



TRIBAL JUDICIAL CODE

NATIVE VILLAGE OF NENANA

Nenana, Alaska

Adopted by the Tribal Council on November 22, 2011

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Section 1. Purpose of the Nenana Tribal Court and Legislative History of this Ordinance

The purpose of the Nenana Tribal Court is to protect the health, safety, and welfare of the Nenana people and Tribe by addressing problems locally through a fair and consistent application of unwritten Nenana cultural traditions and written tribal ordinances. This Ordinance outlines the structure of the Nenana Tribal Court. The Native Village of Nenana Tribal Council adopted a Tribal Court Structure Ordinance in 1998, replaced it with a new Tribal Court Structure Ordinance in 2003. This Chapter amends Tribal Court Structure Ordinance of 2003.

Section 2. Authority to Establish the Nenana Tribal Court

Traditionally, laws and customs of the Nenana Tribe were enforced without outside intervention. The governing body of the Nenana Tribe has the authority to operate a Tribal Court by its inherent sovereignty as a federally recognized tribe, under Article 9 of the Nenana Tribal Constitution, and under any powers so delegated by Congress.

Section 3. Jurisdiction of the Nenana Tribal Court

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

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

Section 4. Nenana Tribal Court System

- A. Nenana Tribal Court:** The Nenana Tribal Court shall be staffed by 8 Tribal Court Judges. At least 5 of the Judges shall be resident tribal members, and up to 3 of the Judges may be tribal members who live outside of Nenana. It is the policy of the Nenana Tribe that a portion of 8 Judges be Elders of the Tribe, 55 years of age and older.
- B. Visiting Judges:** The Nenana Tribal Council may appoint visiting judges from outside the Village when the Council determines that it is in the best interest of the Tribe to do so for a particular case, provided that at least one Judge hearing the case be from Nenana. Such appointment shall be made by an affirmative vote of at least 6 tribal council members. Visiting Judges may be Judges from other tribal courts or attorneys certified by Bar Associations to hear cases in situations where the Nenana Tribal Judges have significant conflicts of interest, or when a case has extreme legal complications. When a visiting Judge is used, there shall be an agreement in writing made as to the terms of any financial arrangements made, and that the visiting Judge shall apply the laws of the Nenana Tribe to the fullest extent possible.
- C. Intertribal Courts:**
- 1. Intertribal court for specific cases:** The Nenana 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 Nenana Tribe and also in another tribe. Prior to beginning such an intertribal court case, the joint tribes shall make an agreement in writing as to what the jurisdictional relationship between the two tribes shall be, and shall determine what the appellate mechanism shall be for the case should a party decide to appeal.
 - 2. Permanent intertribal courts:** The Nenana Tribal Court may also participate in a permanent intertribal court, provided that the Nenana Tribal Council determines it is in the best interest of the Nenana Tribe to do so, and that the

relationship between the Nenana Tribal Court System and such intertribal court are clearly described in written documentation.

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

E. Justice Circles: The Tribal Court may use circles for hearing cases or for circle sentencing, according to the provisions of Chapter 2 of this Judicial Code.

Section 5. Nenana Tribal Court Judges

A Council Appointment of Tribal Court Judges: The Nenana Tribal Council shall appoint 8 Nenana Tribal Court Judges. A minimum of 6 affirmative votes of the Council shall be required to make an appointment of any Judge who serves the Nenana Tribal Court, provided that the Council may seat Visiting Judges on a case-by-case basis by an affirmative vote of at least 6 council members.

B. Number of Tribal Court Judges: The Nenana Tribal Council shall appoint a total of 8 Tribal Court Judges, to serve as a pool of Judges for the Nenana Tribal Court. A minimum of five of the Judges shall be resident tribal members, and up to three may be non-resident tribal members. Visiting Judges may be appointed by the Council on a case-by-case basis.

C. Term of Office: The term for Judges shall be 3 years. At the end of 3 years, the Council shall vote to retain the Judge for another 3 years by an affirmative vote of at least 6 Council members. Any Judges being voted on by the Tribal Council shall be present and allowed to hear the discussion about them and speak at the meeting where the vote is taken. There shall be no term limits on the number of terms a Judge may serve. The date upon which a Judge was appointed, or re-appointed shall be well documented in the records of the tribal council office.

D. Qualification of Judges: The 8 Tribal Court Judges appointed to serve on the standing Nenana Tribal Court shall be honorable, respected tribal members, 21 years of age or older, who have not been convicted of any type of felony within the past 5 years, and of any offence involving murder, sexual offenses, domestic

violence or child abuse ever in their lives. No judge may hear children's cases who have ever been convicted by a state, federal, or tribal court of an offense against a child or any other offenses as listed in the Indian Child Protection and Family Violence prevention Act of 1990. At least 5 of the Judges shall be resident tribal members, and up to three may be non-resident tribal members. It is the policy of the Nenana Tribe that some of the Nenana Tribal Court Judges be Elders, 55 years of age or older.

- E. Vacancies:** Any vacancy on the Nenana Tribal Court shall be filled by appointing a new Judge to serve a three year term, starting from the time of appointment.
- F. Determining which Judges shall serve on a case:** The Nenana Tribal Court Clerk shall keep a list of Tribal Court Judges and call upon Judges to serve on tribal court cases on a rotating basis. If a Judge who is next on the list to be called has a conflict of interest or is unavailable to serve on a case, the Clerk shall move on to the next Judge on the list. Once Judges are assigned to a case, they shall serve as the Judges for that case for the initial and any subsequent hearings to the maximum extent possible.

Section 6. Quorum of the Nenana Tribal Court

A quorum of no less than 3 Judges shall be necessary to hear a case. In any configuration of the Nenana Tribal Court System, there shall be at least one of the 8 Nenana Tribal Court Judges at every hearing.

Section 7. Presiding Judge of the Nenana Tribal Court

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

Section 8. Conflict of Interest for Nenana Tribal Court Judges

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

Section 9. Decision Making by Nenana Tribal Court Judges

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

Section 10. Advisors to the Nenana Tribal Court

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

Section 11. Attorneys in the Nenana Tribal Courtroom

Parties may hire their own attorneys at their own expense. Attorneys may submit written documents to the Court for the consideration of the Nenana Judges serving on that case. Attorneys may be in the Nenana Tribal Court proceeding, provided that they may speak with their clients but not directly to the Tribal Court without express permission of the Nenana Tribal Court Judges serving on that case.

Section 12. Nenana Tribal Court Clerk

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

- Receiving petitions filed with the Nenana Tribal Court
- Answering phone calls and receiving mail for the Court
- Maintaining files for the Court and a Court calendar
- Selecting Judges from a rotating list to serve on cases
- Notifying parties and Judges of hearings
- Setting up teleconference calls if necessary and recording hearings
- Drafting tribal court orders for Judges to review and sign
- Maintaining records of tribal court finances

Section 13. Oath of Confidentiality, Fairness, and Impartiality

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

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

Violators of this oath may be subject to removal under Section 15 of this Ordinance, subject to termination from employment if they are tribal employees, or subject to contempt of the Nenana Tribal Court.

Section 14. Judicial Ethics

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

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

- A. Alcohol and Drugs:** Tribal court judges shall not conduct court sessions, attend any meetings, conferences, trainings, or other events where they are representing the Native Village of Nenana Tribe while under the influence of alcohol or illegal drugs.

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

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

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

Section 15. Judicial Sovereign Immunity

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

Section 16. Forfeitures and Removal of Judges

- A. Forfeitures:** Nenana Tribal Court Judges shall automatically forfeit their positions as Judges if they are convicted of a felony under state or federal law while in office.

- B. Removal:** A Native Village of Nenana Tribal Court Judge may be removed from their position as a Judge when they have been found in violation of the Judicial Ethics provided in Section 13 of this Chapter, or gross violation of the written laws of the Native Village of Nenana 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 Nenana Tribe to do so. The Judge being considered for removal shall be given an opportunity to speak to the Tribal Council in executive session of the Council, prior to a vote of the Council on the removal. The decision to remove a Judge must be affirmed by a minimum of 6 Tribal Council Members. If the Judge is also a Tribal Council member, the Judge shall be relieved of judicial duties, and may be removed from the tribal council under Article 6, Section 1 of the Constitution of the Native Village of Nenana.

CHAPTER 2

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

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

provided that they do not conflict with the procedures provided in the Native Village of Nenana Constitution or Codes.

Section 2. Definitions

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

“Banishment” means sending a person out of the Village of Nenana for a period of time or permanently.

“Clerk” means the primary Clerk of the Nenana Tribal Court or specifically designated alternate.

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

“Juvenile delinquency” means antisocial or illegal behavior by children or adolescents, for example bullying or under age drinking.

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

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

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

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

“Restitution” means compensating a person who has been damaged or injured, by paying money or performing services to compensate for damage or injury. Restitution includes apologizing, payment of medical bills or other bills, repair of property, or replacement of property. The Nenana Tribal Court may also order people to do other things to provide restitution.

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

Section 3. Beginning a Tribal Court Case

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

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

Upon the receipt of a Petition, Citation, or Referral, the Clerk shall contact all available Tribal Court Judges qualified to hear the case, and meet with a minimum of three Judges to determine whether or not to take the case.

A. Decision to take a case: If the decision is made to take the case, the Judges shall decide which three Judges shall hear the case. The Clerk shall schedule the hearing, and give proper notification to parties. The case shall officially begin on the date when the Judges decide to take the case.

B. Decision to not take a case: If the decision is made to not take the case, the Clerk shall write a letter of denial to the Petitioner, or referring entity, as soon as possible after the decision is made by the Judges.

- C. Scheduling Hearings and Notice:** For initial hearings on a case, the Clerk shall set a hearing date and time, and give the Petition, Citation, or Referral and attachments along with Notice to all Parties and any other persons the Court requests in the Courtroom for that case. The hearing shall be held no more than 30 days after a Party receives Notice, unless the Court finds that there is good reason to have a hearing at a later time, or a different length of time is specified for Notice for a particular type of case in the Tribal Code.

Section 4. Notice

- A. Notice for Regular Scheduled Hearings:** Parties shall be given reasonable notice for all scheduled Nenana Tribal Court hearings. The Clerk, or designee, shall personally serve or mail Notice to all Parties. The Notice shall be delivered at least 7 days or mailed at least 14 days before a hearing except as otherwise provided for in the Nenana Tribal Code. A proof of service shall be filed or noted in the Court file. Nenana Tribal Court Judges serving on the case shall also be given reasonable Notice of the hearing date and time.
- B. Notice when hearings are rescheduled:** If the Court changes the time of a hearing for any reason, the involved parties shall be given reasonable Notice of the rescheduled hearing. If a hearing is rescheduled, notification may be made telephonically and noted in the case file. Notice of the rescheduled date and time of the hearing shall also be given to the Nenana Tribal Court Judges.
- C. Notice for emergency hearings:** Notice of emergency hearings shall be given to parties who are reasonably available to receive Notice. If parties are not reasonably available to receive Notice, the Court may hold a hearing without Notice being given.

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

Section 5. General Procedures for Hearings

- A. Opening a Hearing:** The Presiding Judge shall open the court hearing and may ask that a prayer or words from an Elder be given. The Presiding Judge shall then:

- Ask the Clerk to begin recording
- State the case number and the date, time, and place of the hearing
- Ask all persons in the courtroom or at any teleconference sites to state their full names and relationship to the case for the record
- Ask each of the parties how they were notified of the hearing
- Determine if there are any parties who were notified but are not at the hearing. If a party was notified but is not at the hearing, the Court may either proceed with the hearing or reschedule.
- Determine if there are any parties who should have been notified but were not notified. If it is determined that there is a party that was not notified, the hearing shall be rescheduled to allow reasonable notification.
- State the rights of all parties including the:
 - Right to be notified of court hearings
 - Right to copies of documents submitted to the court and court generated documents
 - Opportunity to be heard
 - Opportunity to present witnesses and evidence
 - Opportunity to question any witnesses
 - Right to a fair hearing
 - Right to request a Change of Order if new evidence or circumstances change in the case
 - Right to appeal the final decision to the Nenana Appellate Court within 30 after receiving the written Order

- Ask the Parties if they feel like any of the Judges have a conflict of interest in this case. If so, the Judges shall determine the course of action to take in response.
- Ask all parties to sign or swear an oath of truthfulness
- All present at the hearing shall be instructed to maintain confidentiality outside the Nenana courtroom proceedings.
- The Presiding Judge shall then read the Petition or Citation to the Court
- **Civil violations:** In cases of civil violations, the Respondent shall be asked how he or she pleads: guilty, not guilty, or no contest and the Presiding Judge shall make sure the Respondent understands the pleas. The Respondent shall say what his or her plea is. If the Respondent pleads guilty or no contest, the judges may question the Respondent and any participants in the courtroom to gain information that will help them create an appropriate sentence during their deliberations. They may also counsel the Respondent at that time. If the Respondent pleads not guilty, the hearing shall be held at this time unless the Court finds it appropriate to delay in order for parties to gather witnesses and evidence.

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

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

D. Recesses during hearings: The Court may recess during any type of court hearing.

E. Deliberations: Judges shall take all evidence presented into consideration during their deliberations and make their decision by consensus if possible. If consensus is not possible, the decision shall be made by majority vote. In cases of civil violations where a party entered a plea of not guilty, the judges shall decide if the information provided is sufficient to lead them to reasonably believe that the person is guilty. If so, then decide on an appropriate sentence from Section 16 of this Chapter.

F. Decision in writing All decisions made by the Nenana Tribal Court shall be written on Order forms unless otherwise specified in the Tribal Code.

Section 6. Emergency Hearings

Emergency hearings shall involve matters where harm or damage to a person or property may likely occur if the Court had to wait. In cases of emergencies, the Court may hold a hearing as soon as reasonable proof of imminent harm is provided to the Court. Notice of emergency hearings shall be given to parties who are reasonably available to receive Notice, but the Court may proceed without Notice if parties are not available to receive it. A minimum of 3 judges is necessary to conduct the emergency hearing, and may be connected telephonically if they are not physically able to meet in the Native Village of Nenana Courtroom under short notice. Orders issued during emergency hearings shall be written and of limited duration of up to 20 days for temporary protective orders, 72 hours for emergency custody of children, or as otherwise stated in the tribal code.

Section 7. Rights of Parties

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

- Parties shall have the right to be notified of court hearings, except in cases of emergency circumstances when a party is not reasonably available to be notified
- Right to copies of Petitions, Citations, and court generated documents
- Opportunity to be heard
- Opportunity to present witnesses and evidence
- Opportunity to question any witnesses
- Right to a fair and impartial hearing
- Right to request a Change of Order if new evidence or circumstances change in the case
- Right to appeal the final decision to the Nenana Appellate Court within 30 days after Party has received a final written Order

Section 8. Failure to Appear for a Hearing

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

Section 9. Testimony by Witnesses and Associated Costs

Either Parties to a case or the Nenana Tribal Court may present witnesses. Witnesses may testify in person or telephonically. Parties are responsible for notifying their witnesses, notifying the Court about who the witnesses will be, and paying any costs associated with their testifying. The Nenana is responsible for summoning their witnesses and paying any costs associated with their testifying.

Section 10. Tribal Court Finances

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

- B. Fees:** The Nenana Tribal Court may charge fees to use the Court. Such fees shall be equal for equal types of cases and matters, and shall be made known to any person who wants to use, or files a Petition with, the Nenana Tribal Court.

- C. Payment of fines or fees:** Fines or fees shall be paid in cash, check, or money order. Checks or money orders shall be made out to the Nenana Tribal Court Clerk, and the Clerk shall issue a receipt.

Section 11. Tribal Court Records

All records, electronic or hard copies, of the Nenana Native Village Tribal Court shall be secured and shall only be accessed by the Nenana Tribal Court Clerk or Tribal Court Judges serving on that particular case. Tribal Court case files shall not leave the Nenana Tribal Office. Hard copies of records shall be kept behind at least two locks at all times. Computer files shall be kept on computers that are password protected and kept in rooms that are locked when no one is present in the room. A back up system for all electronic tribal court records shall be provided. Any computer with Court documents that will no longer be in use, or which will be used by someone outside the Nenana Tribal Court shall be wiped clean of all records. All Nenana Tribal Court records shall be kept indefinitely. All Parties to a case have a right to have copies of petitions, citations, and court generated documents.

Section 12. Evidence and Affidavits

The Nenana Tribal Court shall hear all evidence it finds proper. Hearsay evidence given under oath may be considered proper evidence. The Nenana Tribal Court may Order

evidence to be brought before the Court by issuing a subpoena. The Nenana Tribal Court may accept sworn Affidavits as evidence in cases if the witness is not available to testify.

Section 13. Search Warrants

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

- A. Application for Search Warrants:** Prior to searching people, houses, vehicles, boats, or other private property, the Tribal Police Officer, (TPO) or other person designated by the Tribal Council to conduct searches, shall fill out an Application for Search Warrant. The application shall state why he or she believes a search warrant is needed. The application shall contain the sworn verbal or written statement by the person who saw or heard an illegal activity or item.

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

Section 14. Juvenile Delinquency

- A. Application of Tribal Laws to Juveniles:** The civil laws of the Tribe and tribal court procedures generally apply to juveniles the same as they do to adults,

provided that specific ordinances may apply solely to juveniles as status offenses due to their age and that a Nenana Tribal Youth Court may be established and operated under its own written procedures.

- B. Parents or guardians attending hearings:** In cases involving juvenile delinquency, written notification shall be given to the child of an upcoming hearing and written notification also given to parents or guardians. The Nenana Tribal Court may request a parent or guardian to be present at their child's hearing, or, the Court may request parents or guardians to leave a hearing if the judges believe that it is in the best interest of the child. The Court may appoint a spokesperson for a minor child.

Section 15. Procedures for Justice Circles

The Nenana Tribal Court may use a Justice Circle format for sentencing and deciding what should be done, for any cases where the Circle format is appropriate. The Judges assigned to the case shall decide who shall sit in such Circles and who shall sit as the Leader of the Circle. The tribal court clerk shall notify the parties and circle participants about the date, time, and place of Circle hearing. The notice to the parties shall include a copy of the Petition.

- A. Basic Rules of the Circle:** The most basic rule of the Circle is that persons shall have respect for one another. Only one person shall speak at a time while the others respectfully listen. The Leader of the Circle shall lead the Circle, but shall have no greater voice in the final consensus than anyone else in the Circle. The Circles themselves may establish other rules.
- B. Decisions of Circles:** Decisions of Justice Circles shall be by consensus of the Circle and shall be written as Orders of the Nenana Tribal Court. If a Circle fails to come to consensus on a case, the case shall be referred back to the regular Nenana Tribal Court.

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

D. Opening a Circle hearing:

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

E. Circle Process:

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

- **Part Two:** The Leader shall begin the next rounds of discussion that shall focus on appropriate solutions and sentencing. Again, the stick shall be passed around as many times as necessary to come to a consensus on what the Order of the Court shall be.

F. Concluding the Circle:

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

Section 16. Written Orders, Compliance, Request to Change Order

A. Written Orders: All orders made by the Nenana Tribal Court shall be written on Order forms unless otherwise specified by ordinance. All written Orders and notations shall be filed in the case records. The Clerk or other designated person shall personally give or mail a copy of the Order to all parties to the case and file a proof of service.

A. Time frame for Complying with Orders: For cases involving civil violations all sentences shall be accomplished within 30 days after the Respondent has been notified of the Order, unless the Court provides otherwise. For other cases, the Order shall specify timeframes for compliance.

C. Proof of Compliance with Orders: Records of proof of compliance with Orders of the Tribal Court shall be kept by the Tribal Court Clerk in the Court files. Parties shall have 30 days to complete the requirements of an Order unless otherwise specified in the Order. Proof that the action has been completed shall be given to the Court Clerk within 14 days

of completion unless otherwise specified by Court Order. The Clerk shall certify the proof of compliance form. Payment of a fine to the Tribal Court Clerk and a recording of the payment shall be proof in itself of payment. Financial restitution ordered to another party shall be made through the Clerk of the Tribal Court. The Clerk shall report any failures to comply with Tribal Court Orders to the Court. Failure to comply with an Order of the Court in civil violation cases shall be considered contempt of court as described in this Chapter.

D. Request to Change Order: Parties may request the Court for a hearing to consider changing an Order. To make such a request, a Party shall file a Request to Change Order form with the Nenana Tribal Court Clerk. The request shall state the reason the person believes a change should be made. The requesting person shall present new evidence or information to the Court to support the request. Upon receipt of a Request to Change Order, the Clerk shall schedule a meeting with the tribal court judges to decide whether to hear the Request or not. A minimum of 3 judges is necessary to make this decision. The Court may deny the request, or set a hearing date to consider it and notify all Parties.

Section 16. Options for Orders and Sentences

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

- A. Fines:** Fines for violation of a Tribal ordinance shall not exceed \$15,000 or equivalent work sentence. Fines may increase for successive violations of the same ordinance. The Court may garnish wages, permanent fund or dividend checks, village or regional Native corporation dividends, general assistance, or confiscate property in the case of unpaid fines.

- B. Community Service:** Work sentences may include cutting wood or hauling water for people in need of assistance in the village, for the church, or for the community hall. Sentences may include working in the school, building

maintenance or repair, hauling and pumping fuel, and cleaning up trash in the Village of Nenana. The Tribal Court Judges may order other types of community work as well. Community service sentences shall benefit the needy, the village residents as a whole, the Elders, the victim of an offense, the church, or the youth. Tribal Court judges shall not order work sentences that only benefit themselves personally or other tribal government officials. Work sentences shall not displace persons employed in the Village or employment opportunities. Work sentences shall be completed within 30 days unless otherwise directed by the Court.

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

- C. Impounding Vehicles:** Any vehicle that is used in driving while intoxicated, reckless driving under the Nenana Tribal Code, or failure to comply with an Order of the Nenana Tribal Court is subject to impound. To get a vehicle out of impound, the owner shall pay \$75 for the first time the vehicle is impounded, \$150 for the second time, and \$250 for the third time. The fees may be paid by community work service hours if the Court permits. Except in cases of vehicle theft, the owner is responsible for the impound fee even if the owner was not involved with the civil violation. The Nenana Tribal Government is not liable for any damages to vehicles while they are impounded.
- D. Banishment:** An Order of temporary or permanent banishment shall only be used to protect the Village and/or Village residents from physical harm. The length of time a person is banished shall be determined by the severity of the case or upon the completion of treatment that is ordered.
- E. Drug and Alcohol Treatment and Other Counseling:** The Tribal Court may order an assessment for drug and alcohol treatment and may require that the recommendations of the assessment be met. The Tribal Court may

also order other personal counseling. The Tribal Court shall consider the cost to the person and possible waiting periods for getting into treatment, when they order such treatment. The Tribe may pay such costs if funding is available.

- F. Restitution:** The Tribal Court may order a Respondent to make restitution to his or her victims. Restitution is defined to include payment of money, repairing property, and apologies. Restitution payment shall go through the Nenana Tribal Court Clerk. Non-monetary restitution shall be supervised by a person as designated by the Nenana Tribal Court.

- G. Counseling by Judges and Elders:** The Judges of the Nenana Tribal Court may counsel persons brought before them in a helpful spirit. The Nenana Tribal Court may bring Elders or any other appropriate persons into the Nenana Courtroom to counsel people.

- H. Traditional Activities:** The Nenana Tribal Court may order a person found in violation of an Ordinance to participate in seasonally appropriate traditional activities such as fish camps, trapping, hunting, culture camps, and other tribally sponsored or approved traditional activities.

- I. Other Restorative Justice Sentence:** The Nenana Tribal Court may create any reasonable and equitable sentence that is intended to be restorative, and fitting to the offense committed, that will provide accountability for the offender, and restitution and healing to the victim, offender, and community of Nenana.

Section 17. Contempt of Court

- A. Reasons Persons may be found in Contempt of Court:** A person may be found in contempt of court if he or she:
 - 1. Violates the Oath of Loyalty, Confidentiality, Fairness, and Impartiality;

2. Fails to fully comply with an Order of the Nenana Tribal Court;
3. Lies to the Court; and/or
4. Disrupts Court proceedings.

B. Judges in Contempt: Judges shall be in contempt of court for violating the reasons listed in Part A of this Section. Additionally, Judges may be found in contempt of court if found in violation of the Judicial Ethics for the Nenana Tribal Court. The Tribal Council shall determine how to handle the matter based on the facts of the situation, and may remove a Judge temporarily or permanently from the Nenana Tribal Court by a minimum of 6 votes of the Tribal Council. If the Judge is also a Tribal Council member, removal shall be from the judicial duties and not as a member of the Tribal Council unless the procedures for removal of a tribal council member as provided in Article 6 of the Nenana Tribal Constitution are followed.

C. Tribal Staff and other Tribal Officials in Contempt: Tribal staff of other tribal officials who are found in Contempt of Court may be subject to discipline up to and including loss of their job or positions under the terms of the Nenana personnel policy.

D. Parties in Contempt of Court: When Parties are found to be in Contempt of Court, the Court may Order a Sentence under the Options for Orders and Sentences under Section 16 of this Chapter. The Sentence shall match the offense committed. The Tribal Court may seize a person's personal property if that person is found in contempt of court by the Nenana Tribal court for not doing what the Court has Ordered. The property shall remain confiscated and under the care of the Tribal Council until the person complies with the Court Order to the satisfaction of the Nenana Tribal court. If the person does not comply with the Court Order within the time limits set by the Nenana Tribal Court, the Court may sell the confiscated property after providing at least 30 days notice to the person of the proposed sale.

CHAPTER 3

NENANA COURT OF APPEALS

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Section 1. Purpose of the Nenana Court of Appeals

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

Section 2. Structure of the Nenana Court of Appeals

The Nenana Tribal Council shall serve as the Nenana Court of Appeals. A minimum of 3 Council members shall serve on a case that is appealed. The Council shall decide among themselves which three Council members shall so serve. The Judges shall not have a conflict of interest for the case as defined in Section 8, Chapter 1 of the Nenana Judicial Code, nor shall they have served on the case being appealed as a tribal court

judge. If there are not enough Judges who do not have such conflict of interest, the Council may use visiting judges from another tribal court, provided that there shall be at least one Judge who is a Nenana Tribal Court Judge. The provisions for conflict of interest for Nenana Judges and the Indian Child Protection and Family Violence Prevention Act of 1990 apply to Appellate Judges. The three Judges shall decide among themselves who the Presiding Judge shall be, and shall take the Oath of Loyalty, Confidentiality, Fairness, and Impartiality found in Chapter 1 of this Code

Section 3. Clerk of the Nenana Court of Appeals

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

Section 4. Beginning an Appeal

A Party who wishes to appeal a case may file a Notice of Appeal with the Clerk of the Nenana Court of Appeals within 30 days after the Party has received a final written Order from the Nenana Tribal Court. Appeals filed after 30 days from receipt of the Order shall not be considered. A Party who is appealing a case shall be called the "Appellant."

Section 5. Notice of Appeal

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

Section 6. Appellate Court Procedure and Decisions

A. Beginning a Case: The Clerk shall notify the Nenana Tribal Council that an Appeal has been filed. The Clerk and at least two Nenana Judges who did not serve on the case being appealed shall determine who the Appellate Court Judges shall be. Once a determination of who the Appellate Judges shall be has been made, the Clerk shall make copies of the Tribal Court record of the case and the Notice of Appeal for the Court of Appeals. The Clerk shall set a date for the Court of Appeals to review these materials, and to determine if there is sufficient evidence that tribal law may have been inconsistently applied and/or if there may have been a violation of fundamental fairness. If the Nenana Court of Appeals decides that there is not sufficient evidence, the decision of the Nenana Tribal Court stands, and no hearing is scheduled. If no hearing is held the Nenana Court of Appeals shall issue an order to the Appellant stating that.

B. Setting a Hearing Date: Once the Nenana Court of Appeals has completed a review of the case records and decided that it will hear a case, the Clerk shall set a hearing date and shall give all parties to the case Notice of the hearing. The Notice shall be personally delivered at least 7 days or mailed at least 14 days prior to a hearing, and proof of service filed or noted in the case records. At the hearing, all parties may discuss the issues written in the Appeal concerning whether or not the Tribal Court made a mistake in applying tribal law or a mistake concerning fundamental fairness. The parties may only present new evidence in the appeal if the Appellate Court permits it.

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

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

3. Dismiss the case in the most serious of circumstances.

C. Written Decisions of the Appellate Court: After the Nenana Appellate Court hears a case, the Presiding Judge or Clerk shall fill out a Decision of Appeal that shall be filed in the Appeals Court record given to the Tribal Court. The Clerk shall assure that all parties in a case receive a copy of the Decision of Appeal, and file a proof of service in the case records.

CERTIFICATE OF ADOPTION

The Tribal Judicial Code was originally a part of the Tribal Government Operation, Structures and Procedures adopted in 1998. This Judicial Code is now a separate Code and replaces the 1998 version. Additionally, the Nenana Tribal Court Structure was updated in 2003, and Chapter One of this Code amends that ordinance. This Native Village of Nenana Tribal Judicial Code was submitted to a vote of the Nenana Tribal Council at an open meeting on _____ for which proper notice was provided, and was duly adopted by the Nenana Tribal Council by a vote of ____ in favor, and ____ opposed.

_____ **Chief**

_____ **Second Chief**

_____ **Secretary**

_____ **Treasurer**

_____ **Council Member**

_____ **Council Member**

_____ **Council Member**

_____ **Council Member**

_____ **Council Member**