ cases will be law-trained and licensed by a tribal, federal, or state jurisdiction in the United States. In the event the presiding judge is not a licensed attorney, the Court will appoint a specially appointed SDVCJ Judge that is law trained and licensed by a tribal, federal, or state jurisdiction in the United States to preside over the SDVCJ case.

#### Indigent Defense Counsel

**Rule 8.503. Right to Court-Appointed Attorney in SDVCJ Cases; Eligibility at 150% of Federal Poverty Level.** Defendants in SDVCJ cases are entitled to counsel for their defense under GTBCR 6.005. Those convicted of a SDVCJ crime are entitled to an attorney to prosecute their appeal. Eligibility for a Public Defender will be based on 150% of the federal poverty level for any given year.

**Rule 8.504. Reservation of Rights.** The Tribal Court reserves the right to appoint a public defender to any SDVCJ criminal defendant even if they exceed income qualifications.

**Rule 8.505. Arraignments.** The Tribal Court will endeavor to have a public defender available to SDVCJ defendants at all arraignments even if the defendant has not yet asserted his/her right to hire his/her own attorney, request a public defender, or represent him/herself

#### Recordings, Retention and Transcripts

**Rule 8.506. Recordings.** All SDVCJ criminal proceedings are electronically recorded.

**Rule 8.507. Record Retention.** All SDVCJ recordings will be retained by the Tribal Court for a minimum of 10 years.

**Rule 8.508. Recordings on Appeal; Transcripts.** All SDVCJ criminal defendants that appeal their case to the Tribal Appellate Court, and who qualify for a public defender, are entitled to a copy of the trial court recording and a transcript of the proceedings at no cost.

### **Right to Jury Trial**

**Rule 8.509. SDVCJ Criminal Cases.** Any person accused of a Special Domestic Violence Criminal Jurisdiction (SDVCJ) crime is entitled to a trial by jury upon demand.

### **Jury Pool**

**Rule 8.5010. Jury Pool.** To represent a cross-section of the community (25 USC § 1304(d)(3)), each SDVCJ jury member must be either:

- (A) An enrolled member of the Grand Traverse Band of Ottawa and Chippewa Indians and a resident of the six-county primary service area of the Tribe; or
- (B) A non-Tribal Member that is:

- (1) An employee of the Grand Traverse Band government (per the personnel policy);
- (2) An employee of the Grand Traverse Band Economic Development Corporation (per the personnel policy); or
- (3) Residing in Grand Traverse Band Public Housing (as described in the lease).

**Rule 8.5011. Age.** Each SDVCJ juror must be at least eighteen (18) years of age.

**Rule 8.5012. Questionnaires.** Annual SDVCJ jury questionnaires will be mailed to an appropriate number of potential jury pool candidates. The total number of appropriate SDVCJ jury pool candidates will be derived from the persons described in GTBCR 8.5010. Persons receiving the questionnaire must respond within the time provided in the notice or be subject to a contempt citation under GTBCR 8.5024.

**Rule 8.5013. Random Selection.** A random selection process will be used to identify potential SDVCJ jurors.

**Rule 8.5014. Mailing of Questions.** Each potential SDVCJ juror selected by the random draw will be mailed a jury questionnaire by regular mail.

**Rule 8.5015. Filing Deadline.** Each person who receives a jury questionnaire will complete it and be required to return it to the Tribal Court office within fourteen (14) days.

**Rule 8.5016. Access to Jury Questionnaires.** The only persons allowed to examine completed SDVCJ jury questionnaires will be:

- (A) presiding judges of the Court;
- (B) Tribal Court staff;
- (C) parties to the action in which the jurors are called to serve and their attorneys; and
- (D) any other person(s) expressly authorized access by other Court rules or by written order of the Court.

**Rule 8.5017. Annual Pool.** Each person who is part of the SDVCJ jury pool will remain in the pool for the remainder of the calendar year.

**Rule 8.5018. Exemption.** Members of the Tribal Council and the Tribal Court and Tribal Court staff will be exempt from jury duty.

**Rule 8.5019. Previous Service.** Any person who serves on a SDVCJ jury will be exempt from further SDVCJ jury service for the remainder of the calendar year.

**Rule 8.5020. Pool Replenishment.** The SDVCJ jury pool may be replenished if necessary, by random selection.

### **Jury Service**

**Rule 8.5021. Jury Summons Process.** When a SDVCJ jury trial is requested, the Court Clerk will summon thirty (30) members of the jury pool for the jury selection process. Summoned persons must appear at the time and date stated in the notice or be subject to a contempt citation under GTBCR 8.5024, unless excused under GTBCR 8.5022.

**Rule 8.5022. Excuse from Jury Duty.** The Court may excuse any person from jury duty if such duty would cause extreme financial or health related hardship, or for good cause.

**Rule 8.5023. Compensation.** Each SDVCJ juror who is called and reports for SDVCJ jury duty or serves on a SDVCJ jury will be entitled to a fee set by the Court. Applicable fees are posted in the Tribal Court office.

**Rule 8.5024. Contempt of Court.** The following acts or omissions are punishable by the Court as contempt of court:

- (A) failing to properly complete and return the SDVCJ jury questionnaire under GTBCR 8.5015;
- (B) failing to attend court when called for SDVCJ jury duty, or as otherwise directed by the Court at times specified without prior excuse of the Court;
- (C) refusing to take an oath or affirmation;
- (D) offering, promising, paying, or giving money or anything of value to, or taking money or anything of value from a person to evade jury service or to be wrongfully discharged;
- (E) tampering with a SDVCJ jury list, SDVCJ jury selection box, or any other SDVCJ selection apparatus; and,
- (F) doing any act designed to subvert the purposes of these Court rules.

### **Appeal and Habeas Corpus**

**Rule 8.5025. Appeals to Tribal Appellate Court.** All SDVCJ Defendants that have been convicted have the right to appeal his/her case to the Tribal Appellate Court. For appeals, please see GTBCR Chapter 9.

**Rule 8.5026. Habeas Corpus.** All SDVCJ defendants have the right to file a habeas corpus petition in the federal courts to test the legality of his/her detention pursuant to federal law. 25 USC § 1303.

**Rule 8.5027. Stays.** All SDVCJ defendants have the right to file a stay of his/her detention in the trial court if he/she has filed a habeas corpus petition. 25 USC § 1304(e).