



TANANA CHIEFS CONFERENCE, INC.

122 FIRST AVENUE
FAIRBANKS, ALASKA 99701-4897

This is a sample judicial code developed in the Tanana Chiefs Region over the past several years. For more information about this code, contact:

Lisa Jaeger at lisa.jaeger@tananachiefs.org or 1-800-478-6822 ext. 3269

Sue Hollingsworth susan.hollingsworth@tananachiefs.org or 1-800-478-6822 ext. 3273

Sample Tribal Judicial Code

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CHAPTER 1

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Section 1. Name, Establishment and Purpose of the _____ Tribal Court

_____ is the name the Tribe chooses to identify itself, and the Court shall be named the _____ Tribal Court. The Tribe is listed as ‘ _____ ’ in the List of Recognized Tribes. The _____ Tribal Court is hereby established according to the structure outlined in this Chapter. The purpose of the _____ Tribal Court is to protect the health, safety, and welfare of the

_____ people and Tribe by addressing problems locally through a fair and consistent application of unwritten _____ cultural traditions and written tribal ordinances. This Chapter outlines the structure of the _____ Tribal Court.

Section 2. Authority to Establish the _____ Tribal Court

The governing body of the _____ Tribe has the authority to operate a Tribal Court by its inherent sovereignty as a federally recognized tribe, under Article ____ of the _____ Tribal Constitution, and under any powers so delegated by Congress.

Section 3. Jurisdiction of the _____ Tribal Court

The _____ Tribal Court shall have the authority to exercise the inherent judicial powers of a federally recognized tribe. These powers include, but are not limited to, matters relating to the governmental processes internal to the Tribe and over matters arising:

1. In the _____ Tribe's Indian country; and/or
2. Over all tribal members, enrolled or eligible, regardless of where they live or do business; and/or
3. Over all persons and entities who enter into consensual relations with the Tribe or tribal members, or whose activities affect the political integrity, economic security, or the health or welfare of the Tribe or tribal members; and/or
4. Over any matters so delegated by Congress.

Section 4. _____ Tribal Court System

[This example uses qualified members of the tribal council plus some elected judges as the pool of tribal court judges. If the tribe wants to completely separate the tribal council from the tribal court, this section would spell out how many judges will serve the tribal court, whether they are elected or appointed, what the qualifications are, and how long their terms are.]

- A. Standing Court Structure:** The _____ Tribal Court shall be composed of a pool of judges. The pool of judges shall include 3 **[or some other number]** elected judges, plus the members of the _____ Tribal Council who do not have a felony conviction of any kind in the previous five years, or who have never been convicted of rape, murder, child abuse, or sexual assault regardless of when the conviction occurred. Elected Judges shall be elected for three-year **[or some other length of time]** terms at the same time of year that elections are held for the tribal Council. Shorter terms may be used to implement a staggered term process. If a Judge should leave their seat before their term expires, the Tribal Council shall appoint a Judge for the remainder of that term. All Judges so appointed shall meet the qualifications according to Section B.
- B. Qualification of the Elected Judges:** All elected Judges shall be _____ tribal members of at least ____ years of age and reside in the village of _____. Candidates may not have had a felony conviction of any kind in the previous five years, or have ever been convicted of rape, murder, child abuse, or sexual assault regardless of when the conviction occurred.
- C. Determining which Judges shall serve on a case:** When a Petition to use the _____ Tribal Court is received by the _____ Tribal Court Clerk, the Clerk shall contact the qualified members of the Tribal Council and all 3 of the elected Judges to meet. The Judges available to meet shall determine if the Court will take the case and to determine which three Judges shall sit on that case. Once Judges are selected to hear a case, those same Judges shall serve as the Judges for that case for the initial and any subsequent hearings to the maximum extent possible.
- D. Visiting Judges:** The _____ Tribal Council may appoint visiting judges from outside the Village when the Council determines that it is in the best interest of the Tribe to do so for a particular case, provided that at least one Judge hearing the case be from _____. Such appointment shall be made by an affirmative vote of at least ____ Tribal Council members. Visiting Judges may be Judges from other tribal courts when the _____ Tribal Judges have significant conflicts of interest, or attorneys certified by Bar

Associations to hear cases in situations when a case has extreme legal complications. When a visiting Judge is used, there shall be an agreement in writing made as to the terms of any financial arrangements made, and that the visiting Judge shall apply the laws of the _____ Tribe to the fullest extent possible.

E. Intertribal Courts: The _____ Tribal Court may join with other tribal courts to form intertribal courts for specific cases involving persons who are members or eligible for membership in the _____ Tribe and also in another tribe. The _____ Tribal Court may also participate in a permanent intertribal court, provided that the _____ Tribal Council determines it is in the best interest of the _____ Tribe to do so, and that the relationship between the _____ Tribal Court System and such intertribal court are clearly described in written documentation.

F. Specialty Courts: The Tribal Council may establish specialty tribal courts such as a tribal youth court.

Section 5. Quorum of the _____ Tribal Court

A quorum of no less than 3 Judges shall be necessary to hear a case. In any configuration of the _____ Tribal Court System, there shall be at least one of the qualified Tribal Council members or elected judges at every hearing.

Section 6. Presiding Judge of the _____ Tribal Court

The Presiding Judge shall be chosen for each case through a consensus of the Judges. An alternate Presiding Judge shall be chosen in the same manner. The Presiding Judge shall continue to be the Presiding Judge for subsequent hearings on their cases whenever possible. The Presiding Judge shall control the _____ Courtroom in a fair manner and persons in the Court may only speak at the direction of the Presiding Judge.

Section 7. Conflict of Interest for _____ Tribal Court Judges

Judges of the _____ Tribal Court shall remove themselves from hearing a case involving first degree relatives including parents, children, spouses or significant others, siblings, and anyone living in their same home, except that in emergency situations where temporary decisions are made, Judges may be so related. Judges shall remove themselves from any cases in which they have any significant, direct, personal financial or other interest. Judges shall remove themselves from hearing a case in which they cannot be fair for any reason.

Section 8. Decision Making by _____ Tribal Court Judges

The Judges of the _____ Tribal Court shall reach decisions through consensus when possible, and through a majority vote when consensus is not possible. Judges may refer cases to Justice Circles of their design, for decisions by consensus of such circles.

Section 9. Justice Circles

The _____ Tribal Court may use a Justice Circle format for sentencing and deciding what should be done, for any cases where the Circle format is appropriate. The Judges assigned to the case shall decide who shall sit in such Circles and who shall sit as the Leader of the Circle.

- A. **Basic Rules of the Circle:** The most basic rule of the Circle is that persons shall have respect for one another. Only one person shall speak at a time while the others respectfully listen. The Leader of the Circle shall lead the Circle, but shall have no greater voice in the final consensus than anyone else in the Circle. Other rules may be established by the Circles themselves.

- B. **Decisions of Circles:** Decisions of Justice Circles shall be by consensus of the Circle and shall be written as Orders of the _____ Tribal Court. If a Circle fails to come to consensus on a case, the case shall be referred back to the regular _____ Tribal Court.

- C. **Follow-up on Circle Orders:** Before a Circle adjourns a session, it shall set a date to reconvene the Circle to examine the progress of a case if appropriate, or shall make a specific plan for how follow-up will be monitored.

Section 10. Advisors to the _____ Tribal Court

The Judges may confer with Elders, Council members, or other appropriate consultants during hearings, and may call upon the _____ Elders to give answers to questions put to them, which may be recorded for future generations.

Section 11. _____ Tribal Court Clerk

The Tribal Council shall appoint the _____ Tribal Court Clerk, and an alternate Court Clerk. Duties of the Clerk may include:

- Receiving petitions filed with the _____ Tribal Court
- Answering phone calls and receiving mail for the Court
- Maintaining files for the Court and a Court calendar
- Calling a meeting of the Judges to review Petitions and determine which Judges shall sit on cases
- Notifying parties and Judges of hearings
- Setting up teleconference calls if necessary and recording hearings
- Drafting tribal court orders for Judges to review and sign
- Maintaining records of tribal court finances

Section 12. Oath of Confidentiality, Fairness, and Impartiality

_____ Tribal Court Judges, the Tribal Court Clerk, participants of circles used for sentencing, and any other tribal employees or other officials who participate in a case shall take the following oath of confidentiality, fairness, and impartiality prior to all cases:

“I _____ , do solemnly swear and affirm that I will not discuss the proceedings of this case outside of the chambers of the _____ Tribal Courtroom. I shall maintain respect due the _____ Tribal Court by striving for fairness and impartiality in the tribal court proceedings that come before me.”

Violators of this oath may be subject to removal under Section 14 of this Ordinance, subject to termination from employment if they are tribal employees, or subject to contempt of the _____ Tribal Court.

Section 13. Forfeitures and Removal of Judges

- A. Forfeitures:** _____ Tribal Court Judges shall automatically forfeit their positions as Judges if they are convicted of a felony under state or federal law while in office.
- B. Removal:** A _____ Tribal Court Judge may be removed from a particular case, or entirely from their position when the _____ Tribal Council determines that it is in the best interest of the _____ Tribe to do so. The Judge being considered for removal shall be given an opportunity to speak to the Tribal Council in executive session of the Council, prior to a vote of the Council on the removal. The decision to remove a Judge must be affirmed by a minimum of ____ Tribal Council Members. **[The decision to remove a judge from a case or entirely could be left to an appellate court if the tribe has established one.]**

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Section 1. Purpose

The purpose of the _____ Tribal Court Procedures Ordinance is to provide a fair and equitable process for the operation of the _____ Tribal Court that is consistent with the _____ Tribal Constitution and Ordinances, the requirements of the Indian Civil Rights Act and compatible with the unwritten values and practices of the _____ Tribe. The procedures provided in this Ordinance shall be the guidelines and policies of the _____ Tribal Court unless otherwise specifically provided for by the _____ Constitution or tribal ordinance.

Section 2. Definitions

The following words and phrases, whenever used in this Chapter, shall have the following meanings:

Banishment means sending a person out of the Village of _____ for a period of time or permanently.

Clerk means the primary Clerk of the _____ Tribal Court or specifically designated alternate.

Emergency circumstances mean circumstances in which it reasonably appears that there is imminent danger of harm to a person or property.

Parties means Petitioner(s) and Respondent(s) and any other persons the _____ Tribal Court considers to be parties in a particular case. Petitioners may choose not to be a party to a case if it is specifically permitted by tribal ordinance or if the _____ Court permits it.

Petitioner is the party filing a Petition to Use the Tribal Court.

Pre-Hearing Conference is a conference of the judges held after the decision to take a case is made. The conference shall be to decide which judges shall hear the case and to review the court file.

Proof of Service means written or otherwise documented evidence that parties have been notified of an action of the court, such as notification about a hearing.

Respondent means the person involved in an issue brought before the Court by a Petitioner or against whom a Complaint is filed.

Restitution means compensating a person who has been damaged or injured, by paying money or performing services to compensate for damage or injury. Restitution includes apologizing, payment of medical bills or other bills, repair of

property, or replacement of property. The _____ Tribal Court may also order people to do other things to provide restitution.

Civil violation means failing to comply with tribal laws and involves conduct inappropriate to an orderly society, but it is not a criminal offense. A person charged with a civil violation is not entitled to a trial by jury or a right to a public defender.

Section 3. Rights of Parties

Parties appearing before the _____ Tribal Court have rights as specified by the Indian Civil Rights Act of 1968, as amended. Parties appearing before the Court shall have the following rights, which include and exceed those of the Indian Civil Rights Act:

- Parties shall have the right to be notified of court hearings, except in cases of emergency circumstances when a party is not reasonably available to be notified
- Right to copies of documents submitted to the court and court generated documents
- Opportunity to be heard
- Opportunity to present witnesses and evidence
- Opportunity to question any witnesses
- Right to a fair hearing
- Right to request a Change of Order if new evidence or circumstances change in the case
- Right to appeal the final decision to the _____ Appellate Court

Section 4. Confidentially

All children's cases and hearings shall be confidential. Hearings involving adults may be open to the public if the parties and the Court Judges agree. Unless a case is appealed to the _____ Appellate Court, only the Court Judges and Clerk

shall have access to the Court records without further Order of the Court. The _____ Appellate Court shall have access to all records involving cases that are appealed to it.

Section 5. Recording hearings

The Court shall keep a record of all cases consisting of a tape recording or written notes of all panel style hearings, all original documents filed with the Court, and all Orders entered by the Court.

Section 6. Failure to Appear for a Hearing

If parties have been given reasonable notice of a hearing but fail to appear for the hearing, the Court may proceed with the hearing as scheduled and make a decision in the absence of the party, or reschedule it.

Section 7. Recesses During Hearings

The court may recess during any type of court hearing.

Section 8. Testimony and Associated Costs

Witnesses may testify in person, or, with the Court's permission, by telephone. The _____ Tribal Court may summon witnesses to testify at the hearings by issuing a Summons to Testify. Any travel or telephone costs associated with the testimony of witnesses summoned by the Court shall be paid by the _____ tribal government.

Section 9. Evidence and Affidavits

The _____ Tribal Court shall hear all evidence it finds proper. Hearsay evidence given under oath shall be considered proper evidence. The _____ Tribal Court may Order evidence to be brought before the Court by issuing a subpoena. The _____ Tribal Court may accept sworn Affidavits as evidence in cases if the witness is not available to testify.

Section 10. Emergency Hearings

Emergency hearings shall involve matters where harm or damage to a person or property may likely occur if the Court had to wait. In cases of emergencies, the Court may hold a hearing as soon as reasonable proof of imminent harm is provided to the Court. Notice of emergency hearings shall be given to parties who are reasonably available to receive Notice, but the Court may proceed without Notice if parties are not available to receive it. Orders issued during emergency hearings shall be written and of limited duration of up to 30 days unless otherwise stated in the tribal code, or, shall stand only until a regular hearing with reasonable Notice is held.

Section 11. Search Warrants

The _____ Tribal Court shall comply with the Indian Civil Rights Act in requiring tribal search warrants when necessary to search for evidence under circumstances that would lead a reasonable person to believe that a civil violation was or is being committed. Suspicion unsupported by any facts is not sufficient. Search warrants shall specifically state where the search may be done, what items are to be looked for, when the warrant expires, and whether or not the search may take place at night.

- A. Application for Search Warrants:** In order to do searches of people, houses, cars, or other private property, the Village Public Safety Officer (VPSO) or other person designated by the Tribal Council to conduct searches, shall fill out an Application for Search Warrant. The application shall state why he or she believes a search warrant is needed. The application shall state the name of the person who saw or has knowledge of an illegal activity or item if it is the basis for reason to believe that a search is

needed. The person applying for the search warrant shall swear that the statements in the application are true to the best of their knowledge.

- B. Issuing a Search Warrant:** The approval of three _____ Tribal Court Judges shall be necessary to issue a search warrant. Any three of the 8 Judges may issue a warrant. The Judges must be convinced that the person applying for the Search Warrant has “probable cause,” meaning evidence of circumstances that would lead a reasonable person to believe that an offense was or is being committed.

Section 12. Juveniles

- A. Application of tribal laws to juveniles:** The civil laws of the Tribe and tribal court procedures generally apply to juveniles the same as they do to adults, provided that specific ordinances may apply solely to juveniles and that a _____ Tribal Youth Court may be established and operated under its own written procedures.
- B. Parents or guardians attending hearings:** In cases involving civil violations by minor children, written notification shall be given to the child of an upcoming hearing and written notification also given to parents or guardians. The _____ Tribal Court may request a parent or guardian to be present at their child's hearing, or, the Court may request parents or guardians to leave a hearing if the judges believe that it is in the best interest of the child. The Court may appoint a spokesperson for a minor child.

Section 13. Tribal Court Finances

- A. Accounting:** The Tribal Council shall establish a separate line item account for the finances of _____ Tribal Court.

- B. Fees:** The _____ Tribal Court may charge fees to use the Court. Such fees shall be equal for equal types of cases and matters, and shall be made known to any person who wants to use, or files a Petition with, the _____ Tribal Court.
- C. Payment of fines or fees:** Fines or fees shall be paid in cash, check, or money order. Checks or money orders shall be made out to the _____ Tribal Court Clerk, and the Clerk shall issue a receipt.

Section 14. Beginning a Tribal Court Case

Cases generally begin by filing a Petition to Use the Tribal Court with the _____ Tribal Court Clerk. The Petitioner shall write sufficient information about the circumstances and reasons why the Court should take the case. Cases may also come to the court through referrals or transfer of jurisdiction from another court. Upon receipt of a Petition, referral, or option to transfer a case, the Clerk shall schedule a meeting with the tribal court judges to decide whether to take the case or not, and whether to refer a case involving juvenile delinquency to the tribal youth court. A minimum of two judges at the meeting is necessary to make this decision.

- A. Decision to take a case:** If the decision is made to take the case, the clerk shall schedule a pre-hearing conference
- B. Decision to not take a case:** If the decision is made to not take the case, the Clerk shall write a letter of denial to the Petitioner, or referring entity, as soon as possible after the decision is made.
- C. Pre-hearing conference:** Pre-hearing conferences shall be held to determine whether a panel style hearing or justice circle shall be convened. If a circle style is chosen the Judges shall decide which Judge shall serve as the Circle Leader and who the circle participants shall be. The Clerk shall notify participants according to Section 15. If a panel style is chosen, the judges shall identify which judges may have a conflict of

interest with the case, and determine which judges shall hear the case. Judges that will be hearing the case shall decide who the presiding judge shall be and shall review the case file.

- D. Setting hearing date and time:** For initial hearings on a case, the Clerk shall set a hearing date and time, and give the Petition and attachments along with Notice to all Parties and any other persons the Court requests in the Courtroom for that case. The hearing shall be held no more than 30 days after a Respondent receives Notice, unless the Court decides there is good reason to have a hearing at a later time.

Section 15. Notice

- A. Notice for hearings:** Parties shall be given reasonable notice for all scheduled _____ Tribal Court hearings. The Clerk, or designee, shall personally serve or mail Notice, along with the Petition to all parties before hearings. In the case of emergency hearings notice shall be given only to those parties reasonably available to receive it. The Notice shall be delivered at least 10 days or mailed at least 14 days before a hearing except as otherwise provided for in the _____ Tribal Code. A proof of service shall be filed or noted in the Court file.
- B. Notice when hearings are rescheduled:** If the Court changes the time of a hearing for any reason, the involved parties shall be given reasonable Notice of the rescheduled hearing. If a hearing is rescheduled, notification may be made telephonically and noted in the case file.
- C. Notice for emergency hearings:** Notice of emergency hearings shall be given to parties who are reasonably available to receive Notice. If parties are not reasonably available to receive Notice, the Court may hold a hearing without Notice being given.

- D. Notice for witnesses:** Each party shall be responsible for serving Notice to their own witnesses, and giving the _____ Tribal Court Clerk reasonable notice that they have asked witnesses to attend a hearing. The Clerk shall notify the other Parties of witnesses who have been asked to attend.

Section 16. Procedures for Panel of Judges Style Hearings

- A. Opening a hearing:** The presiding judge shall open the court hearing and may ask that a prayer or words from an Elder be given. The Presiding Judge shall then:
- Ask the Clerk to begin the recording
 - State the case number and the date, time, and place of the hearing
 - Ask all persons in the courtroom or at any teleconference sites to state their name and relationship to the case for the record
 - Ask how parties were notified of the hearing
 - Determine if there are any parties who were notified but are not at the hearing. If a party was notified but is not at the hearing, the Court may either proceed with the hearing or reschedule.
 - Determine if there are any parties who should have been notified but were not notified. If it is determined that there is a party that was not notified, the hearing shall be rescheduled to allow reasonable notification.
 - State the rights of all parties including the:
 - Right to be notified of court hearings
 - Right to copies of documents submitted to the court and court generated documents
 - Opportunity to be heard
 - Opportunity to present witnesses and evidence
 - Opportunity to question any witnesses
 - Right to a fair hearing
 - Right to request a Change of Order if new evidence or circumstances change in the case

- Right to appeal the final decision to the _____ Appellate Court
- Ask all parties to sign or swear an oath of truthfulness
- In cases that are closed to the public, all present at the hearing shall be instructed to maintain confidentiality outside the _____ courtroom proceedings.
- The Presiding Judge shall then read the Petition to the Court
- **Civil violations:** In cases of civil violations, the Respondent shall be asked how he or she pleads: guilty, not guilty, or no contest and the Presiding Judge shall make sure the Respondent understands the pleas. The Respondent shall say what his or her plea is. If the Respondent pleads guilty or no contest, the judges may question the Respondent and any participants in the courtroom to gain information that will help them create an appropriate sentence during their deliberations. They may also counsel the Respondent at that time. If the Respondent pleads not guilty, the hearing shall be held at this time unless the Court finds it appropriate to delay in order for parties to gather witnesses and evidence. If the Respondent is present but will not say anything, the Court shall enter a plea of not guilty.

B. Hearing process: The Presiding Judge shall generally maintain order in the courtroom and direct the order of speaking. Generally the Presiding Judge will first ask to hear from the Petitioner and then from the Respondent. If anyone is connected to the hearing by teleconference, all hearing participants shall state their name prior to speaking, and any visual evidence presented to the court shall be described. Petitioners and Respondents may present witness and evidence in the order chosen by the Presiding Judge. Each party shall be permitted to question each other and all witnesses. Judges may question anyone in the Courtroom. When the judges determine that all parties have had sufficient opportunity to speak and present everything they feel is relevant to the case, they shall ask everyone to leave the courtroom while they deliberate.

- C. Deliberations:** Judges shall take all evidence presented into consideration during their deliberations and make their decision by consensus if possible. If consensus is not possible, the decision shall be made by majority vote. In cases of civil violations where a party entered a plea of not guilty, the judges shall decide if the information provided is sufficient to lead them to reasonably believe that the person is guilty. If so, then decide on an appropriate sentence from Section 18 of this ordinance.
- D. Decision in writing** All decisions made by the _____ Tribal Court shall be written on Order forms unless otherwise specified by ordinance.

Section 17. Procedures for Justice Circles

Once the _____ Tribal Court Judges have decided that they want to use a Justice Circle format for a particular case, they shall decide who the Circle Leader and participants will be. Tribal Court Clerk shall notify the parties and circle participants about the date, time, and place of Circle hearing. The notice to the parties shall include a copy of the Petition.

A. Opening a Circle hearing:

- The Leader may choose to open the Circle by beginning with a prayer or special comments from an Elder or someone in the Circle.
- The Leader shall ask the participants to agree to keep what is said in the Circle confidential, to be respectful of one another, to be truthful, and to work together towards a consensus
- The Leader shall state what the situation is that the Circle will be hearing.

B. Circle Process:

- The Leader shall begin the Circle by passing the talking stick or other special object around the Circle clockwise and shall be responsible for keeping order in the Circle should that become necessary.
- Only the person holding the talking stick may speak.
- If a person chooses not to speak they may pass the stick to the next person.
- The discussion of the Circle shall continue in this manner unless the Leader directs otherwise.
- The Leader shall summarize the highlights of what has been said after each round of discussion.
- **Part One:** The stick shall be passed as many times around the Circle as needed for participants to voice their feelings, opinions, share information, and generally talk about the situation.
- **Part Two:** The Leader shall begin the next rounds of discussion that shall focus on appropriate solutions and sentencing. Again, the stick shall be passed around as many times as necessary to come to a consensus on what the Order of the Court shall be.

C. Concluding the Circle:

- The Leader shall state the final consensus of the Circle, and make sure that it is an accurate summary of the Circle's decision
- Before the Circle adjourns, it shall set a date to reconvene the Circle to examine the progress of a case if appropriate, or shall make a specific plan for how follow-up will be monitored.
- The Leader may choose to end with a prayer or special comments from an Elder or someone in the Circle.

- D. Decisions of Circles:** Decisions of Justice Circles shall be by consensus of the Circle and shall be written as Orders of the _____ Tribal Court. If a Circle fails to come to consensus on a case, the case shall be referred back to a hearing panel of _____ Tribal Court Judges.

Section 18. Options for Orders and Sentences

The Court may issue Orders concerning child custody arrangements, domestic relations issues, and any other type of case where an Order is appropriate. Unless the _____ Tribal Code sets a specific penalty for a particular civil violation, the _____ Tribal Court Judges, either by themselves or through a Justice Circle, shall determine the specific Orders for a particular case. The Judges may choose from the following options:

- A. Fines:** Fines for violation of a Tribal ordinance shall not exceed \$5,000 or equivalent work sentence. Fines may increase for successive violations of the same ordinance. The Court may garnish wages, permanent fund or dividend checks, village or regional Native corporation dividends, general assistance, or confiscate property in the case of unpaid fines.
- B. Community Service:** Work sentences may include cutting wood or hauling water for people in need of assistance in the village, for the church, or for the community hall. Sentences may include working in the school, building maintenance or repair, hauling and pumping fuel, and cleaning up trash in the Village of _____. The Tribal Court Judges may order other types of community work as well. Community service sentences shall benefit the needy, the village residents as a whole, the Elders, the victim of an offense, the church, or the youth. Tribal Court judges shall not order work sentences that only benefit themselves personally or other tribal government officials. Work sentences shall not displace persons employed in the Village

or employment opportunities. Work sentences shall be completed within 30 days unless otherwise directed by the Court.

Community work shall contribute \$10.00 per hour towards fines ordered by the _____ Tribal Court. Persons have the option of work sentences instead of paying a fine only if the Court specifically permits it.

- C. Impounding vehicles:** Any vehicle that is used in driving while intoxicated, or reckless driving under the _____ Tribal Code, is subject to impound. To get a vehicle out of impound, the owner shall pay \$75 for the first time the vehicle is impounded, \$150 for the second time, and \$250 for the third time. The fees may be paid by community work service hours if the Court permits. Except in cases of vehicle theft, the owner is responsible for the impound fee even if the owner was not involved with the civil violation. The _____ Tribal Government is not liable for any damages to vehicles while they are impounded.

- C. Banishment:** An Order of temporary or permanent banishment shall only be used to protect the Village and/or Village residents from harm. The length of time a person is banished shall be determined by the severity of the case or upon the completion of treatment that is ordered.

- D. Drug and Alcohol Treatment and Other Counseling:** The Tribal Court may order an assessment for drug and alcohol treatment and may require that the recommendations of the assessment be met. The Tribal Court may also order other personal counseling. The Tribal Court shall consider the cost to the person and possible waiting periods for getting into treatment, when they order such treatment. The Tribe may pay such costs if funding is available.

- E. Restitution:** The Tribal Court may order a Respondent to make restitution to his or her victims. Restitution is defined to include payment of money, repairing property, and apologies. Restitution payment shall go through the

_____ Tribal Court Clerk. Non-monetary restitution shall be supervised by the VPSO or by another person designated by the _____ Tribal Court.

- F. Counseling by Judges and Elders:** The Judges of the _____ Tribal Court may counsel persons brought before them in a helpful spirit. The _____ Tribal Court may bring _____ Elders into the _____ Courtroom to counsel people.
- G. Traditional Activities:** The _____ Tribal Court may order a person found in violation of an ordinance to participate in seasonally appropriate traditional activities such as fish camps, trapping, hunting, culture camps, and other tribally sponsored or approved traditional activities.

Section 19. Written Orders, Timeframe for Complying with Orders

- A. Written Orders:** All orders made by the _____ Tribal Court shall be written on Order forms unless otherwise specified by ordinance. All written Orders and notations shall be filed in the case records. The Clerk or other designated person shall personally give or mail a copy of the Order to all parties to the case and file a proof of service.
- B. Time frame for Complying with Orders:** For cases involving civil violations all sentences shall be accomplished within 30 days after the Respondent has been notified of the Order, unless the Court provides otherwise. For other cases, the Order shall specify timeframes for compliance.

Section 20. Request to Change Order

Parties may request the Court for a hearing to consider changing an Order. To make such a request, a Party shall file a Request to Change Order form with the _____ Tribal Court Clerk. The request shall state the reason the person believes a change should be made. The requesting person shall present new evidence or information to the Court to support the request. Upon receipt of a Request to Change Order, the Clerk shall schedule a meeting with the tribal court judges to decide whether to hear the Request or not. A minimum of two judges is necessary to make this decision. The Court may deny the request, or set a hearing date to consider it and notify all Parties.

Section 21. Proof of Compliance with Orders

Records of proof of compliance with Orders of the Tribal Court shall be kept by the Tribal Court Clerk in the Court files. Parties shall have 30 days to complete the requirements of an Order unless otherwise specified in the Order. Proof that the action has been completed taken shall be given to the Court Clerk within 14 days of completion of the act unless otherwise specified by Court Order. The Clerk shall certify the proof of compliance form. Payment of a fine to the Tribal Court Clerk and a recording of the payment shall be proof in itself of payment. Financial restitution ordered to another party shall be made through the Clerk of the Tribal Court. The Clerk shall report any failures to comply with Tribal Court Orders to the Court. Failure to comply with an Order of the Court in civil violation cases shall be considered contempt of court as described in Section 22 of this Chapter.

Section 22. Contempt of Court

A. Reasons Persons may be found in Contempt of Court: A person may be found in contempt of court if he or she:

1. Violates the Oath of Confidentiality, Fairness, and Impartiality;
2. Fails to fully comply with an Order of the _____ Tribal Court;

3. Lies to the Court; and/or
4. Disrupts Court proceedings.

B. Judges in Contempt: If a Judge is the subject of a contempt of court violation, that Judge shall not participate a decision concerning the matter. The remaining Judges shall determine how to handle the matter based on the facts of the situation.

C. Confiscating Personal Property: The Tribal Court may seize a person's personal property if that person is found in contempt of court by the _____ Tribal Court, for not doing what the _____ Court has ordered. The property shall remain confiscated and under the care of the Tribal Council until the person complies with the Court Order to the satisfaction of the _____ Tribal Court. If the person does not comply with the Court Order within the time limits set by the _____ Tribal Court, _____ Tribal Court may sell the confiscated property after providing at least 30 days notice of the proposed sale to the person.

CHAPTER 3

COURT OF APPEALS

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Section 1. Purpose of the _____ Court of Appeals

The _____ Court of Appeals is established to assure a fair judicial process in the _____ tribal government system. The purpose of the _____ Court of Appeals is not to re-hear cases, but to review cases that are appealed for possible inconsistent application of tribal law and/or violations of due process. The _____ Court of Appeals has discretion whether or not to take a case that is appealed. The _____ Court of Appeals shall take a case after reviewing records on the case from the _____ Tribal Court, reviewing the Appeal, and making a preliminary determination that there is sufficient evidence that there may have been an inconsistent application of tribal law or a violation of due process.

Section 2. Structure of the _____ Court of Appeals

Here's one idea:

The Council shall appoint a panel of three Judges who are adult, resident members of the _____ Tribe, provided that the parties approve the appointments. If the parties cannot agree with the appointment by the Council, a panel of three Judges may be selected by a random drawing from a list of the adult resident tribal members, from which

Council members, parties, and persons with conflicts of interest have been excluded. The provisions for conflict of interest found in Chapter 1, Section 7 also apply to Appellate Judges. Appellate Judges shall take the oath of confidentiality, fairness, and impartiality found in Chapter 1, Section 13 of this Code. The three Judges shall decide among themselves who the Presiding Judge shall be.

Other ideas:

- **If the tribal court is a separate body from the tribal council, the tribal council may be used as the tribal court**
- **The tribe can appoint or elect a pool of appellate court judges**

Section 3. Clerk of the _____ Court of Appeals

The Clerk of the _____ Court of Appeals shall be the same person as the _____ Tribal Court Clerk, unless the _____ Tribal Council specifically designates another person due to availability or to conflict of interest.

Section 4. Beginning an Appeal

A person who wishes to appeal a case may file a Petition for Appeal with the Clerk of the _____ Court of Appeals within 30 days after receiving an Order from the Tribal Court. Appeals filed after 30 days from the receipt of an Order shall not be considered. A person who is appealing a case shall be called the "Appellant."

Section 5. Petition for Appeal

The Petition for Appeal shall state the name and address of the person who is appealing the case, the name of the case, and case number. A copy of any written Order the Appellant is appealing shall be attached to the Petition for Appeal. The Petition for Appeal shall contain a statement of why the Appellant believes that the case should come before the _____ Court of Appeals.

Section 6. Appellate Court Procedure and Decisions

- A. Beginning a Case:** The Clerk shall notify the _____ Tribal Council that an Appeal has been filed. The Clerk shall make copies of the Tribal Court record of the case and the Petition for Appeal for the Court of Appeals. The Clerk shall set a date for the Court of Appeals to review these materials, and to determine if there is sufficient evidence that tribal law may have been inconsistently applied and/or if there may have been a violation of fundamental fairness. If the _____ Court of Appeals decides that there is not sufficient evidence, the decision of the _____ Tribal Court stands, and no hearing is scheduled. If no hearing is held the _____ Court of Appeals shall issue an order to the Appellant stating that.
- B. Setting a Hearing Date:** Once the _____ Court of Appeals has completed a review of the case records and decided that it will hear a case, the Clerk shall set a hearing date and shall give all parties to the case Notice of the hearing. The Notice shall be personally delivered at least 10 days or mailed at least 14 days prior to a hearing, and proof of service filed or noted in the case records. At the hearing, all parties may discuss the issues written in the Appeal concerning whether or not the Tribal Court made a mistake in applying tribal law or a mistake concerning fundamental fairness. The parties may only present new evidence in the appeal if the Appellate Court permits it.
- C. Decisions of the Appellate Court:** After the _____ Appellate Court hears a case, the Presiding Judge or Clerk shall fill out a Decision of Appeal that shall be filed in the Appeals Court record given to the Tribal Court. The Clerk shall assure that all parties in a case receive a copy of the Decision of Appeal, and file a proof of service in the case records.

D. Options for Decisions of the Appellate Court: After finishing a hearing or hearings on a case, the Appellate Court shall take one of the following actions:

1. Uphold the procedures and decision of the _____ Tribal Court;
2. Order the Tribal Court to re-hear the case in a way that is consistent with specific instructions written in the Decision of Appeal; or
3. Dismiss the case in the most serious of circumstances.

CHAPTER 4

TRIBAL YOUTH COURT

STRUCTURE AND PROCEDURES

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Section 1. Purpose of the _____ Tribal Youth Court	

The Youth are the treasures of our Tribe and hope for the future. The purpose of the _____ Tribal Youth Court is to encourage responsible behavior and choices among our Youth, to empower them to participate in decision-making when problems arise among their peers, and to preserve and promote the cultural values and practices of the _____ Tribe. The sentences ordered by the _____ Tribal Youth Court shall be designed to help and heal victims, wrongdoers, and the Village of _____. This Ordinance outlines the basic structure and procedures of the _____ Tribal Youth Court, and is intended to provide a fair and equitable process that is consistent with the _____ Tribal Constitution, tribal ordinances, the requirements of the Indian Civil Rights Act, and compatible with the unwritten laws and values of the _____ Tribe.

Section 2. Authority to Establish and Operate the _____ Tribal Youth Court

The _____ Tribal Council has the authority to establish and operate a tribal court system under its inherent sovereignty as a federally recognized tribe and under Article 9 of the _____ Tribal Constitution. The _____ Tribal Council hereby establishes the _____ Tribal Youth Court as part of the _____ Tribal Court system.

Section 3. Jurisdiction of the _____ Tribal Youth Court

The _____ Tribal Youth Court shall have limited jurisdiction over health, safety, and welfare matters arising among the village Youth between and including the ages of 8 through 18 **[or some other age range]**. Those subjects include use of alcohol and illegal drugs, vandalism, trespass, misuse of firearms and other weapons, traffic violations, theft, assaults, harassment, disorderly conduct, and juvenile curfew. However, the _____ Tribal Court may at any time, initially take, or take over a case when the complexity or seriousness of the situation warrants it.

Section 4. Beginning a Case by Petitioning or Referral

A. Beginning Cases by Petitions: A case may begin by anyone giving a Petition describing an incident, problem, or situation to the _____ Tribal Court Clerk, or to any one of the _____ Tribal Court Judges. Petition forms shall be made

available at the Tribal Office. The person filing a Petition shall be called the Petitioner and may be asked to sit in the Circle on the case. The Clerk shall notify the _____ tribal court judges who do not have a conflict of interest with the case, and those available shall meet to review the petition and decide whether or not the _____ Tribal Youth Court should hold a Justice Circle on the case. If so, they shall proceed to select Circle participants under Section 7(B) of this Ordinance. The Tribal Court Clerk shall schedule a date for the Circle, and notify the parties.

Beginning cases through referrals: A case may begin by a referral from a state court judge or law enforcement officer, or by referral from another tribal court. The Clerk shall notify the _____ tribal court judges who do not have a conflict of interest with the case, and those available shall meet to review the petition and decide whether or not the _____ Tribal Youth Court should hold a Justice Circle on the case. If so, they shall proceed to select Circle participants under Section 7(B) of this Ordinance. The Tribal Court Clerk shall schedule a date for the Circle, and notify the parties.

Section 5. Determining Circle Participants and Leader of the Circle:

Circle participants and the Leader of the Circle shall be chosen by two adult Tribal Court Judges plus two Youth. The two Youth shall be identified on a rotating basis from a list of village Youth, and shall not parties in the case or live in the same household as the wrongdoer coming before the Circle.

Section 6. Tribal Youth Court Clerk

The Court Clerk for the _____ Tribal Court shall also serve as the Clerk of the _____ Tribal Youth Court, unless the Tribal Council specifically designates another person. Duties of the Clerk may include:

- Receiving petitions or referrals filed with the _____ Tribal Youth Court
- Answering the phone calls and receiving mail for the Youth Court
- Maintaining files for the Court and a Court calendar
- Helping to select Circle participants when asked to do so
- Notifying parties and Circle participants of Circle hearings
- Drafting the tribal court order based on the consensus of the Circle for the Leader of the Circle to sign

- Receiving Proof of Compliance with Tribal Youth Court Order forms
- Maintaining records of Youth Court finances

Section 7. Notification of Circle Hearings

The Tribal Court Clerk shall notify the parties being accused of a wrongdoing and Circle participants about the date, time, place of Circle hearings. The notice to the parties shall include a copy of the petition or reason they are being brought to the Justice Circle, and shall state that if the parties believe they are being wrongly accused that they may immediately notify the Tribal Court Clerk who will schedule a hearing before the regular _____ Tribal Court. Notice for Justice Circles shall be given at least three days prior to the Circle date.

Section 8. Justice Circle Tribal Youth Court

- A. Justice Circle:** The _____ Tribal Youth Court shall be conducted through the use of Justice Circles.
- B. Choosing the Circle participants and Circle Leader:** Circle participants and the Leader of the Circle shall be chosen by two adult Tribal Court Judges plus two Youth. The two Youth shall be identified on a rotating basis from a list of village Youth, and shall not parties in the case or live in the same household as the wrongdoer coming before the Circle.
- C. Circle Participants:** In general, participants of Justice Circles shall include all resident Youth between and including the ages of 8 and 18, who are in the Village at the time of the Circle. However, the adult Judges may decide that a particular Youth shall not sit in a specific Circle if it is in the best interest of the Youth or the Circle. The Tribal Court Clerk shall be present at Circle hearings in order to write the decision of the Circle on an Order form. Circles may also include adult community members, parents, teachers, counselors, and any other person who those choosing Circle participants decide should be in the Circle.
- D. Leader’s Role for Opening and Conducting the Circle:**
- The Leader of the Circle shall begin the Circle process by opening the Circle.

- Opening the Circle may include a prayer or special comments from an Elder or someone in the Circle.
- The Leader shall ask the participants to agree to the Oath of Confidentiality and Fairness written in Section 8 of this Ordinance.
- The Leader shall outline the rules of the Circle and ask participants if there are any additional rules they would like to see the Circle go by.
- The Leader shall state what the situation is that the Circle will be hearing.
- The Leader shall begin the Circle by passing the talking stick or other special object.
- The Leader shall be responsible for keeping order in the Circle should that become necessary.
- The Leader shall summarize the highlights of what has been said after each round of discussion.
- The Leader shall state the final consensus of the Circle, and make sure that it is an accurate summary of the Circle's decision, and sign the written Order after the Tribal Court Clerk has prepared it.

E. Basic Rules of the Circle: The most basic rule of the Circle is that persons shall have respect for one another. Only one person shall speak at a time, which shall be the person with the talking stick, or as directed by the Leader of the Circle. What is said in the Circle shall stay in the Circle, and shall not be discussed outside of the Circle.

F. Order of Speaking: Once the Leader has opened the Circle, he or she shall pass the talking stick around the Circle and participants shall speak only when they hold the stick. If a person chooses not to speak, they may pass the stick on to the next person in the Circle. The discussion of the Circle shall continue in this manner unless the Leader directs otherwise.

G. Process of the Circle: The first rounds of the Circle discussion shall be for participants to voice their feelings, opinions, share information, and generally talk about the situation. After these things are thoroughly aired, the Leader shall begin a new round of discussion focusing on appropriate solutions and sentencing.

H. Decision of the Circle: The decisions of the Circle shall be made by consensus. The discussion in the Circle shall proceed until everyone can stand behind the decisions being made. The decision of the Circle shall be written on an Order form by the Tribal Court Clerk and signed by the Leader of the Circle. The decision shall

include who shall do specific tasks that may be decided by the Circle, who shall Mentor the wrongdoer, and specify guidelines for the sentences decided.

- I. **Mentors:** Specific adult mentors shall be assigned to oversee the progress of wrongdoers in completing their sentences. Mentors shall sign off on proof of compliance forms when wrongdoers complete tasks assigned in orders. Mentors shall report to the Tribal Court Clerk if a wrongdoer fails to complete assignments made in orders within the allowed timeframe.

- J. **Follow-up on Circle Orders:** Before a Circle adjourns a session, it shall make a specific plan for how follow-up will be monitored, and may set a date to reconvene the Circle to examine the progress of a case if appropriate. If a party is not complying with an Order of the Circle, the person may be brought before the Circle again, or the case may be referred to the _____ Tribal Court.

Section 8. Oath of Confidentiality and Fairness

Participants of Circles shall agree to the following oath:

“I promise to not discuss what is said in this Circle outside this Circle. I will work towards a fair agreement about what should be done. “

Section 9. Failure to Appear for a Justice Circle

If a wrongdoer was served with a notice about a Circle hearing but fails to show up at for a Hearing, the _____ Tribal Youth Court may make a decision in the absence of the person, send a designated adult to get the person if the person is in the Village, or set another Circle date.

Section 10. Creative Sentencing – Options for Orders

The Circle participants shall design sentences intended to help and heal victims, offenders, and the Village of _____ t. The Circle shall assign specific adult mentors to oversee the completion of sentences. The Circle may choose one or more from the following options:

- A. Community Service Work:** Work sentences shall benefit the needy, the village residents as a whole, the Elders, the victim of an offense, offenders, and/or the youth. Work sentences may include and are not limited to cutting wood, hauling water, shoveling snow, doing laundry, or cleaning homes or yards for needy people or the community hall or church, working in the school, conducting village surveys, helping the VPO or VPSO **[if there is one]**, working with carpenters or other tradesmen in the village, working in the Tribal or City Offices, participating in preparations for community events, building maintenance or repair and cleaning up trash in the Village of _____. Circle participants shall not order work sentences that only benefit themselves personally. Work sentences shall not displace persons employed in the Village or employment opportunities. Work sentences shall be completed within 30 days unless otherwise directed by the Court.
- B. Restitution:** The Circle may order a wrongdoer to make restitution to his or her victims or to the Village. Restitution is defined to include payment of money, repairing property, and apologies. Restitution payment shall go through the _____ Tribal Court Clerk. Non-monetary restitution shall be supervised by the VPSO or by another person designated by the Circle.
- C. Apologies:** The Circle may order wrongdoers to make apologies to victims, parents or guardians, and/or to the whole Village at tribal meetings or gatherings. The Circle may specify if the apologies shall be in writing or oral or both.
- D. Essays and Presentations:** The Circle may order wrongdoers to write essays and/or to give presentations. The order shall specify the topics for such essays and the minimum length. If a presentation is required, the audience such as the Tribal Council, school, or Elders shall be specified.

- E. Organize Events or Fundraisers:** The Circle may order wrongdoers to organize or help organize events for the Youth and village residents organize or fundraisers for restitution or village projects.

- F. Counseling by Professional Counselors, Judges, and Elders:** The Circle participants may counsel wrongdoers in a helpful spirit. The Circle may order professional counseling, as long as the counseling is available in the village, or counseling by specific _____ Elders. The Circle may also order peer counseling by specific peers, or participation in talking circles.

- G. Substance Abuse Awareness Sessions and Talking Circles:** The Circle may order participation in substance abuse awareness sessions or talking circles in the Village.

- H. Traditional Activities:** The Circle may order a person found in violation of an ordinance to participate in seasonally appropriate traditional activities such as fish camps, trapping, hunting, putting up fish or meat, culture camps, preparing Native foods, traditional crafts and Native language activities, and other tribally sponsored or approved traditional activities.

Section 11. Proof of Compliance with Circle Orders and Failure to Comply

If a party is ordered to do something, the party shall file a Proof of Compliance form with the Tribal Court Clerk within 7 days after completion of the order unless otherwise specified by the order. Mentors shall sign off on Proof of Compliance forms. Mentors shall notify the Clerk in the event the person they are mentoring does not complete the requirements of an order. The Clerk may schedule another Circle or report any failures to comply with orders to the regular _____ Tribal Court, schedule a Contempt of Court hearing, and provide notice to the party of the hearing.

Section 12. Appeals

The regular _____ Tribal Court shall serve as the Appellate Court for the _____ Tribal Youth Court. A Youth who wishes to appeal a case may file a

Notice of Appeal with the Tribal Court Clerk within 10 days after receiving an Order from the _____ Tribal Youth Court. Appeals filed after 10 days shall not be considered.

CERTIFICATE OF ADOPTION

This _____ Tribal Judicial Code replaces any previously adopted judicial codes or ordinances adopted by the _____ Tribe. The _____ Tribal Judicial Code was submitted to a vote of the _____ Tribal Council on _____, and was duly (adopted) (rejected) by a vote of _____ for and _____ against, during a regularly scheduled meeting of the _____ Tribal Council for which notice was posted and tribal members had an opportunity to attend and voice their opinions and concerns about this Code.

_____ Chief

_____ Second Chief

_____ Secretary/Treasurer

_____ Council Member

_____ Council Member

_____ Council Member

_____ Council Member