

Title 2

NORTHWAY JUDICIAL CODE

Northway, Alaska

Adopted by the Northway Tribal Council on August 9th, 2022

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CHAPTER 1

NORTHWAY TRIBAL COURT

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Section 1. Authority and Reorganization Northway Tribal Court

Traditionally, laws and customs of the Northway Tribe were enforced and practiced by the Northway people without outside intervention. In modern times the Northway Tribal Council established and operated a tribal court under the inherent sovereignty of a federally recognized Indian tribe, under any delegated or implied authority by the state and federal Governments, and under Article 9 of the Northway Constitution. Upon adoption of this Code, the Northway Tribal Council hereby reorganizes the Northway Tribal Court, replacing all previous ordinances and codes on the subjects in this Title, including Title 2, Northway Tribal Justice Code adopted on October 13, 2015.

Section 2. Purposes of the Northway Tribal Court

The purposes of the Northway Tribal Court are to address internal affairs, domestic relations, and to protect the health, safety, and welfare of the Northway people and Tribe by addressing problems through a fair and consistent application of written tribal codes and unwritten Northway cultural values and traditions.

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 powers of Northway Village. The Northway Tribal Court

Judges shall have the authority to decide whether or not they shall hear a case filed with the Court, except when Citations are filed with the Court. The Court shall hear all cases initiated by Citations made by Officers of the Northway Department of Public Safety.

The Northway Tribal Court may develop and adopt written rules for practices and procedures, provided that they do not conflict with the Northway Tribal Constitution or Tribal Codes.

Section 4. Northway Tribal Court Judges

A. Judges of the Northway Tribal Court:

1. 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.
2. 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 3 to hear cases.
3. 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 shall be:

1. 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 or misdemeanors in violation of the Indian Child Protection and Family Violence Prevention Act as amended; or
2. Be at least 20 years old. And, have physically resided in Northway for at least 20 years immediately prior to an appointment and have children or grandchildren who are lineal descendants of the Northway Tribe. They shall not have felonies or misdemeanors in violation of the Indian Child Protection and Family Violence Prevention Act as amended.

C. Criminal Background Checks: All Northway tribal Judges shall have criminal background checks to assure compliance with the Indian Child Protection and Family Violence Prevention Act as amended.

D. Appointment of Judges:

1. Prior to appointing Northway Tribal Court Judges, notice shall be posted in Northway to solicit interested persons to serve as Judges.
2. Tribal members shall have the opportunity to attend and speak at any Council meeting where Judges are appointed.
3. Persons interested in serving as a Judge shall have a criminal background check.
4. An affirmative vote of at least 5 Council members shall be necessary to appoint Judges.

E. Term of Office: Northway Tribal Court Judges shall serve until they resign, move away from Northway, are removed or recalled under Section 10 of this Chapter, are not reconfirmed by the Northway tribal voters, or are otherwise no longer qualified to serve as Northway Tribal Court Judge.

F. Reconfirmation of Judges:

1. Every two years there shall be a reconfirmation vote by the Northway tribal voters to either retain, or remove Northway Tribal Court Judges.
2. 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.
3. Records of the Seats and the date for reconfirmation shall be kept in the Northway Tribal Office.

G. 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.

H. Quorum to Hear Cases: A minimum of 3 Judges shall be necessary to hear a case.

I. Husbands and Wives: Husbands and wives shall not serve on the same cases.

Section 5. Presiding Judges of the Northway Tribal Court

1. 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.
2. An alternate Presiding Judge shall be chosen in the same manner.
3. The Presiding Judge shall continue to be the Presiding Judge for subsequent hearings on their cases whenever possible.
4. 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. Judicial Ethical Standards

All Judges and Court personnel of the Northway Tribal Court 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 of their positions, tribal Judges and Court personnel are expected to live their lives with high ethical standards, and shall follow these guidelines:

- A. Comply with Applicable Laws:** Judges and Court personnel shall respect and comply with all applicable laws of the Northway Tribe, as well as applicable state and federal laws.
- B. Alcohol, Marijuana, and Illegal Drugs:** Tribal Court Judges and personnel shall not participate in court hearings, attend any meetings, conferences, trainings, or other events where they are representing the Northway Tribe while under the

influence of alcohol, marijuana or illegal drugs. Additionally, Tribal Court Judges shall not hear cases when under the influence of prescribed pain or other medication which specifies that persons shall not drive motor vehicles while under its influence.

C. Conflict of Interest:

1. **Relatives and Relationships:** 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.
2. **Personal Interest:** Judges shall remove themselves from any cases in which they have any significant, direct, personal financial or other interest.
3. **Cannot be Fair:** Judges shall remove themselves from hearing a case in which they cannot be fair for any reason.
4. **Contempt of Court:** If a Judge refuses to remove his or herself from a case where they have a conflict of interest, the Northway Tribal Council may hold that Judge in contempt of court and temporarily or permanently remove him or her from her position as Judge.
5. **Circle Sentencing:** This Conflict of Interest shall not apply to Judges who participate in Circle Sentencing.

D. Confidentiality:

1. Judges and court personnel shall maintain confidentiality on all cases that come before them.
2. Confidential information received in the course of judicial duties includes information that is not public and is not authorized to be made public.

3. Confidential information includes, but is not limited to information on pending cases that is not already a matter of public record and information concerning the work product of any Judge, Clerk, or other court personnel including, but not limited to files, notes, papers, discussions, and memorandums.

E. Ex Parte Communication: Judges and court personnel shall not initiate, permit, consider, or in any way discuss cases with any persons outside the Northway Tribal Courtroom, or disclose any information regarding cases through any private or public forums outside the Courtroom.

F. Nepotism and Favoritism: Tribal court Judges shall not hear cases that fall under the conflict of interest provisions of this Section and shall not otherwise exert influence over other tribal court Judges, witnesses, Clerks or Parties to a case to their friends or their family's benefit. Judges shall not allow family or other relationships to influence their conduct or judgment.

G. Violation of Ethical Standards:

1. Judges who are in violation of these Ethical Standards may be found in contempt of court and subject to forfeiting their seat or removal by the Northway Tribal Council.
2. Court personnel may be subject to disciplinary action or termination.

Section 8. Oath of Fairness, Impartiality, and Ethical Standards

All Judges and court personnel serving in the Northway Tribal Court shall take an oath of fairness, impartiality and ethical standards prior to assuming duties as Judge or court personnel.

"I _____, do solemnly swear and affirm that I will uphold the Constitution, Codes, Resolutions, Customs and Values 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 follow ethical standards and maintain confidentiality of the Court and will not discuss the proceedings of cases outside of the chambers of the Northway Tribal Courtroom.”

Judges who violate this oath may be subject to forfeiture of their seat, or removal by the Council. Court personnel may be subject to disciplinary action or termination.

Section 9. Judicial Sovereign Immunity

As a sovereign nation, the Northway Tribe enjoys immunities from suit available to all federally recognized tribes, except to the extent that the Northway 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 or court personnel acting within the scope of his or her authority shall have judicial immunity from suit.

Section 10. Forfeitures, Removal, and Recall of Judges

A. Forfeitures: A Judge shall forfeit his or her seat if:

1. They move away from Northway;
2. Are convicted of a crime which would no longer qualify them as a Judge;
3. Resign from their position as a judge;
4. Are removed by the Tribal Council;
5. Are recalled by the tribal voters; or
6. Are 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 7 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.

1. 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.
2. The decision to remove a Judge shall be affirmed by a minimum of 5 Tribal Council Members.
3. 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:

4. A Northway Tribal Court Judge may be recalled by the Northway tribal voters through a petition and election process.
5. 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.
6. Upon receipt of a valid petition, the Council shall hold a special election within 30 after the receipt of the petition.
7. 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.

Section 11. Visiting Judges

The Northway Tribal Court may use Visiting Judges when it is necessary and in the best interest of the Tribe to do so. The Northway Tribal Court may use Judges from other tribal courts, intertribal courts, state court Judges, or attorneys licensed by the Alaska or other Bar Associations to hear cases in situations where the Northway Judges have significant conflicts of interest, or when a case has extreme legal complications.

- A. Qualifications for Visiting Judges:** Visiting Judges shall sign a statement certifying that they have never been convicted in a state, tribal, or federal court of a crime involving murder, sexual offences, or child abuse ever in their lives or have had felonies or misdemeanors under the Indian Child Protection and Family Violence Prevention Act as amended.

- B. Comply with Ethical Standards:** Visiting Judges shall agree in writing to comply with the Judicial Ethical Standards provided in this Chapter.

- C. Financial Agreement in Writing:** When Visiting Judges are used, there shall be an agreement in writing made as to the terms of any financial arrangements made.

- D. Applying the Laws of the Northway Tribe:** Visiting Judges shall also agree in writing that they shall apply the laws of the Northway Tribe to the fullest extent possible.

- E. One Judge from the Northway Tribal Court:** When Visiting Judges serve on a case there shall be at least one Judge from the Northway Tribal Court, if possible, to make a quorum of 3. If there are no Northway Tribal Court Judges who are able to serve on a case, the Tribal Court Clerk shall make a note in the court record for that case stating the circumstances.

- F. Serving as Visiting Judges:** When Northway Tribal Court Judges are asked to serve as Visiting Judges in other Tribal Courts, there shall be an agreement in writing about any financial agreements made, whose codes and rules shall be used, and any other special arrangements that need to be made.

Section 12. Intertribal Courts

- A. Temporary 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. The Court shall draft an agreement in writing regarding the relationship with the other tribe, such as which tribes' laws shall apply if joining jurisdictions together, and what shall be used for appeals in the event that the case is be appealed.
- B. Permanent Intertribal Courts:** The Northway Tribal Court may 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. The relationship between the Northway Tribal Court and such intertribal court shall be clearly described in written documentation.

Section 13. Tribal Court Administration

- A. Ethical Standards:** All Northway Tribal Court personnel shall follow the judicial ethical standards provided in Section 7 of this Chapter.
- B. Tribal Court Personnel:** The Council may hire court personnel as needed. Each position shall have a job description outlining the basic duties of their position.
- c. Tribal Court Records**
- 1. Maintaining Files:** The Court shall maintain case files for all proceedings of the court including electronic, hard copy, or digital recordings of Court hearings. The Court shall establish a policy for court records retention.
 - 2. Access to Records:**
 - a.** Only the Court Judges who served on that case and current tribal court Clerk shall have access to the Court records without specific authorization of the Northway Court.

- b. Parties shall have access to the court generated documents pertaining to their specific cases.
- c. The Northway Appellate Court shall have access to all records involving cases that are appealed to it.

3. Tribal Court Records Security:

- a. All hard copies of tribal court records shall be kept behind at least 2 locks such as a locking file cabinet within a locked office.
- b. Files shall not be left on desks or other places where they are not secure.
- c. Tribal Court files shall not leave the Northway Tribal Office.
- d. All electronic files shall be password protected and access provided only to the Tribal Court Clerk and others who may be specifically authorized by the Council.

D. Tribal Court Finances. The financial affairs of the Tribal Court and its personnel shall comply with the Northway financial policies.

CHAPTER 2

NORTHWAY TRIBAL COURT

GENERAL PROCEDURES

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

A. Purpose: 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, due process, and the requirements of the Indian Civil Rights Act, and compatible with the customary practices and values of the Northway Tribe.

B. General Guidelines: The procedures provided in this Chapter shall be the general guidelines for the Northway Tribal Court unless otherwise specifically provided for in other places in Northway tribal codes.

C. Court Rules: In addition to the procedures outlined in this Chapter, the Northway Tribal Court may make additional policies and rules of procedure that compliment but do not conflict with the Constitution or other Tribal Codes or Policies.

Section 2. Definitions

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

“Emergencies” are matters where harm or damage to a person or property may likely occur if the Court had to wait. The standard of proof the Judges shall use to determine if a situation is an emergency is ‘probable cause’. In matters that are not emergencies the Judges shall use the standard of ‘preponderance of the evidence.’

“Parties” are those persons the Northway Tribal Court Judges specifically identify as Parties to a case. The Court may, or may not, chose to make Petitioners Parties to a case. Parties to a case are entitled to notice of hearings, all documents filed with the court, and court generated documents.

“Petitioner” is the person or entity filing a Petition to Use the Tribal Court.

‘Preliminary conference’ is a conference of the Judges held in a number of circumstances such as making decisions on whether or not to take a case, deciding which judges shall hear a case, whether a written motion shall be considered, and whether a case shall be sent to a justice circle.

‘Preponderance of the evidence’ This is the standard of proof needed to make decisions and orders when situations are not emergencies. It requires that the evidence presented convinced the Judges that something was more likely than not to have happened. The evidence provided reflects that the evidence presented that something happened and is of greater weight or more convincing than the evidence offered in opposition to it.

‘Probable cause’ This is the standard of proof needed to make decisions when emergency situations exist. It means that upon review of a petition, affidavit, and/or testimony, a reasonable person would believe that emergency action is needed to protect people and/or property.

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

“Respondent” is the person involved in a violation of a Northway tribal code brought before the Court by a Petitioner or against whom a Citation is filed.

Section 3. How Cases Come Before the Court

Cases may come before the Northway Tribal Court in a variety of ways including:

1. A Petition to Use the Tribal Court is filed with the court Clerk;
2. A Citation by a Northway public safety officer is filed with the court Clerk;
3. A referral or diversion is made through another tribe, or federal or state entity; or
4. The Northway Council requests a case to be transferred from a state, federal, or tribal court.

Section 4. Deciding Whether or not to take a Case

A. Emergencies:

1. Upon the receipt of a Petition to Use the Northway Tribal Court where danger or harm to a person or property is likely imminent, the Clerk or alternate designee shall contact all available Tribal Court Judges and hold a preliminary conference with at least 3 Judges to decide if they wish to take the case and issue an emergency order.
2. The conflict of interest provision of the Judicial Ethics section of this Chapter do not apply to emergency decisions, but judges for subsequent hearings on the case shall comply with the conflict of interest guidelines and quorum requirements for subsequent hearings on the case.
3. The Northway Tribal Codes may provide further guidance on actions that may or may not be taken by tribal staff in emergency situations without the consent of the Court.

B. Non-Emergencies: In non-emergency circumstances, at least 3 Northway Tribal Court Judges who do not have a conflict of interest with a potential case may hold a preliminary conference on a case-by-case basis to consider petitions, referrals, or transfers from another jurisdiction, to determine whether or not to take the case.

C. Decision to Take a Case:

1. If the decision is made to take the case, the Judges shall decide which Judges shall hear the case and appoint a Presiding Judge to serve the entirety of the case.
2. If the Judges decide that the matter should go to a Circle, they shall direct how the Circle shall be organized.

3. The Clerk shall schedule the hearing or Circle, and give proper notification to Parties.

D. Decision Not to Take a Case: If the Judges decide not take a case, the Clerk shall write a letter of denial to the Petitioner, or referring entity, within 10 business days after the decision is made.

E. Deferring a decision to Take a Case: In some situations, the Northway Tribal Court Judges may defer a decision to take a case when more information is needed or other such circumstances apply. These cases shall be considered 'pending' and Petitioners shall be notified in writing with an explanation.

F. Citations: The Northway shall accept all cases made by Citations issued by Officers recognized through the Northway Department of Public Safety.

Section 5. When a Case Begins

A case formally begins when the Judges decide to take a case and the Petition or other documents requesting the Northway Tribal Court to hear a case are stamped 'accepted' by the Court Clerk. Cases where a Citation has been issued begin when an Officer of recognized through the Northway Department of Public Safety files a Citation with the Tribal Court.

Section 6. Notice

A. Notice for Hearings:

1. Parties shall be given reasonable notice for all scheduled Northway Tribal Court hearings.
2. Notice may be provided through the most appropriate method for each case. Preferred methods are certified mail, return receipt requested or through personal service. Notice may also take place telephonically, through email, social media, or through newspaper legal sections when necessary.

3. The Clerk, or designee, shall be responsible for serving notice to all Parties.
4. Northway subject matter codes may specify the length of time notice shall be given for specific subjects and types of hearings.
5. If the codes are silent on notice requirements, notice shall be personally delivered, emailed, provided through social media at least 10 business days, or, hard copies mailed at least 15 business days before a hearing.
6. Proof of service for all notices 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, or through the most appropriate method for that case 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: Parties 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. The Clerk shall be responsible for serving notice to witnesses the Court summons.

Section 7. Recording Hearings

The Court shall keep a record of all cases by digital recording or written notes of all hearings.

Section 8. Opening Hearings

Presiding Judges may use a script appropriate for each type of hearing that they preside over. The Presiding Judge may ask that a prayer or words from an Elder be given prior to

opening the hearing. The Presiding Judge may follow these guidelines when opening a hearing:

1. Ask the Clerk to begin recording by digital recording or written notes;
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;
6. If a Party was notified but is not at the hearing, the Court may either proceed with the hearing or reschedule;
7. Determine if there are any Parties who should have been notified but were not notified;
8. If it is determined that there is a Party that was not notified, the hearing shall be rescheduled to allow reasonable notification;
9. State the rights of all Parties including the:
 - a. Right to be notified of court hearings;
 - b. Right to copies of documents submitted to the Court and court generated documents;
 - c. Opportunity to be heard;
 - d. Opportunity to present witnesses and evidence;
 - e. Opportunity to question any witnesses;
 - f. Right to hire an attorney at their own expense;
 - g. Right to a fair hearing;
 - h. Right to request a Change of Order if new evidence or circumstances change in the case; and
 - i. Right to appeal the final decision to the Northway Appellate Court within 30 days after receiving the written order
10. 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 any 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;

11. Ask all Parties to sign or swear an oath of truthfulness;
12. In cases that are closed to the public, all present at the hearing shall be instructed to maintain confidentiality outside the Northway courtroom proceedings; and
13. The Presiding Judge shall then read the Petition to the Court.

Section 9. Opening Hearings for Civil Violations:

In cases of contested civil violations, the Court shall follow the provisions provided in Section 8 of this Chapter and then ask the Respondent how he or she pleads: guilty, not guilty, or no contest. The Presiding Judge shall make sure the Respondent understands the pleas. The Respondent shall say what his or her plea is.

- A. Guilty or No Contest:** If the Respondent pleads guilty or no contest, the Judges may question the Respondent and any participants in the courtroom to gain information that may help them create an appropriate sentence during their deliberations. They may also counsel the Respondent at that time.
- B. Not Guilty:** 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.
- C. Silent:** If the Respondent is present but will not say anything, the Court shall enter a plea of not guilty.

Section 10. General Hearing Procedures

The Presiding Judge shall generally maintain order in the courtroom and direct the order of events.

A. General Order:

1. The Presiding Judge may first ask to hear from the Petitioner and then from the Respondent.
2. Petitioners and Respondents may present witness and evidence in the order chosen by the Presiding Judge.
3. Each Party shall be permitted to question each other and all witnesses. Judges may question anyone in the Courtroom.
4. When the Judges determine that all Parties have had sufficient opportunity to speak and present all testimony and evidence they feel is relevant to the case, they shall ask everyone to leave the courtroom while they deliberate.

B. Telephonic Connections: If anyone is connected to the hearing by teleconference, they shall state their name prior to speaking, and any visual evidence presented to the court shall be described. They shall also disclose the name of any other person who may be in the room with them.

C. Presenting Witnesses and Evidence: 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 and review all presented evidence. Judges may determine that witnesses may only be in the courtroom while they are speaking to the Court.

D. Judges Questioning: Judges may question anyone in the courtroom or on teleconference.

E. Concluding Hearings: When the Judges determine that all Parties have had sufficient opportunity to speak and present all testimony and evidence they feel is relevant to the case, they shall ask everyone to leave the courtroom while they deliberate.

F. Deliberations and Decision Making: Judges shall take all testimony and evidence presented into consideration during their deliberations and make their

decision by consensus if possible. If consensus is not possible, the decision may be made by majority vote.

G. Decisions in Writing: All formal decisions made by the Northway Tribal Court regarding cases shall be written on Order forms unless otherwise specified in the Tribal Code.

Section 11. Emergency Hearings

A. Definition: Emergency hearings shall involve matters where harm or damage to a person or property may likely occur if the Court had to wait.

B. Hearing and Orders upon Probable Cause: In cases of emergencies, the Court may hold a hearing and/or issue emergency orders upon a determination that probable cause has been provided to the Court.

C. Notice for Emergency Hearings: 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.

D. 2 Judge Minimum: A minimum of 2 Judges is necessary to conduct the emergency hearing and/or issue an emergency order. The hearing may be connected telephonically if Judges are not physically able to meet in the Northway Courtroom under short notice.

E. Orders of Short Duration: Orders issued during emergency hearings shall be written and of limited duration as stated in the subject matter tribal codes.

Section 12. Rights of Parties

Parties appearing before the Court shall have the following rights, which include those provided by the Indian Civil Rights Act of 1969 as amended:

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

Section 13. Open or Closed Courtroom

The Northway Courtroom involving domestic relations cases and/or children under 18 shall be closed to persons other than the Parties and those approved by the Northway Tribal Court, except in Circles. Civil violation hearings involving persons 18 and over shall be open unless specifically closed by the Northway Tribal Court.

Section 14. Recesses

The Court may recess during any type of court hearing.

Section 15. 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 16. Attorneys in the Northway Tribal Courtroom

1. Parties may hire attorneys at their own expense;
2. Attorneys may submit written documents to the Court;
3. Attorneys shall be allowed into the Northway Tribal Courtroom in person or telephonically;
4. Attorneys may speak with their clients, but may not speak directly to the Court without express permission by the Northway Tribal Court Judges; and
5. Attorneys may be asked to leave the Courtroom if they are disrupting the court proceedings.

Section 17. Motions

1. Motions are a request to the Court to ask for an action to be taken or decision to be made.
2. All motions to the Northway Tribal Court shall be in writing.
3. Motions may be made by Parties, attorneys for Parties, or by persons asking to be made a Party to a case.
4. The Northway Tribal Court Clerk shall receive motions and shall schedule a meeting of the Judges serving on that case to consider them.
5. The Judges may decide whether to grant the motion, to deny the motion, or to schedule a hearing on the motion.

Section 18. Witnesses and Associated Costs

1. The Northway Tribal Court may summon witnesses to testify at the hearings by issuing a Summons to Testify. Any associated costs with the testimony of witnesses summoned by the Court shall be paid by the Northway Tribal Government.
2. Parties may ask their own witnesses to testify on their behalf. Parties shall notify the tribal court in advance of witnesses they intend to call upon during a hearing, and, shall pay any associated costs with the witnesses' testimony.
3. Witnesses shall take an oath of truthfulness.
4. Witnesses may testify in person, or, with the Court's permission, by telephone.
5. Witnesses may or may not be asked to only be in the courtroom during their testimony.

Section 19. Evidence and Affidavits

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

Section 20. Tribal Court Orders

1. All Orders made by the Northway Tribal Court shall be written on Order forms unless otherwise specified by Code.
2. All written Orders shall be filed in the case records.
3. 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.

Section 21. Request to Change Order

1. Parties may request the Court for a hearing to consider changing an Order.
2. To make such a request, a Party shall file a Request to Change Order form with the Northway Tribal Court Clerk.
3. 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.
4. 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.
5. A minimum of 3 Judges is necessary to make this decision.
6. The Court may deny the request, or set a hearing date to consider it and notify all Parties.

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. Fails to fully comply with an Order of the Northway Tribal Court;
2. Lies to the Court;
3. Disrupts Court proceedings;
4. Violates the Oath of Confidentiality, Fairness, and Impartiality, and/or
5. Violates the Northway Judicial Ethical Standards.

B. Parties or Others in the Courtroom in Contempt: Penalties for being found in contempt of court may result in orders to leave the courtroom, change in orders for their case, or other penalty as deemed suitable by the Judges to the case.

C. Failure to Comply for Civil Violation: Failure to comply with an Order of the Court for a civil violation may result in confiscating of personal property, referral to the

State for prosecution, or withholding tribal services with the exception of health or general assistance services.

D. Confiscating Personal Property:

1. 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.
2. The property shall remain confiscated and under the care of the Tribal Court until the person complies with the Court Order to the satisfaction of the Northway Tribal Court.
3. 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 calendar day 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 diverted from the state, or federal government, the case may be referred to state or federal courts for prosecution when appropriate.

F. Withholding Tribal Services: If a person fails to complete a Court Ordered sentence for being found in Contempt, the Northway Tribal Council may withhold tribal services, with the exception of health services and general assistance.

G. Judges in Contempt:

1. Judges shall be in contempt of court for violating the reasons listed in A of this Section.
2. Additionally, Judges may be found in Contempt of Court if found in violation of the Judicial Ethical Standards in Chapter 1, Section 7 of this Code.
3. The Tribal Council shall determine how to handle the matter based on the facts of the situation.

4. Judges may be temporarily or permanently removed from the Northway Tribal Court by a minimum of 5 affirmative votes of the Tribal Council, under procedures outlined in Chapter 1, Section 10 of this Code.

H. Tribal Employees in Contempt: Tribal employees shall be in contempt of court for violating any of the reasons listed in A of this Section. Employees may be subject to disciplinary action under the Northway personnel policy, including termination of employment.

CHAPTER 3

NORTHWAY COURT OF APPEALS

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Section 1. Purpose and Jurisdiction of the Northway Court of Appeals

The Northway Court of Appeals is established to assure that a fair judicial process is provided by the Northway Tribal Court. The Court shall determine if there were

violations of due process, inconstant application of Northway law, or if the Court lacked jurisdiction to hear a case. The Northway Court of Appeals shall have jurisdiction to hear appeals from the Northway Tribal Court, unless restricted by express provision of the Northway Tribal Codes.

Section 2. Composition of the Northway Court of Appeals

A. Tribal Council: The Northway Tribal Council shall serve as the Northway Court of Appeals, except that Council members may not serve on the Appellate Court under these circumstances:

1. They served on the case that is under Appeal;
2. They have a conflict of interest with the case being Appealed as described in Chapter 1, Section 7 of this Code; or
3. They have been convicted of crimes listed in the Indian Child Protection and Family Violence Prevention Act of 1990 as amended.

B. Panel of 4: The Northway Court of Appeals shall be composed of a panel of 4 Judges.

C. Visiting Judges: If there are not 4 Council members who are available and qualified to hear an Appeal, the Council may use Visiting Judges as specified in Chapter 1, Section 11 of this Code.

Section 2. Appellate Court Case Review

The Court of Appeals shall not re-hear cases, but shall review Petitions to Appeal and the Tribal Court Records of cases that have been appealed. The review shall look for:

A. Violations of Due Process: The Court of Appeals shall determine if there may or may not have been a failure to give sufficient notice to Parties, whether

Parties had sufficient opportunity to be heard, and whether the Tribal Court provided fair and impartial Judges.

B. Inconsistent Application of Tribal Law: The Court of Appeals shall determine if the laws of the Northway Tribe were or were not properly interpreted or applied in a consistent manner.

C. Lack of Jurisdiction to Hear a Case: The Court of Appeals shall determine if the Tribal Court has or does not have jurisdiction to hear the case being appealed.

Section 4. 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. Under those circumstances the Council shall designate another person to serve as the Appellate Court Clerk on that case.

Section 5. Filing a Petition to Appeal

A. Who May Appeal a Final Order of the Tribal Court: Only a Party recognized by the Northway tribal court may file an Appeal. A person who files an Appeal shall be called the Appellant.

B. What Orders may be Appealed: Only final Orders issued by the Northway Tribal Court may be Appealed.

C. 30 Calendar Day Timeframe to File a Petition to Appeal:

1. A Party who wishes to Appeal a final decision of the Northway Tribal Court may file a Petition to 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.

2. Appeals filed after 30 calendar days from receipt of the Order shall not be considered, unless there are extenuating circumstances that Council deems sufficient to allow an Appeal after 30 calendar days.
3. Under no circumstances may the Council allow an Appeal to be filed more than 60 calendar days after a final Order has been received.

D. Information on the Petition:

1. The Petition to Appeal shall state the name and address of the Party who is appealing the case, the name of the case, and case number.
2. The Petition to Appeal shall contain a statement of why the Appellant believes that the case should come before the Northway Court of Appeals. The Appeal should describe how the Northway Tribal Court made a mistake in providing due process, did not appropriately interpret or apply tribal law, or does not have jurisdiction to hear their case.
3. A copy of the written Order the Appellant is appealing shall be attached to the Notice of Appeal.

Section 7. Appellate Court Procedures

- A. Receiving and Notifying the Court and Parties of an Appeal:** When a Party has filed a Petition to Appeal with the Tribal Court Clerk, the Clerk shall notify the Tribal Court that a Petition has been filed. The Clerk shall notify all Parties that an Appeal has been filed and shall give a copy of the Appeal to all Parties.
- B. Seating the Appellate Court Judges and Clerk:** The Tribal Council shall determine who the 4 Judges for the case shall be, and if Visiting Judges need to be

used. The Council shall also determine if the Tribal Court Clerk shall serve on the appellate case or whether they should select an alternate Clerk.

C. Court Case Records: The Clerk shall assemble all documents, recordings, and transcripts of the case being Appealed. The Clerk shall prepare the records for review by the Appellate Court Judges.

D. Reviewing an Appeal: The 4 Appellate Judges shall meet to discuss the Appeal and the tribal court record of the case.

E. Accepting an Appeal:

1. After reviewing the Appeal and Court Record, the Appellate Court shall accept appeals only if there is sufficient reason to believe that the Petitioner's due process rights were violated, that the Tribal Court inappropriately or inconsistently applied the Northway Tribal Law; or that the Northway Tribal Court lacked jurisdiction to hear their case.
2. The Clerk shall then notify all Parties of their decision.
3. A hearing shall be set within 30 business days of their decision.
4. Notice to all Parties regarding an appellate hearing shall be given at least 20 business days in advance.

F. Denying an Appeal: After reviewing the Appeal and Court Record, the Appellate Judges may deny an Appeal if they decide that due process was not violated, tribal law was appropriately applied, and that the Northway Tribal Court had jurisdiction over the case. The Clerk shall then notify all Parties of their decision and file a record of their decision in the case file.

Section 7. Appellate Hearing Procedures

If the Appellate Court accepts an Appeal, the Court shall follow the same hearing procedures as outlined for the Northway Tribal Court in Chapter 2 of this Code.

Section 8. Options for the Appellate Court

The Northway Court of Appeals may:

- A. Let the Tribal Court Decision Stand:** If the Appellate Court determines that there was no violation of due process, no inconsistent application of tribal law, and that the Tribal Court had jurisdiction to hear the case, the Appellate Court shall dismiss the Appeal and the Tribal Court decision shall stand; or
- B. Send the Case Back to the Tribal Court:** If the Appellate Court determines that there was a violation of due process, or inconsistent application of tribal law the Appellate Court shall send the case back to the Tribal Court to rehear. The Appellate Court shall give specific instructions to the Tribal Court to correct the violation of due process or inconsistent application of tribal law; or
- C. Dismiss the Case:** If the Appellate Court finds that the Tribal Court lacked jurisdiction to hear the case, the Appellate Court may dismiss the case. The Appellate Court may only dismiss a case if it finds that the Tribal Court lacked jurisdiction.

Section 9. Appellate Court Decisions After Hearings

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.

CHAPTER 4
NORTHWAY JUSTICE CIRCLES

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Section 1. Northway Justice Circles

- A. Purposes:** The purposes of Northway Justice Circles are to encourage responsible behavior and choices among our tribal members and residents of Northway, to empower our people to participate in decision-making and problem solving when problems arise, and to preserve and promote the cultural practices and values of the Northway Tribe.

- B. Restorative Justice:** The decisions and sentences designed by the Northway Justice Circle shall be designed as restorative, to help and heal victims, offenders, families, the Northway Tribe and Village of Northway.

- C. Fair Process:** This Chapter outlines the basic procedures of Northway Justice Circles and is intended to provide fair and equitable processes that are consistent with the Tribal Constitution, Tribal Codes, the requirements of the Indian Civil Rights Act, and compatible with the traditional customs and values of the Northway Tribe.

Section 2. Jurisdiction and Use of the Northway Justice Circle

- A. Jurisdiction:** The Northway Justice Circle shall hear cases referred to it by the Northway Tribal Court.

- B. Restorative Sentencing:** Justice Circles may be used for restorative 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.

- C. Resolve Disputes:** The Justice Circle may be used to resolve disputes.

- D. Family Mediation:** The Justice Circle may be used for family mediation.

Section 3. Deciding to use Justice Circles

The Northway Tribal Court may decide to use the Justice Circle on a case by case basis. An affirmative vote of at least 2 Tribal Court Judges shall be necessary to decide to use the Justice Circle.

Section 4. Justice Circle Clerk

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

Section 5. Notification of Justice Circles

A. Notifying Parties: The Tribal Court Clerk shall notify the Parties about the date, time, and place of Justice Circles. Notice shall be given at least 10 days in advance, unless the Court finds good reason to hold a Circle in less than 10 days.

B. Content of Notification:

1. The notice to the Parties shall include a copy of the Petition or reason they are being brought to the Justice Circle.
2. For civil violations, the notice shall state that if the Party believes they are being wrongly accused that they may immediately notify the Tribal Court Clerk who shall schedule a hearing before the regular Northway Tribal Court or forward the case for prosecution under the State of Alaska or Federal Court System if appropriate.

C. Notifying Circle Participants: The Clerk shall also notify specific persons the Court identifies who they wish to sit in the Circles, or, notify the Northway Community if the Court wishes the Circle to be open for all residents to participate.

Section 6. Circle Facilitator and Participants

A. Circle Facilitator: The Facilitator of each Northway Justice Circle shall be chosen by the Northway Tribal Court Clerk in consultation with at least 2 Northway Tribal Court Judges.

B. Circle Participants:

1. 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.
2. Victims may decide if they wish to participate in the Circle or not.
3. 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. They may choose whether or not to participate in the Circle.

Section 7. General Procedures of Northway Justice Circles

1. The Facilitator of the Circle may begin the Circle process by opening the Circle which may include a prayer or special comments from an Elder, the Facilitator, or someone in the Circle.
2. The Facilitator may 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 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.
3. The Facilitator may then ask the participants to agree to an Oath of Confidentiality and Fairness and to agree to the rules of the Circle.

4. The Facilitator may explain the general process of the Circle, introductions, talking about the situation, then talking about the solution/sentencing
5. The Facilitator may emphasize the severity of the situation and what the consensus might be if the case was tried in the State of Alaska Court System.
6. The Facilitator shall state what the situation is that the Circle will be hearing.
7. The Facilitator shall begin the Circle by passing the talking stick or other special object. 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.
8. The Facilitator may conduct various rounds of the Circle such as introductions, general thoughts and advice regarding the situation, specific sentencing recommendations or solutions to the situation, and closing of the Circle.
9. The Facilitator may summarize the highlights of what has been said after each round of discussion.
10. The Facilitator or other designee may write sentencing suggestions or solutions to the situation on a flipchart for all to see.
11. The Facilitator shall summarize the final consensus of the Circle, and make sure that it is an accurate representation of the Circle's recommendations
12. The Facilitator shall give the recommendations from the Circle to the Tribal Court Clerk or Judge to draft in Order form for the Tribal Court to certify.

Section 8. Follow-up on Circle Recommendations

A. Civil Violations:

1. **Specific Sentencing Order:** The Clerk or Judge shall draft an Order with a plan containing specific sentencing activity, timeframe guidelines, who shall monitor each of the assigned activities, and proof of compliance with the Order.
2. **Signing the Order:** At least 2 Tribal Court Judges shall approve and sign off on the Order, provided that they may make changes to the Order before signing.
3. **Mentors:** Specific adult mentors may be assigned to oversee the progress of offenders in completing their sentences. Mentors shall sign off on proof of compliance forms when an offender completes 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
4. **Failure to Comply:** 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.

B. Dispute Resolution: For Circles used in dispute resolution, the recommendations of the Circle shall be forwarded to the Tribal Court which may draft a plan or Order for resolving the dispute.

C. Family Mediation: For Circles used in family mediation, the recommendations of the Circle shall be forwarded to the Tribal Court which may draft a plan or Order for resolving the family issues.

Section 9. Failure to Appear for a Justice Circle

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

Section 10. Proof of Compliance with Circle Orders and Failure to Comply

- A. Proof of Compliance Form:** If an offender is ordered to do something, the offender shall sign a Proof of Compliance form for the Tribal Court Clerk or assigned mentors within the timeframes specified in the Order.

- B. Notify the Court for failure to Comply:** The Court Clerk or assigned mentors shall notify the Court in the event the person they are monitoring does not complete the requirements of an Order within the specified timeframes.

- C. Follow-up Circle or Hearing:** The Clerk may schedule another Circle or a Court hearing and provide notice to the Party of the hearing.

- D. Forwarding Charges:** 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 11. 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 calendar days after receiving a written Order from the Northway Tribal Court.