

Title 2

TRIBAL JUDICIAL CODE NORTHWAY TRIBAL GOVERNMENT

Northway, Alaska

Adopted by the Northway Tribal Council

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CHAPTER 1

NORTHWAY TRIBAL COURT STRUCTURE

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Section 1. Authority and Establishment of the Northway Tribal Court

Traditionally, laws and customs of the Northway Tribe were enforced without outside intervention since time immemorial. The Northway Tribal Council has established a tribal court under the inherent sovereignty of a federally recognized Indian tribe, through sovereign powers delegated to the Northway Tribal Council to exercise under Article 9 of the Constitution of the Northway Tribe. This Chapter amends and reorganizes the structure of the Northway Tribal Court and replaces previously adopted Judicial Ordinances adopted in 1983-5 and 1987-1.

Section 2. Purpose of the Northway Tribal Court

The purpose of the Northway Tribal Court is to maintain peace by protecting the health, safety, and welfare of the Northway people and Tribe by addressing problems through a culturally appropriate administration of justice. The Northway Tribal Court shall follow a fair and consistent application of unwritten Northway cultural traditions and written tribal ordinances. This Chapter outlines the structure of the Northway Tribal Court.

Section 3. Jurisdiction of the Northway Tribal Court

The Northway Tribal Court shall be a court of general jurisdiction and have the authority to exercise the judicial authority of the Northway Tribe, known as 'Northway Village' on the list of federally recognized tribes. The Northway Tribal Court shall have the authority to decide whether or not to hear a case filed in or referred to the Court.

Section 4. Northway Tribal Court System

A. Northway Tribal Court Judges: The Northway Tribal Court shall be composed of a pool of 7 judges who shall be appointed by an affirmative vote of at least 5 Northway Tribal Council members. The Judges shall be assigned Seats A – G. Council members may be used as Tribal Court Judges if necessary to fill the quorum requirement of 4 to hear cases. Any Council members used as a Tribal Court Judge shall meet the qualifications listed in Section 4 (B) of this Chapter.

B. Qualifications for Judges: To serve as a Judge of the Northway Tribal Court, a person must be an enrolled Northway tribal member or lineal descendant of a

Northway Base Roll member, 21 years of age or older, physically residing in Northway, and not have felonies and misdemeanors in violation of the Indian Child Protection and Family Violence Prevention Act of 1990 as listed in Title 3, Chapter 1, Section 5 of the Northway Domestic Relations Code. All Northway tribal Judges shall have criminal background checks to assure compliance with the Act.

- C. Appointment of Judges:** Prior to appointing Northway Tribal Court Judges, Notice shall be posted in Northway to solicit interested persons to serve as Judges. Tribal members shall have the opportunity to attend and speak at any Council meeting where Judges are appointed. Persons interested in serving as a Judge shall have a criminal background check. An affirmative vote of at least 5 Council members shall be necessary to appoint Judges.
- D. Term of Office:** Northway Tribal Court Judges shall serve until they resign, move away from Northway, are elected to serve on the Northway Tribal Council, are removed or recalled under Section 11 of this Chapter, are not reconfirmed by the Northway tribal voters, or are otherwise no longer qualified to serve as Northway Tribal Court Judge.
- E. Reconfirmation:** Every two years there shall be a reconfirmation vote by the Northway tribal voters to either retain, or remove Northway Tribal Court Judges. Seats A, B, C, and D shall be up for a reconfirmation vote during even calendar years, and Seats E, F, and G shall be up for a reconfirmation vote during odd calendar years. Records of the Seats and the date for reconfirmation shall be kept in the Northway Tribal Office.
- F. Vacancies:** In the event of a vacancy, the Tribal Council may appoint Judges to fill the Seat by an affirmative vote of at least 5 Council members.
- G. Quorum to Hear Cases:** A minimum of 4 Judges shall be necessary to hear a case.
- H. Husbands and Wives:** Husbands and wives shall not serve on the same cases.
- I. Conflict of Interest:** Judges of the Northway Tribal Court shall remove themselves from hearing a case involving first degree relatives including parents, children, spouses, and siblings, and anyone living in their same home, or anyone with whom a romantic relationship exists, 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. If a Judge refuses to remove his or herself from a case where they have a conflict of interest, the remaining tribal court judges may hold that Judge in contempt of court and temporarily or permanently remove him or her from her position as Judge. This Conflict of Interest shall not apply to Judges who participate in Circle Sentencing.

J. Visiting Judges: The Northway 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 Northway. Such appointment shall be made by an affirmative vote of at least 5 Tribal Council members. Visiting Judges may be Judges from other tribal courts or attorneys certified by Bar Associations to hear cases in situations where the Northway Tribal Judges have significant conflicts of interest, or when a case has extreme legal complications. No visiting judge may hear children's cases if they have ever been convicted in a state, tribal or federal court of a crime involving murder, sexual offences, child abuse, or domestic violence ever in their lives or have had felonies or misdemeanors of moral turpitude under the Indian Child Protection and Family Violence Prevention Act of 1990. 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 Northway Tribe to the fullest extent possible.

K. Intertribal Courts: The Northway 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 Northway Tribe and also in another tribe. In cases where two tribal courts are combined, the tribes shall agree upon whose codes they will use and what appellate mechanism will be used prior to hearing a case jointly. The Northway Tribal Court may also participate in a permanent intertribal court, provided that the Northway Tribal Council determines it is in the best interest of the Northway Tribe to do so, and that the relationship between the Northway Tribal Court System and such intertribal court is clearly described in written documentation.

L. Appellate Court: The Northway Court of Appeals structure and general procedures are described in Chapter 3 of this Title.

M. Specialty Courts: The Tribal Council may establish specialty tribal courts such as a Northway Tribal Circle Court which is described in Chapter 4 of this Title.

Section 5. Presiding Judges of the Northway Tribal Court

After it is determined which Judges shall hear a case, 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 Northway Courtroom in a fair manner and persons in the Court may only speak at the direction of the Presiding Judge.

Section 6. Decision Making by Northway Tribal Court Judges

The Judges of the Northway Tribal Court shall reach decisions through consensus when possible and through a majority vote when consensus is not possible. Judges may refer cases to the Northway Tribal Circle Court, for recommendations and decisions by consensus of such circles.

Section 7. Northway Tribal Court Clerk

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

- Receiving petitions filed with the Northway 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

- Keeping track of the terms of each Judge, notifying the Tribal Council of vacancies, and seeking persons to serve as Northway Tribal Court Judges
- Notifying parties and Judges of hearings
- Recording hearings
- Setting up teleconference calls
- Drafting tribal court orders for Judges based on their decisions, for their review and signature
- Maintaining records of tribal court finances

Section 8. Oath of loyalty, Fairness, Impartiality, and Confidentiality

Northway Tribal Court Judges, the Tribal Court Clerk and any tribal employees or other tribal officials who participate in a case involving minors or other confidential subjects shall take an oath of confidentiality, fairness, and impartiality.

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

Violators of this oath may be subject to removal under Section 11 of this Chapter, subject to termination from employment if they are tribal employees, or otherwise subject to Contempt of the Northway Tribal Court.

Section 9. Judicial Ethics

The Northway Tribal Court Judges have a responsibility through their judicial duties for the health and welfare of the Tribe, tribal members, and the community of Northway. In order to comply with the trust and responsibility given to them, tribal judges are

expected to live their lives with high ethical standards. Judges respect and comply with all applicable laws of the Northway Tribe and with the following ethical guidelines:

- A. Alcohol and Drugs:** Tribal court judges shall not conduct court sessions, attend any meetings, conferences, trainings, or other events where they are representing the Northway while under the influence of alcohol or illegal drugs, or under the influence of prescription drugs that have warnings of impaired driving or judgement.

- B. Conflict of Interest:** Tribal court judges shall not participate in hearings or court decisions when they have a conflict of interest as provided in Section 4 (I) of this Chapter.

- C. Confidentiality:** Tribal court judges shall maintain confidentiality on all cases that come before them.

- D. Nepotism and Favoritism:** Tribal court judges shall not hear cases that fall under the Conflict of Interest provisions of this Chapter and shall not otherwise exert influence over other tribal court judges, witnesses, clerks or Parties to a case to their or their family's benefit. Judges shall not allow family or other relationships to influence their conduct or judgment.

Section 10. Judicial Sovereign Immunity

As a sovereign nation, the Northway Tribe is immune from suit except to the extent that the Tribal Council expressly waives the Tribe's sovereign immunity in writing, according to the Constitution and Codes of the Northway Tribe. Any Northway Tribal Court Judge acting within the scope of his or her authority shall be immune from suit.

Section 11. Forfeitures, Removal, and Recall of Judges

- A. Forfeitures:** A Judge shall forfeit his or her seat if they move away from Northway, get elected to the Northway Tribal Council, are convicted of a crime which would no longer qualify them as a Judge, resigns from their position as a Judge or are removed by the Tribal Council, recalled by the Tribal members, or not reconfirmed by the tribal voters.
- B. Removal:** A Northway Tribal Court Judge may be removed from their position as a Judge by the Northway Tribal Council when they have been found in violation of the Judicial Ethics provided in Section 9 of this Chapter, or gross violation of the written laws of the Northway Tribal Government, when they refuse to step off a case in a situation of conflict of interest, or when the Tribal Council determines that it is in the best interest of the Northway Tribe to do so. The Judge being considered for removal shall be given a written notice with the reason the Council is considering removal at least 10 days prior to a Council meeting where their Seat will be discussed and 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 5 Tribal Council Members. If the Judge is also a Tribal Council member, the Judge shall be relieved of judicial duties, and may be removed from the tribal council under Article 7, Section 1 of the Constitution of the Northway Tribe.
- C. Recall:** A Northway Tribal Court Judge may be recalled by the Northway tribal voters through a petition and election process. A minimum of 35 tribal voters shall sign a petition asking for the recall of a specified tribal court judge and submit it to the Northway Tribal Council. Upon receipt of a valid petition, the Council shall hold a special election within 30 after the receipt of the petition. If the Council fails to hold such election, the tribal members may meet to conduct the election in a meeting, provided that notice has been posted for at least two weeks and that a quorum of at least 35 qualified tribal voting members attend the meeting.

CHAPTER 2

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Section 1. Purpose and Rulemaking Authority of the Northway Tribal Court

The purpose of this Chapter is to provide a fair and equitable process for the operation of the Northway Tribal Court that is consistent with the Constitution of the Northway Tribe, Tribal Codes, the requirements of the Indian Civil Rights Act, and compatible with the unwritten values and practices of the Northway Tribe. The procedures provided in this Chapter shall be the general guidelines and policies of the Northway Tribal Court unless otherwise specifically provided for by the Northway Constitution or in other places in the Tribal Codes. In addition to the procedures outlined in this Chapter, the Northway may

make additional rules of procedure and practices that compliment these procedures, provided that they do not conflict with the procedures provided in this Chapter.

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 Northway for a specific period of time or permanently.

“Clerk” means the primary Clerk of the Northway 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.

“Juvenile delinquency” means antisocial or illegal behavior by children or adolescents, for example bullying and vandalism.

“Parties” means Petitioner(s) and Respondent(s) and any other persons the Northway 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 Northway Court permits it.

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

“Preliminary Conference” is a conference of the Judges held to decide whether or not to take a case, and if they decide to take the case to decide which Judges shall serve on the case or whether the case shall be sent to the Northway Justice Circle.

“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 Northway Tribal Court may also order people to do additional 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. Beginning a Tribal Court Case

Cases may come to the Northway Tribal Court in the following ways:

1. A Petition to Use the Tribal Court is filed with the court clerk
2. A Citation is filed with the court clerk
3. A Referral is made through another tribe, or federal or state entity.
4. The Northway Tribal Government requests a case to be transferred from a state, federal, or tribal court

Upon the receipt of a Petition, Citation, or Referral, the Clerk organize a Preliminary Conference by contacting all available Tribal Court Judges who do not have a conflict of interest with the case, to determine whether or not to take the case. There shall be at least 4 Northway Tribal Court Judges participating in the Preliminary Conference.

A. Decision to Take a Case and Official beginning of a Case: If the decision is made to take the case, the Judges shall decide which 4 Judges shall hear the case if it is to be a panel style hearing. If the Judges decide that the matter should go to a Circle hearing, they shall discuss who shall sit in the Circle and how they shall be notified. The Clerk shall schedule the hearing, and give proper notification

to parties. A case officially begins when the Judges decide to take a case and schedule a hearing. .

- 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:** Prior to hearings, Judges shall meet to go over documents filed with the Court concerning the case.
- D. Scheduling hearings and Notice:** 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 finds that there is good reason to have a hearing at a later time, or a different length of time is specified for Notice for a particular type of case in the Tribal Code.

Section 4. Notice

- A. Notice for Hearings:** Parties shall be given reasonable Notice for all scheduled Northway Tribal Court hearings. The Clerk, or designee, shall personally serve or mail Notice to all Parties. 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 15 days before a hearing except as otherwise provided for in the Northway 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 by speaking with the Party 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 Northway Tribal Court Clerk reasonable Notice that they have asked witnesses to attend a hearing.

Section 5. General Hearing Procedures

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:

1. Ask the Clerk to begin recording
2. State the case number and the date, time, and place of the hearing
3. Ask all persons in the courtroom or at any teleconference sites to state their full names and relationship to the case for the record
4. Ask each of the parties how they were notified of the hearing
5. 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.
6. 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.
7. 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 hire an attorney at their own expense

- Right to request a Change of Order if new evidence or circumstances change in the case
 - Right to appeal the final decision to the Northway Appellate Court within 30 after receiving the written Order
8. State the relationship of the Judges to the Conflict of Interest language for the Northway Tribal Court and ask if parties have a major concern with one or more Judges. If so, the Judges shall determine the course of action to take in response, including replacing a Judge with another Northway Tribal Court Judge.
9. Ask all parties to sign or swear an oath of truthfulness
10. In cases that are closed to the public, all present at the hearing shall be instructed to maintain confidentiality outside the Northway courtroom proceedings.
11. The Presiding Judge shall then read the Petition to the Court
12. **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. After opening the hearing,

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. Recording Hearings:** The Court shall keep a record of all cases consisting of a tape recording or written notes of all hearings, all original documents filed with the Court, and all Orders entered by the Court.
- D. Recesses During Hearings:** The Court may recess during any type of court hearing.
- E. 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 17 of this Chapter.
- F. Decision in Writing** All decisions made by the Northway Tribal Court shall be written on Order forms unless otherwise specified in the Tribal Code.

Section 6. 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. A minimum of 4 judges is necessary to conduct the emergency hearing, and may be connected telephonically if they are not physically able to meet in the Northway Courtroom under short notice. Orders issued during emergency hearings shall be written and of limited duration of up to 20 days for temporary protective orders, 72 hours for emergency custody of children, or as otherwise stated in the tribal code.

Section 7. Rights of Parties

Parties appearing before the Northway 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:

1. 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
2. Right to copies of Petitions, Citations, and court generated documents such as Orders
3. Opportunity to be heard
4. Opportunity to present witnesses and evidence
5. Opportunity to question any witnesses
6. Right to a fair hearing
7. Right to hire an attorney at their own expense

8. Right to request a Change of Order if new evidence or circumstances change in the case

9. Right to Request a Change of Order

10. Right to appeal the final decision to the Northway Appellate Court within 30 days after Party has received a final written Order

Section 8. 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 the Court may reschedule the hearing.

Section 9. Advisors to the Northway Tribal Court

The Northway Tribal Court may confer with Elders, Council members, Attorneys, or any other appropriate consultants during the hearings of the Northway Tribal Court.

Section 10. Attorneys in the Northway Tribal Courtroom

Parties have the right to hire attorneys at their own expense. Attorneys may submit written documents to the court. If attorneys are present or telephonically connected with the Northway Tribal Courtroom, they may speak with their clients and may not speak directly to the Court without the express permission of the Court.

Section 11. Testimony and Associated Costs

Witnesses may testify in person, or, with the Court's permission, by telephone. The Northway 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 Northway tribal government.

Section 12. Tribal Court Finances

- A. Accounting:** The Tribal Council shall establish a separate line item account for the finances of Northway Tribal Court.
- B. Fees:** The Northway 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 Northway 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 Northway Tribal Court, and the Clerk shall issue a receipt.

Section 13. Evidence and Affidavits

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

Section 14. Search Warrants

The Northway 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 Tribal Police Officer, (TPO) or other person deputized 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 2 Northway Tribal Court Judges shall be necessary to issue a search 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 15. Juvenile Delinquency

- 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 as status offenses due to their age and that a Northway Tribal Circle Court may be established and operated under its own written procedures.
- B. Parents or Guardians Attending Hearings:** In cases involving juvenile delinquency, written notification shall be given to the child of an upcoming hearing and written notification also given to parents or guardians. The Northway 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 16. Written Orders, Compliance, Request to Change Order

- A. Written Orders:** All Orders made by the Northway 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 the timeframes specified on the Orders. For cases involving domestic relations, all requirements and mandates shall be accomplished within the timeframes specified on Orders and is case plans.
- C. 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 shall be given to the Court Clerk within 14 days of completion 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 this Chapter.
- D. 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 Northway 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 17. 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 Northway Tribal Code sets a specific penalty for a particular civil violation, the Northway Tribal Court Judges, either by themselves or through a Justice Circle, shall determine the specific Orders for a particular case. The Court may choose from, but are not limited to, the following options:

- A. Fines:** Fines for violation of a Tribal ordinance shall not exceed \$15,000 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 Northway. 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 Northway 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 Northway Tribal Code, is subject to impound. To get a vehicle out of impound, the owner shall a fee as set by a schedule of the Northway Tribal Court, and impound fees shall be increased each time a person has had their vehicle impounded. 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 Northway Tribal Government is not liable for any damages to vehicles while they are impounded.
- D. Banishment:** An Order of temporary or permanent banishment shall only be used to protect the health and safety of the Village and/or Village residents. 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.
- E. 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 or treatment for domestic violence. 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.
- F. Restitution:** The Tribal Court may order an offender 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 Northway Tribal Court Clerk. Non-monetary restitution shall be supervised by a person as designated by the Northway Tribal Court.
- G. Counseling by Judges and Elders:** The Judges of the Northway Tribal Court may counsel persons brought before them in a helpful spirit. The Northway Tribal Court may bring Elders or any other appropriate persons into the Northway

Courtroom to counsel people. The Court may Order professional counseling, as long as the counseling is available in the village, or counseling by specific Elders or mentors. The Court may also order peer counseling by specific peers.

- H. Apologies:** The Court may order offenders to make apologies to victims, parents or guardians, and/or to the whole Village at tribal meetings or gatherings. The Court may specify if the apologies shall be in writing or oral or both.
- I. Essays and Presentations:** The Court may Order Offenders 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, Elders, or at the Annual Tribal Meeting shall be specified.
- J. Organize Events or Fundraisers:** The Court may order offenders to organize or help organize events for the Youth and village residents organize or fundraisers for restitution or village projects.
- K. Traditional Activities:** The Northway Tribal Court may Order a person to participate in seasonally appropriate traditional activities such as fish camps, trapping, hunting, culture camps, and other tribally sponsored or approved traditional activities.
- L. Other Restorative Justice Sentence:** The Northway Tribal Court may create any reasonable and equitable sentence that is intended to be restorative, and fitting to the offense committed, that will provide accountability for the offender, and restitution and healing to the victim, offender, and community of Northway.
- M. Tribal Probation:** The Court may Order a period of Tribal Probation within which the offenders must check in on a regular basis with specific tribal staff, refrain from drinking alcohol or using illegal drugs, and other conditions such as mandatory attendance at school if the person is of school age.

Section 18. 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 Northway Tribal Court;
 3. Lies to the Court; and/or
 4. Disrupts Court proceedings.
- B. Judges in Contempt:** Judges shall be in contempt of court for violating the reasons listed in Part A of this Section. Additionally, Judges may be found in Contempt of Court if found in violation of the Judicial Code of Ethics for the Northway Tribal Court. The Tribal Council shall determine how to handle the matter based on the facts of the situation, and may remove a Judge temporarily or permanently from the Northway Tribal Court by a minimum of 5 votes of the Tribal Council, under procedures outlined in Chapter 1, Section 11 (B) of this Title.
- D. Confiscating Personal Property:** The Tribal Court may seize a person's personal property if that person is found in contempt of court by the Northway Tribal Court, for not doing what the Northway 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 Northway Tribal Court. If the person does not comply with the Court Order within the time limits set by the Northway Tribal Court, Northway Tribal Court may sell the confiscated property after providing at least 30 days' notice of the proposed sale to the person.
- E. Refer for prosecution under State or Federal Law:** If a person fails to comply with an Order of the Northway Tribal Court on a case deferred from the State, or

Federal Government, the case may be referred to State or Federal court for prosecution.

CHAPTER 3

NORTHWAY COURT OF APPEALS

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Section 1. Purpose of the Northway Court of Appeals

The Northway Court of Appeals is established to assure a fair judicial process in the Northway Tribal Government System. The purpose of the Northway Court of Appeals is not to re-hear cases, but to review cases for possible inconsistent application of tribal law and/or violations of due process and fundamental fairness. The Northway Court of Appeals has discretion on whether or not to take a case on appeal. The Northway Court of Appeals shall only take a case after reviewing records on the case from the Northway Tribal Court, reviewing the Appeal, and making a preliminary determination that there is sufficient reason to believe that there may have been an inconsistent application of tribal law or a violation of due process and fundamental fairness.

Section 2. Structure of the Northway Court of Appeals

The Northway Court of Appeals is the Northway Tribal Council. All Council members who meet the qualifications for serving as a Northway Tribal Court Judge listed in Chapter 1, Section 4 (B) of this Title, and who do not have a conflict of interest as listed in Chapter 1, Section 4 (I). The Appellate Court shall consist of a minimum of at least 4 Judges. If there are not enough Tribal Council members who qualify to hear an appellate case, the Northway Appellate Court may use Visiting Judges as specified in Chapter 1, Section 4 (J) of this Title, provided that at least one of the Judges shall be a Northway Tribal Council member. The Judges shall decide among themselves who shall serve as the Presiding Judge for each appellate case.

Section 3. Clerk of the Northway Court of Appeals

The Clerk of the Northway Court of Appeals shall be the same person as the Northway Tribal Court Clerk, unless there is a conflict of interest and another person is specifically designated to be the Clerk by the Northway Tribal Council.

Section 4. Filing an Appeal

- A. Who Can File an Appeal:** Only Party to a case as recognized by the Northway Tribal Court may file an Appeal.

- B. 30 Day Filing Time Limit:** A Party who wishes to appeal a decision may file a Notice of Appeal with the Clerk of the Northway Court of Appeals within 30 calendar days after the Party has received a final written Order from the Northway Tribal Court. Appeals filed after 30 days from receipt of the Order shall not be considered.

- C. Notice of Appeal Information:** The Notice of Appeal shall state the name and address of the Party who is appealing the case, the name of the case, and case number. The Notice of Appeal shall contain a statement of why the Appellant believes that the case should come before the Northway Court of Appeals. A copy

of the written Order the Appellant is appealing shall be attached to the Notice of Appeal.

Section 5. Reviewing an Appeal and Determining to hear, or Not to Hear an Appeal

- A. Preliminary Meeting:** When an Appeal is filed with the Northway Tribal Court, there shall be a Preliminary Meeting consisting of all Tribal Council members who do not have a conflict of interest with the case as specified in Chapter 1, Section 4 (I) of this Title, and who meet the qualification to serve as a Northway Tribal Judge as specified in Chapter 1, Section 4 (B) of this Title. The meeting shall take place within 10 business days of receiving an Appeal. The Judges shall review the records on the case from the Northway Tribal Court and the contents of the Appeal. The Judges shall then make a determination that there is sufficient reason to believe that there may have been an inconsistent application of tribal law or a violation of due process and fundamental fairness.
- B. Deciding Not to Hear an Appeal:** If the Judges determine that there is not sufficient reason to believe that there may have been an inconsistent application of tribal law or a violation of due process and fundamental fairness, they shall decide not to hear the Appeal. The Clerk shall notify the Appellant and Parties in the case in writing.
- C. Deciding to Hear an Appeal and Notice:** If the Judges determine that there is sufficient reason to believe that there may have been an inconsistent application of tribal law or a violation of due process and fundamental fairness, they shall hold a hearing on the Appeal. The Clerk shall schedule the hearing to be held within 30 calendar days of the decision, and shall provide Notice of the hearing to the Appellant and all Parties. The Notice shall be personally delivered at least 7 days or mailed at least 14 days prior to a hearing, and proof of service filed or noted in the case records.

Section 6. Appellate Court Hearing Procedures

The Appellate Court shall follow the same hearing procedures as outlined for the Northway Tribal Court in Chapter 2 of this Title.

Section 7. Appellate Court Decisions and Options

A. Decisions of the Appellate Court: After the Northway Appellate Court hears a case, the Appellate Court designee shall write a Decision of Appeal that shall be certified by the Appellate Court and filed in the Northway Tribal Court records. The Clerk shall make sure that all Parties in a case receive a copy of the Decision of Appeal, and shall file a proof of service in the case records.

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

1. Uphold the procedures and decision of the Northway Tribal Court; or
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
NORTHWAY TRIBAL CIRCLE COURT
STRUCTURE AND PROCEDURES

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Section 1. Purpose of the Northway Tribal Justice Circle

The purpose of the Northway Tribal Justice Circle is to encourage responsible behavior and choices among our tribal members, residents of Northway, and youth, to empower our people to participate in decision-making and problem solving when problems arise, and to preserve and promote the cultural values and practices of the Northway Tribe. The sentences designed by the Northway Tribal Justice Circle shall be designed as

restorative, to help and heal victims, offenders, the Northway Tribe and Village of Northway. This Chapter outlines the basic structure and procedures of the Northway Tribal Justice Circle, and is intended to provide a fair and equitable process that is consistent with the Northway Tribal Constitution, Tribal Codes, the requirements of the Indian Civil Rights Act, and compatible with the unwritten laws and values of the Northway Tribe.

Section 2. Authority to Establish and Operate the Northway Tribal Circle Court

The Northway 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 Northway Tribal Constitution. The Northway Tribal Council hereby establishes the Northway Tribal Justice Circle as part of the Northway Tribal Court system.

Section 3. Jurisdiction of the Northway Tribal Justice Circle

The Northway Tribal Justice Circle shall hear cases referred to it for sentencing involving juvenile delinquency, status offenses, civil violations, misdemeanors by persons of any age as so listed in the Northway Tribal Code or referred from the governments of a state, the federal government, or another from another tribe.

Section 4. Beginning a Case by Petitioning or Referral

- A. Beginning Cases by Petitions:** A case may begin by anyone filling out a Petition describing an incident, problem, or situation and giving it to the Northway Tribal Court Clerk. 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, plus any 4 of the Northway Tribal Court Judges shall review the petition and decide whether or not the Northway Tribal Court should hold a Justice Circle on the case. If so, they shall contact the offender to agree to go to a Circle rather than to take the case to trial through Tribal, State, or Federal Court. If the offender agrees, the Clerk shall schedule a date, time and place for the Circle, and notify the parties and other Circle participants.
- B. 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 tribe. The

Northway Tribal Court Clerk shall set up a Preliminary Conference with at least 4 Northway Judges to review the referral and decide whether or not the Northway Tribal Justice Circle should be held. If they decide that a Justice Circle should be held, the Clerk shall work with the State if the case is a State case in scheduling a date, time and place for the Circle, and notify the parties and other Circle participants.

Section 5. Tribal Justice Circle Clerk

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

- Receiving petitions or referrals filed with the Northway Justice Circle and bringing them to the Judges for review
- Answering phone calls and receiving mail for the Justice Circle
- Maintaining files for the Circle and a Justice Circle calendar
- Helping to review petitions or referrals and 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 Northway Tribal Court
- Receiving Proof of Compliance with Sentencing from the Justice Circles
- Maintaining records of Justice Circle finances

Section 6. Notification of Justice Circles

The Tribal Court Clerk shall notify the Parties about the date, time, and place of Justice Circles. 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 Northway Tribal Court or forward the case for prosecution under the State of Alaska or Federal Court System. Notice for Tribal Justice Circles shall be given at least 7 days in advance.

Section 7. General Procedures of the Northway Justice Circle

- A. Circle Facilitator:** The Facilitator of each Northway Justice Circle shall be chosen by the Northway Tribal Court Clerk in consultation with at least 4 Northway Tribal Court Judges.
- B. Circle Participants:** In general, participants of Justice Circles may include family, friends, teachers, council members, tribal court judges, law enforcement, residents and youth who are in the Village at the time of the Circle. Victims may decide if they wish to participate in the Circle or not. The Tribal Court Clerk, or another specifically designated person, shall be present at Justice Circles in order to write the decision of the Circle on an Order form.
- C. Facilitator's Role for Opening and Conducting the Circle:**
- The Facilitator of the Circle shall begin the Circle process by opening the Circle.
 - The Facilitator may assign other persons to assist in the Facilitation of the Circle by emphasizing various aspects such as the severity of the situation, impact on the community, importance of maintain confidentiality, or any other issue that would be helpful to emphasize in that situation.
 - Opening the Circle may include a prayer or special comments from an Elder, the Facilitator, or someone in the Circle.
 - The Facilitator shall ask the participants to agree to the Oath of Confidentiality and Fairness written in Section 8 of this Chapter.
 - The Facilitator 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 Facilitator shall explain the general process of the Circle, introductions, talking about the situation, then talking about the solution/sentencing
 - The Facilitator shall emphasize the severity of the situation and what the consensus might be if the case was tried in the State of Alaska Court System.
 - The Facilitator shall state what the situation is that the Circle will be hearing.
 - The Facilitator shall begin the Circle by passing the talking stick or other special object.
 - The Facilitator shall be responsible for keeping order in the Circle should that become necessary.

- The Facilitator shall summarize the highlights of what has been said after each round of discussion.
- The Facilitator shall state the final consensus of the Circle, and make sure that it is an accurate summary of the Circle's recommendations
- The Facilitator shall give the recommendations from the Circle to the Tribal Court Clerk to draft in Order form for the Tribal Court to certify.

D. 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 Facilitator of the Circle. Personal matters shared in the Circle shall stay in the Circle, and shall not be discussed outside of the Circle.

E. Order of Speaking: Once the Facilitator 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 Facilitator directs otherwise.

F. 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 Facilitator shall begin new rounds of discussion focusing on appropriate solutions and sentencing recommendations.

G. 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 recommendations being made. The recommendations of the Circle shall be written on paper for all to see. The recommendations may include who shall do specific tasks that may be decided by the Circle, who shall Mentor the Offender, and specify guidelines for the sentences decided.

H. Mentors: Specific adult mentors shall be assigned to oversee the progress of offenders in completing their sentences. Mentors shall sign off on proof of compliance forms when offenders complete tasks assigned in orders. Mentors shall report to the Tribal Court Clerk if an Offender fails to complete assignments made in Orders within the allowed timeframe.

M. Tribal Probation: The Circle may recommend that a person be placed on tribal probation and check in with the tribal probation officer who may also be the tribal social worker or tribal court clerk. The recommendation may include things such as checking in with the probation officer on a regular basis for counseling; abstain from alcohol and illegal drugs, or mandatory attendance at school if the person is of school age.

J. Follow-up on Circle Recommendations: Before a Circle adjourns, it shall make recommendations for appropriate sentencing to be given to the Northway Tribal Court Clerk. The Clerk shall draft an Order with specific sentencing with a plan containing specific activities, timeframe guidelines, who shall monitor each of the assigned activities, and proof of compliance with the Order. The Northway Tribal Court Judges shall approve and sign off on the Order, provided that they may make changes to the Order before signing. If an Offender is not complying with an Order of the Circle, the person may be brought before the Circle again, ordered to appear before the Northway Tribal Court., or the case may be referred to the State of Alaska or Federal Court System for prosecution.

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 on the consequences for the situation before us. “

Section 9. Failure to Appear for a Justice Circle

If an offender was served with a Notice about a Circle hearing but fails to show up for a hearing, the Northway Tribal Justice Circle may discuss the case and make sentencing recommendations in the absence of the person, or set another Circle date.

Section 10. Restorative Sentencing – Consequences for Wrongful Behavior

The Circle participants shall design sentences intended to help and heal victims, offenders, and the village of Northway. Sentences shall include specific activities and

timeframes for compliance and shall not just leave the choice of activities up to an offender. Sentencing Options are listed in Chapter 2, Section 17 of this Title.

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

If an offender is ordered to do something, the offender shall sign a Proof of Compliance form for the Tribal Court Clerk or assigned Tribal Probation Officer within the timeframes specified in the Order. Assigned 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 Northway Tribal Court, schedule a hearing, and provide notice to the party of the hearing. Failure to comply with a Northway Justice Circle Order may result in the charges being filed in the State of Alaska or Federal Court System for prosecution.

Section 12. Appeals

The Northway Tribal Appellate Court shall serve as the Appellate Court for the Northway Justice Circle. A person who wishes to appeal a case may file a Notice of Appeal with the Tribal Court Clerk within 30 days after receiving an Order from the Northway Tribal Circle.