

DRAFT- FOR PUBLIC COMMENT ONLY

NORTHERN CHEYENNE TRIBE LOGO HERE

TITLE II - NORTHERN CHEYENNE TRIBAL COURTS CODE

Table of Contents

Chapter 1 General Provisions.....	1
Chapter 2 Jurisdiction	1
Chapter 3 Trial Court.....	1
Chapter 4 Appellate Court.....	3
Chapter 5 General Appellate Court Procedures.....	6
Chapter 6 Full Appeals.....	7
Chapter 7 Immediate Appeals.....	8
Chapter 8 Removal of Judges.....	9
Chapter 9 Constitutional Court.....	13

DRAFT- FOR PUBLIC COMMENT ONLY

CHAPTER 1. GENERAL PROVISIONS

SECTIONS

Sec. 2.1.1 Courts Established.....	1
Sec. 2.1.2 Northern Cheyenne Court	
Fees	1

2.1.1 Courts Established

There is hereby established the Northern Cheyenne Court, constituting the Judicial Branch of Tribal government, comprised of the Trial Court, Appellate Court, Constitutional Court, and Office of the Court Clerk.

The terms “Northern Cheyenne Reservation Judicial System,” “Northern Cheyenne Reservation Court,” “Reservation Court,” and the like, which may at times appear in other Titles of this Law and Order Code, shall be construed as being synonymous with the Northern Cheyenne Court or Judicial Branch.

2.1.2 Northern Cheyenne Court Fees

A. Fees associated with filing matters, motions, and appeals shall be set by the Chief Judge(s) of the Northern Cheyenne Trial Court and the Northern Cheyenne Appellate Court. Such fees shall be publicly posted in the Northern Cheyenne Court office.

B. Fee amounts shall be reviewed every two (2) years by the Chief Judge(s) and adjusted as necessary.

CHAPTER 2. JURISDICTION

SECTIONS

Sec. 2.2.1 Trial Court.....	1
Sec. 2.2.2 Appellate Court.....	1
Sec. 2.2.3 Constitutional Court.....	1

2.2.1 Trial Court

The Trial Court is the trial level court of general civil and criminal jurisdiction, including without limitation jurisdiction over matters arising under the Tribe’s Juvenile Code, Domestic Relations Code, and Heirship and Probate Code.

2.2.2 Appellate Court

The Appellate Court has the exclusive jurisdiction to hear appeals and other authorized requests for appellate review of Trial Court decisions.

2.2.3 Constitutional Court

The Constitutional Court shall have the exclusive jurisdiction to review and declare unlawful legislative actions of the Tribal Council and any claim explicitly authorized by the Tribal Council.

CHAPTER 3. TRIAL COURT

SECTIONS

Sec. 2.3.1 Trial Court Judges.....	1
Sec. 2.3.2 Term of Office.....	2
Sec. 2.3.3 Election of Trial Court Judges.....	2
Sec. 2.3.4 Trial Court Judge Qualifications..	2

2.3.1 Trial Court Judges

The Trial Court shall have at least two full-time Trial Judges, including a Chief Trial Judge and one or more Associate Trial Judge(s). Each Trial Court Judge shall serve until his or her Term of Office expires and thereafter until the election and swearing-in of his or her successor. The person whose Term has expired may be re-elected to office.

DRAFT- FOR PUBLIC COMMENT ONLY

2.3.2 Term of Office

There shall be a four (4) year Term of Office applicable to all Judges. Each Judge shall serve their term of office and the period thereafter until his or her successor has been duly sworn in.

2.3.3 Election of Trial Court Judges

All Trial Court Judges shall be selected through a primary election followed by a general election, both conducted at-large, and otherwise generally conducted on the same conditions and under the same procedures as those applicable to the selection of the Tribal President and Vice President.

If the office of Trial Judge becomes vacant due to death, resignation, removal, or other cause, there shall be an at-large primary followed by an at-large general election to fill the vacancy for the remainder of the Term of Office, provided that, if the vacancy in office occurs when there are less than 180 days remaining in the Term of Office, the Tribal Council may choose not to hold the election, whereupon the Tribal Council shall appoint a qualified person to the office.

2.3.4 Trial Court Judge Qualifications

Trial Court Judges must meet the following qualification criteria:

- A. Must be at least thirty (30) years of age.
- B. Must be an enrolled member of the Tribe.
- C. Must be domiciled on the Reservation throughout the Term of Office.
- D. Must be a high school graduate or hold a G.E.D. certificate or its equivalent.

E. Must have never been convicted of a felony in any tribal, federal, or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure. The foregoing shall not include convictions which have since been vacated.

F. Must have not been convicted of a Misdemeanor Involving Moral Turpitude in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure within the ten (10) year period preceding the election to office. The foregoing shall not include convictions which have since been vacated.

G. Must not have been removed as a judge on a Complaint for Removal within the three (3) year period preceding (A) the date set for the primary election (and through the date of the general election) or (B) the date of appointment to office, as the case may be.

H. Must not be a party in pending litigation in the Northern Cheyenne Courts at the time of filing for election to office.

I. Must be familiar with the Tribal Constitution, the Tribal Law and Order Code, civil and criminal procedures, the Indian Civil Rights Act, the Indian Child Welfare Act, and federal Indian law generally.

J. Must have the ability and competence to:

1. Conduct efficient and organized legal proceedings;
2. Research and apply applicable law;
3. Timely decide or otherwise resolve disputes; and
4. Set forth clear and reasoned decisions and orders in writing.

DRAFT- FOR PUBLIC COMMENT ONLY

K. Must be able to deal effectively with people in highly emotional, adversarial, and/or confrontational situations.

L. Familiarity with the Cheyenne language is desirable but not mandatory.

CHAPTER 4. APPELLATE COURT

SECTIONS

Sec. 2.4.1 Composition of the Appeals Court.....	3
Sec. 2.4.2 Term of Office.....	3
Sec. 2.4.3 Selection of Appellate Court Judges.....	3
Sec. 2.4.4 Appellate Judge Qualifications...	3
Sec. 2.4.5 Compensation.....	4
Sec. 2.4.6 Conflict of Interest.....	4
Sec. 2.4.7 Administrative Responsibilities...	5
Sec. 2.4.8 Clerks Duties.....	5
Sec. 2.4.9 Court Sessions.....	5

2.4.1 Composition of the Appeals Court *[As amended by Ords. 27(88), 22(89), DOI 3(98)]* *[As stated in 1A-5-2]*

The Appellate Court shall have at least three part-time Appellate Judges, including a Chief Appellate Judge and at least two Associate Appellate Judges.

2.4.2 Term of Office

There shall be a four-year Term of Office for all Judges, ending with the first Regular Presidential election occurring after appointment.

Each Appellate Judge shall serve until his or her Term of Office expires and thereafter until the appointment and swearing-in of his or her successor or the assignment of a Judge Pro Tem to temporarily fill the position pending the appointment of a successor. The

person whose term has expired may be re-appointed to office.

2.4.3 Selection of Appellate Court Judges *[As stated in Title 1A, Chapter 11]*

A. Appointment. All Appellate Judges shall be appointed by the Tribal President with the concurrence of the Tribal Council.

B. Expiration of Term. Upon expiration of the Term of Office, a successor Appellate Judge shall be appointed for the four-year Term described in section 2.4.2.

C. Death, Resignation, or Removal. Upon the death, resignation or Removal of an Appellate Judge, a successor shall be appointed to fill the vacancy. The appointee shall serve for the remainder of the former Appellate Judge's Term of Office.

2.4.4 Appellate Judge Qualifications

Each Appellate Judge must be a graduate of an accredited law school. Membership in a state bar is desirable, but not mandatory.

Appellate Court Judges must meet the following qualifications:

A. Age. All Appellate Judges must be at least 30 years old.

B. Tribal Membership. At least one Appellate Judge must be an enrolled member of the Tribe.

C. Education and Bar Membership. Every Judge must be a high school graduate or hold a G.E.D. certificate or its equivalent. At least two Appellate Judges must have graduated from an accredited law school and be a member of a state bar, which credentials are desirable, but not mandatory, for all other Appellate Judges.

DRAFT- FOR PUBLIC COMMENT ONLY

D. No Felony Conviction. A Judge must never have been convicted of a felony in any tribal, federal, or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure. The foregoing shall not include convictions which have been vacated.

E. No Serious Misdemeanor Conviction Within 10 Years. Within the 10 year period preceding the date set for the primary election or the date of appointment to office, as the case may be, and at all times thereafter through the end of the Term of Office, a Judge must not have been convicted of a Misdemeanor Involving Moral Turpitude in any tribal, federal, or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure. The foregoing shall not include convictions which have been vacated.

F. No Removal Within Three Years. Within the three-year period preceding (A) the date set for the primary election (and through the date of the general election) or (B) the date of appointment to office, as the case may be, a candidate for Judge must not have been removed as a Judge on a Complaint for Removal under section IA-17-3.

G. Not a Party to Tribal Court Proceedings. At the time of filing for election to office or of appointment to office, as the case may be, a candidate for Judge must not be a plaintiff or defendant in any civil or criminal action pending in the Northern Cheyenne Court.

H. Legal Knowledge. All Judges must be familiar with the Tribal Constitution, the Tribal Law and Order Code, civil and criminal procedures, the Indian Civil Rights

Act, the Indian Child Welfare Act, and federal Indian law generally.

I. Legal Skills. All Judges must have ability and competence to: conduct efficient and organized proceedings; research and apply applicable law; timely decide or otherwise resolve disputes; and set forth clear and reasoned decisions and orders in writing.

J. Deal with Conflict. All Judges must be able to deal effectively with people in highly emotional, adversarial, and confrontational situations.

K. Familiarity with Cheyenne Language. It is desirable, but not mandatory, that all Judges have some familiarity with the Cheyenne language.

2.4.5 Compensation [*As amended by Ords. 22(89), DOI 3(98)*][As stated in 1A-15-3]

The compensation for Appellate Judges shall be set by the Tribal Council.

Except for cases where the Tribal Council, acting under section 1A-12-1, converts a full-time Judgeship to a part-time Judgeship, the compensation of a Judge may not be reduced while the Judge is in office, unless the reduction is part of a program which provides for comparable and proportionate reductions in compensation for the President, Vice President, and all Tribal Council members.

2.4.6 Conflict of Interest [*As amended by Ords. 22(89), DOI 3(98)*]

No Appellate Judge shall hear or decide an appeal if that Judge:

1. Decided any material matter in the Trial Court proceedings;
2. Is related by blood or marriage to the appellant or appellee,

DRAFT- FOR PUBLIC COMMENT ONLY

if such relationship is in the first degree, such as brother, sister, parent, spouse, child, stepchild, foster child, adopted child, former spouse, grandparent, great grandparent, uncle or aunt (whether by blood or marriage), or a first cousin; or

3. Would benefit personally and to a much greater degree than members of the general public of the Northern Cheyenne Reservation from any particular disposition of the appeal; or

4. Would otherwise be in a position where his or her impartial judgment might be significantly affected.

An Appellate Judge shall disqualify himself in any appellate case in which he has a substantial interest, or as otherwise provided for above, or where, in that Judge's opinion, it would be otherwise improper to sit on appeal.

A party to an appeal may, in accordance with the above provisions, file an affidavit of prejudice with the Appellate Court stating facts and reasons for the belief that prejudice exists. The affidavit must be filed within five (5) days of the designation of the Appellate Judge to hear the appeal.

If two other Appellate Judges agree prejudice in accordance with the above provisions exists, another Judge will be appointed to hear the case.

A party may file only one such affidavit of prejudice in any case.

2.4.7 Administrative Responsibilities [As stated in 1A-5-3 and 1A-5-4]

The Chief Appellate Judge shall have overall administrative authority over the Appellate Court and the Constitutional Court, including without limitation authority to assign cases among the Appellate Judges, designate *en banc* Appellate panels, designate Constitutional Court panels, assign Judges Pro Tem to Appellate Court or Constitutional Court proceedings as provided in section 1A-16-3, and manage the calendars of the Appellate Court and the Constitutional Court.

2.4.8 Clerk's Duties [As stated in 1A-7-1 and 1A-7-2]

Clerk's Office.

There shall be an Office of the Court Clerk serving the entire Northern Cheyenne Court. The Office of the Court Clerk shall be administered by the Court Clerk, subject to the supervision of the Chief Trial Judge.

Clerk's Duties.

The Court Clerk shall have administrative authority over the Office of the Court Clerk and its staff, and overall responsibility for: maintenance of all court files, exhibits, evidence and records; receipt of all filing fees, fines, and other revenues; preparation and transmission of all records on appeal and transcripts to the Appellate Court; and performance of all other necessary duties and functions of the Office of the Court Clerk.

2.4.9 Court Sessions

The Appellate Court shall convene whenever there is a case to be heard.

DRAFT- FOR PUBLIC COMMENT ONLY

CHAPTER 5. GENERAL APPELLATE PROCEDURES

SECTIONS

Sec. 2.5.1 Who Can Appeal.....	6
Sec. 2.5.2 How to Request an Appeal.....	6
Sec. 2.5.3 Clerks Duties.....	6
Sec. 2.5.4 Opposing Party's Response.....	6
Sec. 2.5.5 Consequences of Missing Filing Dates.....	6
Sec. 2.5.6 Filing Fee.....	6
Sec. 2.5.7 Costs.....	7
Sec. 2.5.8 Satisfaction of Judgement.....	7
Sec. 2.5.9 Extension of Time Limits.....	7

2.5.1 Who Can Appeal [*As amended by Ord. DOI 3(98)*]

Any party adversely affected by a decision of the Trial Court in a civil case may appeal that decision. Any party in a criminal case, except the prosecution, may appeal from any final order, commitment, or judgment of the Trial Court. The prosecution in a criminal case may appeal only alleged procedural error.

2.5.2 How to Request an Appeal [*As amended by Ord. DOI 3(98)*]

An appeal is commenced in a civil case by filing an original and one (1) copy of a Request for Appeal with the Court Clerk within thirty (30) days of the date of the Trial Court's adverse decision. In a civil case, the party requesting appeal must also file two (2) copies of his brief and a copy of the trial transcript with the Court Clerk within twenty (20) days of requesting an appeal. In criminal cases an appeal must be requested within seven (7) calendar days of the decision and briefs are due within seven (7) calendar days.

2.5.3 Clerk's Duties [*As amended by Ord. DOI 3(98)*]

When a Request for Appeal is received, the Court Clerk will notify the Chief Appellate Judge and opposing parties within three (3) days of the Request. After the brief and transcript are received, the Clerk will distribute the transcript and one copy of the brief to the Chief Appellate Judge and the other brief to the opposing party within two (2) days. The opposing party's brief, when received, will also be distributed in two (2) days.

2.5.4 Opposing Party's Response [*As amended by Ord. DOI 3(98)*]

In a civil case, the opposing party will have ten (10) days from the date the appealing party brief is received to file an opposing brief and any Request for Cross-Appeal supported by the opposing brief. In a criminal case the opposing brief and any Request for Cross-Appeal must be filed within seven (7) days of receiving the appealing party's brief. A party shall have seven (7) days from receipt of a Request for Cross-Appeal to file a responsive brief.

2.5.5 Consequences of Missing Filing Dates [*As amended by Ord. DOI 3(98)*]

If any party does not file his Request for Appeal within the stated time limits, he loses his opportunity to appeal. If any party does not file his brief within the stated time limits, the case will be decided without that brief.

2.5.6 Filing Fee [*As amended by Ord. DOI 3(98)*]

The appealing party shall pay a filing fee at the time the Request for Appeal is filed to the Court Clerk.

DRAFT- FOR PUBLIC COMMENT ONLY

2.5.7 Costs [*As amended by Ord. DOI 3(98)*]

The costs of an appeal rest on the appealing party unless the Trial Court’s decision was the result of the Trial Judge’s conflict of interest as determined by the Appellate Court; then the opposing party is responsible for the costs of the appeal.

2.5.8 Satisfaction of Judgment [*As amended by Ord. DOI 3(98)*]

All judgments and orders of the Appellate Court shall be enforceable through and by the Trial Court. Upon compliance with and satisfaction of the judgment or order, the Court Clerk shall notify the Chief Appellate Court Judge.

2.5.9 Extension of Time Limits [*As amended by Ord. DOI 3(98)*]

The Appellate Court, for good cause, may extend any time limit set in this Chapter.

CHAPTER 6. FULL APPEALS

SECTIONS

Sec. 2.6.1 Who Hears the Appeal.....	7
Sec. 2.6.2 What May be Appealed.....	7
Sec. 2.6.3 Standards on Full Appeal.....	7
Sec. 2.6.4 When Oral Arguments Heard.....	8
Sec. 2.6.5 No Majority of the Decision.....	8
Sec. 2.6.6 Written Decision.....	8
Sec. 2.6.7 Time Limits.....	8

2.6.1 Who Hears the Appeal [*As stated in 1A-5-5*]

All appeals and other authorized requests for review before the Appellate Court shall be heard and decided by one Appellate Judge. A full appeal is heard by a single Appellate Judge, provided that subsequent *en banc*

review by a panel of three (3) Appellate Judges may be sought.

En banc review of the decision of a single Appellate Judge may be sought and shall be granted if two (2) Appellate Judges, in their absolute discretion, vote in favor or *en banc* review. Requests for *en banc* review must be in writing and filed and served within thirty (30) days of issuance of the single Appellate Judge’s decision. Any other party may file and serve a written response to the request within ten (10) days of its receipt of the request. The Court Clerk shall ensure that copies of all requests for *en banc* review and all responses thereto are promptly distributed to each Appellate Judge.

2.6.2 What May Be Appealed [*As amended by Ord. DOI 3(98)*]

Any final decision of the Trial Court may be appealed unless the right of appeal is foreclosed by this Law and Order Code or other applicable Tribal or federal law.

2.6.3 Standards on Full Appeal [*As amended by Ord. DOI 3(98)*]

The Appellate Court may decide not to hear an appeal in a civil case if the Request for Appeal is frivolous or the information in the Request is clearly false, as determined by the Appellate Court.

When an appeal is heard, the Appellate Court may affirm, modify, reverse, or remand the Trial Court’s decision. There can be a modification or reversal only where there were no facts to support the decision or there was a misapplication of the law.

DRAFT- FOR PUBLIC COMMENT ONLY

2.6.4 When Oral Arguments Heard [*As amended by Ord. DOI 3(98)*]

In a civil or criminal case, oral argument shall be held only if ordered by the Appellate Court.

2.6.5 No Majority on the Decision [*As amended by Ord. DOI 3(98)*]

In *en banc* reviews, if no majority is reached on a decision, then the decision rendered by the single Appellate Judge shall stand.

2.6.6 Written Decision [*As amended by Ord. DOI 3(98)*]

The Appellate Court’s decision shall be in writing and shall contain the facts and issues of the case, the rules of law relied on, the reasoning of the Court, and the decision.

2.6.7 Time Limits [*As amended by Ord. DOI 3(98)*]

The written decision in a civil or criminal case shall be issued within fifteen (15) days of the later of: the date the last brief is due or the date of oral argument.

2.7.1 Who Hears Immediate Appeals [*As amended by Ord. DOI 3(98)*][*As stated in 1A-5-5*]

An immediate appeal is heard by a single Appellate Judge, provided that subsequent *en banc* review by a panel of three Appellate Judges may be sought and granted.

En banc review of the decision of a single Appellate Judge may be sought and shall be granted if two (2) Appellate Judges, in their absolute discretion, vote in favor of *en banc* review. Requests for *en banc* review must be in writing and filed and served within thirty (30) days of issuance of the single Appellate Judge’s decision. Any other party may file and serve a written response to the request within ten (10) days of its receipt of the request. The Court Clerk shall ensure that copies of all requests for *en banc* review and all responses thereto are promptly distributed to each Appellate Judge.

2.7.2 What May be Immediately Appealed [*As amended by Ord. DOI 3(98)*]

A party may request an immediate appeal in the following circumstances, unless the right to immediate appeal is foreclosed by this Law and Order Code or other applicable Tribal or federal law:

- A. Injunctions: Trial Court order prohibiting or allowing a particular action.
- B. Mandamus: Trial Court order directing the Tribe or its Instrumentalities or a Tribal Representative, as these terms are defined in section 1-3-2, to perform or refrain from performing a particular act as part of its or his official duties or to restore to a party rights and privileges of which has been illegally deprived; provided the foregoing shall not be construed as a waiver of sovereign immunity under section 1-3-2.

CHAPTER 7. IMMEDIATE APPEALS

SECTIONS

Sec. 2.7.1 Who Hears Immediate Appeals...	8
Sec. 2.7.2 What May be Immediately Appealed.....	8
Sec. 2.7.3 Time Limits.....	9
Sec. 2.7.4 Standard on Immediate Appeal...	9
Sec. 2.7.5 Notice on Immediate Appeal.....	9
Sec. 2.7.6 Submission of Information by Parties.....	9
Sec. 2.7.7 Written Discussion.....	9
Sec. 2.7.8 Full Appeal Not Precluded.....	9

DRAFT- FOR PUBLIC COMMENT ONLY

C. Interlocutory: Trial Court order deciding some point before the end of a case that is not a final decision in the case.

D. Habeas corpus: Trial Court order to produce a detained person, justify the detention, and provide any related relief.

2.7.3 Time Limits [*As amended by Ord. DOI 3(98)*]

The request for an immediate appeal must be made in writing in the Request for Appeal. Within three (3) days of such filing, the Appellate Judge will decide in writing whether the appeal will be processed as an immediate appeal, dismissed or processed as a full appeal. If processed as an immediate appeal, a written decision on the appeal shall be issued as soon as possible, but no later than ten (10) days after the Request for Appeal is filed.

2.7.4 Standards on Immediate Appeal [*As amended by Ord. DOI 3(98)*]

The Appellate Court on an immediate appeal may affirm, modify, reverse, or remand the Trial Court's order. The order may be modified or reversed only if there was no clear evidence to support the order.

2.7.5 Notice of Immediate Appeal [*As amended by Ord. DOI 3(98)*]

The appealing party must notify the opposing parties of the request for an immediate appeal at or prior to the time the Request for Appeal is filed with the Court Clerk or the appeal will not be processed as an immediate appeal.

2.7.6 Submission of Information by Parties [*As amended by Ord. DOI 3(98)*]

When the appeal is processed as an immediate appeal, all parties shall submit their reasons for having the order reversed or

affirmed or modified, in writing and/or orally at a hearing as the Appellate Court requests. Information not submitted by the parties will not be considered by the Appellate Court in reaching a decision.

2.7.7 Written Decision [*As amended by Ord. DOI 3(98)*]

The Appellate Court's decision on an immediate appeal shall be written, stating the type of order appealed, the facts, the rules of law applied, the reasoning and the decision.

2.7.8 Full Appeal Not Precluded [*As amended by Ord. DOI 3(98)*]

The processing and disposition of an immediate appeal does not preclude a full appeal of the Trial Court's final decision in the case.

CHAPTER 8. REMOVAL OF JUDGES

SECTIONS

Sec. 2.8.1 Automatic Removal.....	9
Sec. 2.8.2 Removal by Complaint.....	10
Sec. 2.8.3 Procedure for Removal.....	10
Sec. 2.8.4. Proceedings for Removal by Complaint	11

2.8.1 Automatic Removal

A Judge shall forfeit and be removed from office ("Automatic Removal") on the following grounds:

A. Conviction of Felony. Automatic Removal shall occur if the Judge, while holding his or her current position as Judge, is convicted of any felony in any tribal, federal or state court; whether after a plea of guilty or nolo contendere, a trial, or other procedure, irrespective of whether the

DRAFT- FOR PUBLIC COMMENT ONLY

conduct on which the conviction is based occurred before or during the Judge's current term of office.

B. Conviction of Misdemeanor Involving Moral Turpitude. Automatic Removal shall occur if the Judge, while holding his or her current position Judge, is convicted of any misdemeanor or gross misdemeanor in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial or other procedure, which the Constitutional Court determines is a Misdemeanor Involving Moral Turpitude, irrespective of whether the conduct on which the conviction is based occurred before or during the Judge's current term of office.

C. Lack of Qualifications. Automatic Removal shall occur if the Judge does not possess a qualification for office set forth in this Title, irrespective of whether the lack of qualification arises from events which occurred before or during the Judge's current term of office.

2.8.2 Removal by Complaint

Removal by Complaint may be sought and effected on the grounds that the Judge:

A. has grossly or repeatedly failed to competently perform the duties of office;

B. while performing the duties of office, has used alcohol, drugs, or other mind-altering substance, or engaged in immoral behavior, unethical conduct, or corruption or abuse of power, provided that where such misconduct has resulted in a conviction as described in section IA-17- 2.A or B, the convicted Judge shall be Automatically Removed in the manner described in section IA-17-2;

C. suffers from physical or mental incapacity preventing the competent performance of the duties of office, including the loss of essential physical or mental capabilities due to illness, injury, or addiction to alcohol, drugs or other mind-altering substance; or

D. has grossly or repeatedly violated the Code of Judicial Conduct.

2.8.3 Procedure for Removal [*As amended by Ords. 22(89), DOI 3(98)*]

Procedures for Automatic Removal [*As stated in 1A-17-2*]

Confirmation by Constitutional Court. An Automatic Removal shall not take effect until it is confirmed by the Constitutional Court as provided in this subsection:

A. Upon receiving advice, it deems reliable that indicates that a Judge ("Respondent") stands convicted of a felony or a Misdemeanor Involving Moral Turpitude, or lacks any qualification for office, the Constitutional Court shall, as a matter of highest priority, proceed with dispatch to determine whether such ground for Automatic Removal in fact exists, and if it does, to confirm the Automatic Removal of the Respondent, in the following manner. Such proceedings shall not be delayed or suspended because judicial proceedings to reconsider, vacate or appeal a conviction are pending.

B. The Constitutional Court shall issue a written notice to the Respondent, Tribal President and Tribal Secretary advising that the Constitutional Court will convene a hearing to determine whether the Automatic Removal of Respondent from office must be confirmed. The notice shall state the date, time, and place of the Constitutional Court

DRAFT- FOR PUBLIC COMMENT ONLY

hearing, and summarize the indicated grounds for Automatic Removal, and shall include a copy of this Title. The hearing shall be held as promptly as possible but no sooner than ten (10) days from the date of issuance of the written notice.

C. At the hearing, the Respondent shall be accorded an adequate opportunity to be heard on the matter, and may be represented by an attorney or advocate at his or her own expense. Conviction of a felony or a Misdemeanor Involving Moral Turpitude must be evidenced either by a copy of the judgment of conviction certified by the court in which the Respondent was convicted or by Respondent's sworn admission to such conviction. The Constitutional Court may consider any additional factual or legal materials, information, or submissions it deems relevant.

D. After considering the materials, information and submissions before it, the Constitutional Court shall decide, as the case may be, whether the Respondent stands convicted of a felony, Misdemeanor Involving Moral Turpitude, or lacks any requisite qualification for office. If the Court decides that such ground for Automatic Removal in fact exists, it shall be dutybound to immediately confirm Respondent's Automatic Removal from office, effective immediately. The Constitutional Court's decision shall be in writing.

E. The decision of the Constitutional Court on Automatic Removal shall be final, binding on the Tribe and all branches of Tribal government, and not subject to review in any court.

F. While Automatic Removal proceedings are pending, the Constitutional

Court may suspend or otherwise limit Respondent's status or authority as a Judge.

2.8.4 Proceedings for Removal by Complaint

Shall be initiated by a written complaint ("Complaint") seeking removal of a single Judge only ("Respondent"). The Complaint shall specify the grounds for removal, allege the facts supporting such grounds in reasonable detail, and be sworn to and signed by one or more enrolled members of the Tribe who are at least 18 years old ("Complainants"), provided that any Judge, irrespective of tribal membership, may be a Complainant. The Complaint, accompanied by a filing fee, shall be filed with the Court Clerk ("Filing"), who promptly shall provide a true copy thereof to the Respondent, each member of the Constitutional Court, the Tribal President, and the Tribal Secretary. The Constitutional Court shall have continuing authority to adjust the filing fee to account for inflation or other factors.

A. **Withdrawal of Complaint.** At any time prior to the commencement of a hearing under subsection E below, any Complainant may withdraw his or her signature on the Complaint by filing with the Court Clerk a signed and sworn certificate of such withdrawal. If all signatures on a Complaint are so withdrawn, all further proceedings on the Complaint shall terminate. The Court Clerk promptly shall provide true copies of all signature withdrawal(s) to the Respondent, any other Complainant(s), each member of the Constitutional Court, the Tribal President, and the Tribal Secretary

B. **Review by Tribal Secretary.** Within seven (7) days after the Filing of the Complaint, the Tribal Secretary shall make best efforts to review the Complaint and any

DRAFT- FOR PUBLIC COMMENT ONLY

signature withdrawal(s) filed to date, determine the validity and, sufficiency of all signatures thereon, and report the results of this review in writing to the Respondent, the Complainant(s), the Court Clerk, each member of the Constitutional Court, and the Tribal President.

C. Review by Constitutional Court. If the report of the Tribal Secretary states that the Complaint is supported by valid signature(s), the Constitutional Court, under such procedures as it considers appropriate, promptly shall review the Complaint and determine:

1. if it meets the formal and procedural requirements of this Ordinance; and
2. if it alleges grounds and sufficient supporting facts which, if proven to the satisfaction of the Court, would justify Removal by Complaint.

The Constitutional Court shall make best efforts to report its determinations on items (1) and (2) in writing to the Respondent, Complainant(s), Tribal President and Tribal Secretary within 21 days after the Filing of the Complaint. If the Court reports negatively on either item (1) or (2), the Complaint shall thereupon be deemed dismissed and no further action shall be taken on it. If the Court reports positively on items (1) and (2), the Court shall make best efforts to schedule a hearing on the Complaint to be commenced within 35 days after the Filing of the Complaint. Pending such a hearing and its decision on the Complaint, the Constitutional Court may suspend or otherwise limit Respondent's status or authority as a Judge.

D. Timelines. On a case-by-case basis, the Constitutional Court may adjust any time period specified in subsection B or C above, as it deems warranted.

E. Hearing. If the Constitutional Court determines to hold a hearing on the Complaint, the hearing shall be conducted as follows:

1. At least ten (10) days before the hearing, the Court Clerk shall issue a written notice to the Respondent, Complainant(s), Tribal President, and Tribal Secretary which states the date, time, place and purpose of the hearing, and includes a copy of this Title.
2. The hearing shall be conducted in accordance with such procedures and evidentiary standards as the Constitutional Court considers necessary to afford fair and reasonable opportunity to the Complainant(s) and the Respondent to support and refute the Complaint, and to enable the Court to make an informed and fair decision on the Complaint. The Complainants collectively and the Respondent may each be represented by an attorney or advocate at the hearing at their own expense.
3. The hearing shall be conducted in public and on the record. A verbatim steno graphically or electronically recorded transcript of the hearing shall be maintained.

F. Decision. After the hearing, the Constitutional Court shall issue a decision on the Complaint. The decision shall be in writing and shall set forth findings of fact,

DRAFT- FOR PUBLIC COMMENT ONLY

conclusions as to whether grounds for Removal by Complaint have been established, and the Court's decision with respect to such removal. The Constitutional Court may dismiss the Complaint, or may decide that Respondent shall be removed as Judge, that Respondent's status as Judge shall be suspended for no more than 90 days, or may impose conditions on Respondent's continued status or activities as Judge. The decision of the Constitutional Court shall be final, binding on the Tribe and all branches of Tribal government, and not subject to judicial review in any court.

CHAPTER 9. CONSTITUTIONAL COURT

SECTIONS

Sec. 2.9.1 Composition of the Constitutional Court.....	13
Sec. 2.9.2 Exclusive and Original Jurisdiction over Constitutional Claims....	13
Sec. 2.9.3 Relief.....	13
Sec. 2.9.4 Procedures and Rules.....	14
Sec. 2.9.5 Standing; Case or Controversy...	14
Sec. 2.9.6 Principles of Judicial Restraint...	14
Sec. 2.9.7 Certification of Constitutional Claim by Other Courts	14
Sec. 2.9.8 Limited Waiver of Immunity.....	15
Sec. 2.9.9 Other Claims of Relief.....	14
Sec. 2.9.10 Removals.....	15
Sec. 2.9.11 Decisions Binding.....	15
Sec. 2.9.12 Implementation of Declaratory Judgment Vindicating a Constitutional Claim.....	15

2.9.1 Composition of the Constitutional Court

The Constitutional Court shall consist of three (3) Judges of the Appellate Court, sitting as a panel and acting by majority vote.

All claims brought in the Constitutional Court shall be tried to and adjudicated by the panel; there shall be no jury trials in the Constitutional Court.

2.9.2 Exclusive and Original Jurisdiction Over Constitutional Claims

The Constitutional Court shall have original jurisdiction over, and be the exclusive Tribal juridical forum to adjudicate any and all claims (“Constitutional Claims”) between any parties, whether made in a civil or criminal context, that a resolution, ordinance, code or other legislative enactment of the Tribal Council adopted after the Effective Date of this Title (“Council Enactment”) is in whole or in part invalid because it violates:

- A. The Tribal Constitution and Bylaws;
- B. A referendum adopted under Article VIII of the Tribal Constitution;
- C. A Tribal resolution, ordinance or code; or
- D. Applicable federal law including without limitation the Indian Civil Rights Act;

Provided that the Constitutional Court may not adjudicate a Constitutional Claim if and to the extent the Council Enactment which is the subject of the Claim has been explicitly designated as final and not subject to review by any court in any controlling source of law described in subsections A-D above.

2.9.3 Relief

Unless authorized to grant other relief, the Constitutional Court shall have authority to issue only one (1) form of relief on a Constitutional Claim – a declaration that the Claim is in whole or in part valid or invalid (“Declaratory Judgment”), along with such

DRAFT- FOR PUBLIC COMMENT ONLY

supporting findings of fact, conclusions of law, and/or opinion as the Constitutional Court considers necessary or appropriate.

2.9.4 Procedures and Rules

Except to the extent inconsistent with this Chapter, Constitutional Claims and Other Claims (other than appeals) shall be initiated in and adjudicated by the Constitutional Court in accordance with all relevant trial-level rules and procedures, evidentiary standards, and statutes of limitation applicable to trial-level civil actions under the Law and Order Code.

In the event of any inconsistency between such provisions of the Law and Order Code and this Chapter, the provisions of this Chapter shall be controlling. The Constitutional Court shall have continuing authority to adopt general or case-specific special procedural rules for its proceedings to cover matter not addressed by the foregoing provisions of this section.

2.9.5 Standing; Case or Controversy

In order to bring a Constitutional Claim, a party must have standing to do so and there must be an actual case or controversy as assessed under recognized legal principles.

2.9.6 Principles of Judicial Restraint

In adjudicating Constitutional Claims, the Constitutional Court shall observe all established doctrines of judicial restraint, including without limitation the following:

A. Requiring exhaustion of available remedies within the Executive Branch and/or Legislative Branch;

B. Presuming that the Council Enactment is valid and requiring that its

invalidity be clearly and convincingly known;

C. Deferring to the Tribal Council's judgment on policy matters and political questions;

D. Deferring to determinations of administrative agencies within the Executive Branch in matters within their particular expertise;

E. Avoiding Constitutional issues;

F. Deciding on non-Constitutional grounds;

G. Abstaining from hypothetical or moot questions; and

H. Upholding all valid and severable portions of the enactment or other action of the Tribal Council under challenge.

2.9.7 Certification of Constitutional Claim by Other Courts

In the event a Constitutional Claim is made in a civil or criminal proceeding between any parties in another Tribal Court or other Tribal adjudicatory body (if any) (together "Other Tribal Adjudicatory Body"), such Other Tribal Adjudicatory Body shall not have jurisdiction to adjudicate the Constitutional Claim but may certify it to the Constitutional Court for adjudication. Subject to and in accordance with the provisions of this Chapter, the Constitutional Court shall have authority to adjudicate and issue a Declaratory Judgment on the Constitutional Claim so certified. Upon so certifying a Constitutional Claim and pending the issuance of a Declaratory Judgment on it by the Constitutional Court, the Other Tribal Adjudicatory Body may, as it considers appropriate, proceed with the adjudication of

DRAFT- FOR PUBLIC COMMENT ONLY

any other claim (other than a Constitutional Claim) within its jurisdiction in the proceeding pending before it. In addition, the Constitutional Court shall have the authority to adjudicate Constitutional Claims certified to it by any federal, state, or tribal court or adjudicatory body. Constitutional Claims shall be certified to the Constitutional Court by execution and delivery of a written instrument. Claims so certified shall be adjudicated in accordance with all rules, procedures and standards set forth, referred to, or authorized in this Chapter for Constitutional Claims initiated in the first instance in the Constitutional Court.

2.9.8 Limited Waiver of Immunity

With respect to Constitutional Claims, the sovereign immunity of the Tribal Council, as an entity, is hereby waived in the Constitutional Court (and in no other court) solely with respect to Declaratory Judgments on Constitutional Claims brought or certified in strict compliance with this Title. The sovereign immunity of the Tribe, any Tribal Entity, or any Tribal Representative is not otherwise waived in any respect.

2.9.9 Other Claims or Relief

In addition to Constitutional Claims, the Tribal Council by resolution, ordinance or code may in its absolute discretion explicitly empower the Constitutional Court to:

A. Adjudicate or hear appeals on other claims brought by or against the Tribe, any Tribal Entity, or any Tribal Representative, or any other claim of import to the Tribe (collectively “Other Claims”);

B. Provide relief other or in addition to a Declaratory Judgment on a Constitutional Claim or Other Claim (“Other Relief”); and/or

C. Any such resolution, ordinance or code must describe each Other Claim and/or the Other Relief with specificity and must explicitly set forth any necessary limited waiver of Tribal sovereign immunity with respect thereto in the Constitutional Court.

2.9.10 Removals

The Constitutional Court shall confirm the Automatic Removal of a Judge as provided for in this Title and shall hear and decide any Complaint for Removal of a Judge.

2.9.11 Decisions Binding

All Declaratory Judgments of the Constitutional Court on matters within its jurisdictions:

A. Shall be final, conclusive and binding on the Tribal Council, all other parties to the Constitutional Court proceeding, the Judicial Branch, and any other Tribal Adjudicatory Body certifying the Constitutional Claim; and

B. May not be modified, vacated or reversed by the Tribal Council or the Executive Branch.

2.9.12 Implementation of Declaratory Judgment Vindicating a Constitutional Claim

Upon issuance of a Declaratory Judgment vindicating a Constitutional Claim in whole or in part, the Tribal Council shall bring the Council Enactment at issue into compliance with the Declaratory Judgment and may, in its absolute discretion, explicitly provide other remedial relief to any party. The decision of the Tribal Council with respect to such other remedial relief shall be final and not reviewable by any court. The Executive

DRAFT- FOR PUBLIC COMMENT ONLY

Branch and all other Tribal Entities and Tribal Representatives shall give full faith and credit to the Declaratory Judgment and take such action as may be necessary to assure that their actions are not inconsistent with the terms of the Declaratory Judgment.