

DRAFT
**REVISED NORTHERN CHEYENNE LAW &
ORDER CODE**

TITLE 2
SUPREME COURT AND APPEALS

DRAFT

Title 2

SUPREME COURT OF APPEALS

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TITLE 2

SUPREME COURT AND APPEALS

Chapter 1. GENERAL SECTION

2-1-1. Composition of the Supreme Court

A. **Supreme Court Judges.** The Supreme Court will have at least three part-time Supreme Judges, including a Chief Supreme Judge and at least two Associate Supreme Judges.

B. **Selection of Chief Supreme Court Judge.** The Tribal President with the concurrence of the Tribal Council will designate one Supreme Court Judge as the Chief Supreme Court Judge. The designee will serve as Chief Supreme Court Judge through his or her Term of Office as Supreme Court Judge, provided that the Tribal President with the concurrence of the Tribal Council, in their absolute discretion, may at any time designate another Supreme Court Judge as the Chief Supreme Court Judge.

C. **Authority of Chief Supreme Court Judge.** The Chief Supreme Court Judge will have overall administrative authority over the Supreme Court, including without limitation authority to assign cases among the Supreme Court Judges, designate Full Panel Review of Appellate panels, assign Judges Pro Tem to Supreme Court proceedings as provided in this Title, and manage the calendars of the Supreme Court.

D. **Pro Tem Judges.** The Tribal President with the concurrence of the Tribal Council must appoint and maintain a panel of Judges Pro Tem available to temporarily fill-in for a sitting Judge who is recused, disqualified, or otherwise temporarily unavailable to serve in a particular case or for a discrete period of time. The Tribal President with the concurrence of the Tribal Council, in their absolute discretion, may at any time remove a Judge Pro Tem from the panel provided that such removal will not be effective with respect to any Trial Court, Supreme Court or matter which has been assigned to the Judge Pro Tem unless the removal has been concurred in by the Chief Trial Judge or Chief Supreme Court Judge making the assignment.

2-1-2. Pro Tem Judge Qualifications. To serve as a Judge Pro Tem in a particular Court, one must possess the qualifications set forth in this Title for Judges of Northern Cheyenne Tribal Court.

2-1-3. Pro Tem Judge Assignment. For the temporary purpose described Chief Supreme Court Judge may assign a qualified Judge Pro Tern to serve in the Supreme Court and the Chief Supreme Court Judge may assign a qualified Judge Pro Tem to serve in the Supreme Court, provided that, in removal proceedings directed at a Supreme Court Judge, only the Chief Trial Judge may assign a Judge Pro Tem.

2-1-4. Qualification of Judges.

A. **Certification of Qualifications.** A person appointed to the position of Supreme Court Judge or appointed to the panel of Judges Pro Tem, by the Tribal President must (1) assure that the qualifications of the candidate for appointment have been carefully Investigated, and (2) certify in writing that such an full investigation has been performed and that the candidate possesses the requisite qualifications.

B. **Age.** All Judges must be at least 30 years old.

C. **Tribal Membership.** All Judges must be enrolled members of the Tribe. At least one Supreme Court Judge must be an enrolled member of the Tribe.

D. **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 Supreme Court Judges must have graduated from an accredited law school and be a member of a state bar, which credentials are mandatory, for all other Supreme Court Judges and all Trial Judges.

E. **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 will not include convictions that have been vacated.

F. **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 will not include convictions which have been vacated.

G. **No Removal Within Three Years.** Within the three-year period preceding (1) the date set for the primary election (and through the date of the general election) or (2) 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.

H. **Domicile.** All Trial Judges must be domiciled on the Reservation throughout the Term of Office. At least one Supreme Court Judge must be domiciled within 150 miles of Lame Deer, Montana throughout the Term of Office. As used herein, the term "domicile" means the residence in which a person customarily and actually resides during the applicable time period.

I. **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.

J. **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.

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

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

2-1-5. Terms of Office.

A. **Four-Year Terms.** The Supreme Court Judges will serve four-year terms consistent with the election of Trial Court Judges.

B. **Serve Until Successor Elected or Appointed. Supreme Court Judges.** Each Supreme Court Judge will 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.

2-1-6. Appointment of Supreme Court Judges

The Supreme Court Judges will be appointed as set out below:

A. **Appointment.** All Supreme Court Judges will 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 Supreme Court Judge must be appointed for the four-year Term described in section 2-1-5.

C. **Death, Resignation or Removal.** Upon the death, resignation or removal of a Supreme Court Judge, a successor must be appointed to fill the vacancy. The appointee will serve for the remainder of the former Appellate Judge's Term of Office.

2-1-7. Compensation. The compensation for Supreme Court Judges will be set by the Tribal Council. Adjustments including increases and reductions in a sitting Supreme Court Judge's compensation must be consistent with a proportionate adjustment in compensation for the President, Vice President and Tribal Council; or because of converting from or to a full-time to part-time status.

2-1-8. Judicial Training. Subject to the availability of funds, there will be mandatory training for all Judges, as directed by the Chief Trial Judge for the Trial Judges and by the Chief Supreme Judge for the Appellate Judges.

A. **Annual Training.** Each Judge will receive training at least annually.

B. **Subjects.** The training must cover subjects relevant to the Judge's function, including without limitation pre-trial, trial, or appellate procedures, discovery, legal research, legal writing, Tribal law, and federal Indian law.

C. **Conduct of training.** The training will be conducted by authorities in their respective fields.

2-1-9. Code of Judicial Conduct. The Chief Trial Judge and Chief Supreme Judge, in consultation with the Tribal Council, reaffirm the Code of Judicial Conduct by Supreme Court Judicial Order for the Judicial Branch to be in force on the Effective Date of this Title ("Current Code"), and adopt an amended Code of Judicial Conduct found in Chapter 6 of this Title.

2-1-10. Conflict of Interest.

A. A Supreme Court Judge can not hear or decide an appeal if that Judge:

1. Decided any material matter in the Trial Court proceedings; or is related by blood or marriage to the appellant or appellee, if such relationship is in the first degree, such as a 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

2. 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

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

B. Disqualification. A Supreme Court Judge must 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.

C. Review of Disqualification by Supreme Court. A party to an appeal may, in accordance with the above provisions, file an affidavit of prejudice with the Supreme Court stating facts and reasons for the belief that prejudice exists. The affidavit must be filed within five days of the designation of the Supreme Judge to hear the appeal. If two other Supreme Court Judges agree to 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.

D. Alternative to Disqualification. A judge disqualified pursuant to Section 2-2-10 (A) or (B) above may, instead of withdrawing from the proceeding, disclose on the record the basis of his/her disqualification. If based upon such disclosure the parties and lawyers or lay advocates, independent of the judge's participation, all agree in writing that the judge's participation is not prejudicial or that the judge's financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding.

2-2-11. Removal of Supreme Court Judge. Exclusive Method. The Supreme Court has exclusive authority to hear and decide the removal of any Judge. There are two types of removals: Automatic Removal and Removal by Complaint. Both are administered and decided by the Supreme Court. If the removal is directed at a Supreme Court Judge and if there are fewer than three other available sitting Supreme Court Judges, the Respondent's seat on the Supreme Court will be filled in the removal proceedings by a Trial Judge or a qualified Judge Pro Tem designated by the Chief Trial Judge.

2-1-12. Automatic Removal. A Judge must forfeit and be removed from office for:

A. Conviction of Felony. Automatic Removal must 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 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 must occur if the Judge, while holding his or her current position as 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 Supreme 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 must 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.

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

1. Upon receiving information it deems reliable that indicates that a Judge stands convicted of a felony as described in subsection (A) above or a Misdemeanor Involving Moral Turpitude as described in subsection (B) above, or lacks any qualification for office as described in subsection (C) above, the Supreme Court must, as a matter of highest priority, proceed immediately to determine whether such ground for Automatic Removal in fact exists, and if it does, to confirm the Automatic Removal of the Judge, in the following manner. Such proceedings cannot be delayed or suspended because judicial proceedings to reconsider, vacate or appeal a conviction described in subsection A or B are pending.

2. The Supreme Court must issue a written notice to the Judge, Tribal President and Tribal Secretary advising that the Supreme Court will convene a hearing to determine whether the Automatic Removal of Judge from office must be confirmed. The notice must state the date, time and place of the Supreme Court hearing, and summarize the indicated grounds for Automatic Removal, and must include a copy of this Title. The hearing must be held as promptly as possible but no sooner than 10 days from the date of issuance of the written notice.

3. At the hearing, the Judge/Respondent must be afforded an adequate opportunity to be heard on the matter, and may be represented by an attorney or lay 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 Supreme Court may consider any additional factual or legal materials; information or submissions it deems relevant.

4. After considering the materials, information and submissions before it, the Supreme Court must decide, whether the Respondent stands convicted of a felony as described in subsection (A); or a Misdemeanor Involving Moral Turpitude as described in subsection (B); or lacks any requisite qualification for office as described in subsection (C). If the Court decides that such ground for Automatic Removal in fact exists, it must immediately confirm Respondent's Automatic Removal from office, effective immediately. The Supreme Court's decision must be in writing.

5. The decision of the Supreme Court on Automatic Removal will be final and binding. The decision is not subject to review in any court.

6. While Automatic Removal proceedings are pending, the Supreme Court may suspend or otherwise limit Respondent's status or authority as a Judge.

E. Effect of Subsequent Vacation of Conviction. If the Automatic Removal grounds were based on a conviction described in subsection (A) or B), and the conviction was subsequently vacated; then the Supreme Court must determine whether the vacated conviction existed at time the respondent was elected or appointed to serve as a Judge. If the Judge's conviction was not vacated at the time of election or appointment, the Judge should be removed, but not precluded from running to serve as a Judge in future elections or from being appointed as a judge in the future. Otherwise, the Judge should be held to the qualification standards as set out in this Code.

2-1-13. Removal by Complaint. In addition to Automatic Removal under section 1-3-12 any Judge may be removed from office by complaint:

A. Complaint. Proceedings for Removal by Complaint will be initiated by a written complaint ("Complaint") seeking removal of a single Judge only ("Respondent"). The Complaint must 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, must be filed with the Court Clerk ("Filing"), who promptly must provide a true copy thereof to the Respondent, each member of the Supreme Court, the Tribal President, and the Tribal Secretary. The Supreme Court will have continuing authority to adjust the filing fee.

B. Grounds. Removal by Complaint may be sought and effected on the ground that the Respondent:

1. has grossly or repeatedly failed to competently perform the duties of office;
2. 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 1-3-12 (A) or (B), the convicted Judge will be Automatically Removed in the manner described in section 1-3-12;
3. 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
4. has grossly or repeatedly violated the Code of Judicial Conduct.

C. Withdrawal of Complaint. At any time prior to the commencement of a hearing under subsection G 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 must be terminated. The Court Clerk promptly must provide true copies of any signature withdrawal(s) to the Respondent, any other Complainant(s), each member of the Supreme Court, the Tribal President, and the Tribal Secretary.

D. Review by Tribal Secretary. Within 7 days after the Filing of the Complaint, the Tribal Secretary must determine the validity and sufficiency of all signatures on the Complaint, and report the results of this review in writing to the Court Clerk.

E. Review by Supreme Court. If the Complaint is supported by valid signature(s), the Supreme Court, must:

1. Promptly review the Complaint and determine if it:
 - a. meets the formal and procedural requirements of this Code;

b. alleges grounds and sufficient supporting facts which, if proven to the satisfaction of the Court, would justify Removal by Complaint; and

2. Report its determinations within 21 days after the Filing of the Complaint on items (1)(a) &(b) in writing to the Respondent and Complainant(s).
 3. Dismiss the Complaint if the Court reports negatively on either items (1)(a) or (b) and no further action is necessary; or
 4. Schedule a hearing to commence within 35 days after the filing of the Complaint if the Court reports positively on items (1) (a) and (b).
 5. (5) Determine whether to suspend or otherwise limit Respondent's status or authority as a Judge pending the hearing.
- F. **Timelines.** On a case-by-case basis, the Supreme Court may adjust any time period specified in subsection D or E above, as it deems warranted.
- G. **Hearing.** If the Supreme Court determines to hold a hearing on the Complaint, the hearing will be conducted as follows:
1. At least 10 days before the hearing, the Court Clerk must 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 will be conducted in accordance with such procedures and evidentiary standards as the Supreme 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 will be conducted in public and on the record. A verbatim stenograph or electronically recorded transcript of the hearing will be maintained.
- H. **Decision.** After the hearing, the Supreme Court will issue a decision on the Complaint. The decision must be in writing and must set forth findings of fact, conclusions of law as to whether grounds for Removal by Complaint have been established, and the Court's decision with respect to such removal. The Supreme Court may dismiss the Complaint; or may decide that Respondent is to be removed as Judge; or that Respondent's status as Judge will be suspended for no more than 90 days; and/or may impose conditions on Respondent's continued status or activities as Judge. The decision of the Supreme Court will be final, binding on the Tribe and all branches of Tribal government, and not subject to judicial review in any court.

2-1-14 Effect of Removal on Future Eligibility for Judge.

A. **Automatic Removal - Felony.** A Judge Automatically Removed from office due to a felony conviction as provided in this section will not be eligible for election or appointment as a Judge unless the conviction has been vacated and otherwise person meets all other qualifications set forth in this Title.

B. Automatic Removal - Misdemeanor Involving Moral Turpitude. A Judge Automatically Removed from office due to conviction of a Misdemeanor Involving Moral Turpitude as provided in this section will not be eligible for election or appointment as a Judge during the 10-year period following such conviction, unless the conviction has been vacated and such person possesses all other qualifications for such office set forth in this Title.

C. Removal by Complaint. A person who has been removed as a Judge by Complaint as provided in this section will not be eligible for election or appointment for a three-year period following such removal.

Chapter 2. ADMINISTRATION

2-2-1. Administrative Responsibilities The Chief Supreme Court Judge, will have overall administrative authority over the Supreme Court.

2-2-2. Clerk's Office. There will be an Office of the Court Clerk serving the entire Northern Cheyenne Tribal Court. The Office of the Court Clerk will be administered by the Court Clerk and subject to the supervision of the Chief Trial Judge.

2-2-3 Clerk's Duties. The Court Clerk will 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 Supreme Court; and performance of all other necessary duties and functions of the Office of the Court Clerk. With regard to the Supreme Court:

- A. It is the duty of the Clerk of Court to notify the Supreme Court when an appeal has been filed.
- B. It is the duty of the Clerk of Court to maintain the calendar for the briefing schedule for the Supreme Court.
- C. It is the duty to ensure the Supreme Court receives the transcript from the Trial Court and briefs from the appealing parties.
- D. It is the duty of the Clerk of Court to schedule oral arguments before the Supreme Court when appropriate.
- E. It is the duty of the Clerk of Court manage the bonds and make distributions appropriately and timely.

Chapter 3. SUPREME COURT GENERAL PROCEDURE

2-3-1. Supreme Court Hears All Appeals.

- A. The Supreme Court will hear all appeals and other authorized requests for appellate review from decisions of the Trial Court.
- B. The Supreme Court must convene when an appeal has been properly filed in accordance with this Title.

C. Exclusive and Original Jurisdiction Over Constitutional Claims. The Supreme Court will have original jurisdiction over, and be the exclusive Tribal judicial 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 Supreme 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 described above.

D. Relief. Unless authorized to grant Other Relief as provided the Supreme Court will have authority to issue only one 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 supporting findings of fact, conclusions of law, and/or opinion as the Supreme Court considers necessary or appropriate.

E. Participation of Tribal Council. The Tribal Council, as an entity, may be made a party-defendant in any Supreme Court proceedings on a Constitutional Claim, whether the claim is brought directly or indirectly in the Supreme Court.

F. 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, under recognized legal principles.

2-3-2. Parties to an Appeal. Any party may appeal an adverse decision, final order, commitment or judgment of the Trial Court in any civil or criminal case to the Northern Cheyenne Supreme Court. The Prosecution in a criminal case cannot appeal a jury or bench verdict of not guilty. In guilty verdictsthe Prosecution may appeal procedural errors.

2-3-3 Supreme Court Hears the Appeal. An appeal is heard by a single Supreme Court Judge. However, a full panel of three (3) Supreme Court Judges may be sought and granted; or in the Chief Supreme Court's discretion a full panel may be called to decide an appeal.

2-3-4. Commencement of an Appeal by filing Notice of Appeal.

A. Notice of Appeal. An appeal is commenced by filing a Notice of Appeal with the Supreme Court. A Notice of Appeal must be filed Court Clerk within five (5) business days of the date of adverse decision of the Trial Court.

B. Notice to Appellee. A Court Clerk Certified copy of the Notice of Appeal must also be served upon the adverse party, Appellee within five (5) business days.

C. **Contents of Notice of Appeal.** The Notice of Appeal must provide a plain statement to the Supreme Court that describes: 1) grounds for appeal; 2) issue(s) for the Supreme Court to decide; 3) relief sought; 4) name the appellees. Any issues not preserved by objection or other means at the Trial Court are barred from being heard on appeal.

D. **Failure to File Notice of Appeal.** The Supreme Court is barred from hearing appeals where the party has failed to File Notice of Appeal with the Clerk of Court within (5) business days.

E. **Review on Record Below.** All appeals and other authorized requests for review before the Supreme Court must be based and decided on the pleadings, briefs, files, records and transcripts of the Trial Court proceedings. No new evidence may be introduced or considered by the Supreme Court.

F. **No Extensions.** The Filing of Notice of Appeal cannot be extended in any circumstances.

2-3-5. Filing Fee. The appealing party must pay a \$100 filing fee at the time of Filing the Notice of Appeal is filed to the Court Clerk.

2-3-6. Bond Requirement. The appealing party must post a bond simultaneously while filing the notice of appeal where a judgment has been awarded.

A. **Judgments up to \$1000.00.** A bond of \$200.00 must be posted for judgments up to \$1000.00.

B. **Judgments over \$1000.00.** For judgments over \$1000.00, a bond must be posted in the amount of \$200.00 plus an additional 10% of the judgment award.

C. Bonds will be returned or forfeited appropriately upon the final decision of the Supreme Court.

2-3-7. Mandatory Briefing Schedule

A. **Opening Brief of Appeal.** The appealing party/Appellant must file the Opening Brief with the Clerk of Court and serve the opposing party/Appellee the Appellant's Opening Brief within 20 business after the filing of the Notice of the Appeal.

B. **Reply Brief.** The Appellee must file the Appellee's Reply Brief with the Clerk of Court and serve the Appellant within 35 business days after the filing of the Notice of the Appeal.

C. **Responsive Brief.** The Appellant may file a Responsive Brief with the Clerk of Court and serve the Appellant within 45 days after the filing of the Notice of the Appeal.

D. **Failure to file a brief.** The Supreme Court will not decide issues that are not briefed. The Clerk of Court will not accept late briefs. An Appellant failing to file an Opening Brief as described in: Section 3-3-7., A, is precluded from filing a Responsive Brief as described in Section 3-3-7., C.

E. The Supreme Court cannot extend briefing deadlines under the Mandatory Briefing Schedule. However, the Supreme Court has discretion to seek additional briefing from the parties.

2-3-8. Briefing Requirements

A. **Brief Requirements.** All briefs submitted to the Supreme Court of the Northern Cheyenne Tribe must:

1. be presented in a type-face 12 point font, double spaced lines;
2. be on 8 ½ x 11 white paper;
3. have proper heading and caption, ie. Naming parties, Appellant v. Appellee, in the Supreme Court of the Northern Cheyenne Tribe;
4. be no longer than 20 pages in length (not including, table of contents, table of authorities, exhibits);
5. have numbered pages;
6. be signed by the attorney, lay advocate or pro se litigant; and
7. include a signed certificate of service to the opposing party.

2-3-9. Oral Arguments. Either the Appellant or Appellee can seek to present oral argument before the Supreme Court. The party seeking to present oral argument must submit a formal request to the Clerk of Court and notify the opposing party before the briefing of the case has been completed. Requests for oral arguments may be granted or denied by the Supreme Court Judge.

2-3-10. Standard of Review.

A. The Supreme Court must determine the standard of review when deciding an appeal. The Supreme Court may require briefing on the standard of review to be used for the appeal it is considering for matters of first impression. Unless otherwise authorized or determined necessary, the Supreme Court will refrain from using a de novo standard of review.

B. **No Decision.** The Supreme Court may decide not to hear an appeal when it is evidently clear to the Clerk of Court and Chief Supreme Court Judge that the appeal is frivolous and/or information in the Notice of Appeal is clearly false.

C. **Decision.** When an appeal is heard, the Supreme 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.

D. **Principles of Judicial Restraint.** When adjudicating matters the Supreme Court will observe all established doctrines of judicial restraint, including without limitation the following:

1. requiring exhaustion of available remedies within the Executive Branch and/or the Legislative Branch;
2. presuming that the Council Enactment is valid and requiring that its invalidity be clearly and convincingly shown;

3. deferring to the Tribal Council's judgment on written policy matters and political questions;
4. deferring to determinations of administrative agencies within the Executive Branch in matters within their particular expertise;
5. avoiding Constitutional issues;
6. deciding on non-Constitutional grounds;
7. abstaining from hypothetical or moot questions; and
8. upholding all valid and severable portions of the enactment or other action of the Tribal Council under challenge.

2-3-11. Written Decision.

A. **Contents.** The Supreme Court's decision must be in writing and must contain: standard of review; the findings of facts; conclusions of law; and the decision and direction for the trial court if appropriate. The Written Decision must be issued within 15 business days of either the date of the last brief or from the date of the oral argument.

B. **Decisions Binding.** All Decisions, including Declaratory Judgments on Constitutional Issues on matters within its jurisdiction:

1. are to be final, conclusive and binding on the Tribal Council, all other parties to the Supreme Court proceeding, the Judicial Branch, and any other Tribal Adjudicatory Body; and
2. may not be modified, vacated or reversed by the Tribal Council or the Executive Branch.

C. **Implementation of Declaratory Judgment Vindicating a Constitutional Claim.** Upon issuance of a Declaratory Judgment vindicating a Constitutional Issue in whole or in part, the Tribal Council must 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 will be final and not reviewable by any court. The Executive Branch and all other Tribal Entities and Tribal Officials must give full faith and credit to the Declaratory Judgment and take such action as may be necessary to assure that their actions are consistent with the terms of the Declaratory Judgment.

3-3-12. Full Panel Review. Either or both of the Appellant and Appellee can request a Full Panel Review. A formal Request for a Full Panel Review must be submitted to the Clerk of Court within thirty (30) days of the Supreme Court's issuance of decision. The Chief Supreme Court Judge must call for a vote of the full Supreme Court Judge Panel on whether or not to grant the request for a Full Panel Review. The Chief Supreme Court Judge must hold a Full Panel Review of the Appeal if a majority or 2/3 of the Supreme Court Judges vote in favor of a Full Panel Review.

With a Full Panel Review all Supreme Court Judges will be provided copies of the briefings, pleadings and other filings. The Supreme Court may request additional briefing and/or oral arguments in their discretion. A Full Panel Review must issue their decision within thirty (30) business days from the date of granting Full Panel Review; or date of Fully Panel oral argument.

Chapter 4. COSTS, SATISFACTION OF JUDGMENT, EXTENSION OF TIME LIMITS

2-4-1. Costs. The costs of an appeal, rest on the appealing party unless: 1) the Trial Court's decision was the result of the Trial Judge's conflict of interest as determined by the Supreme Court, then the opposing party is responsible for the costs of appeal; or 2) the Trial Court's decision was arbitrary or capricious; or not supported by facts; then the opposing party is responsible for the costs of the appeal. In situations where Supreme Court finds the litigation was prompted to delay, frustrate or otherwise cause distress, the attorney fees, lay advocate fees and court costs may be awarded.

2-4-2. Satisfaction of Judgment. All judgments and orders of the Supreme Court will be enforceable through and by the Trial Court. Upon compliance with and satisfaction of the judgment or order, the Court Clerk will notify the Chief Supreme Court Judge.

2-4-3. Extension of Time Limits. Unless otherwise prohibited, the Supreme Court, for good cause, may extend any time limit set in this Title.

Chapter 5. EXPEDITED APPEALS

2-5-1. Expedited Appeals. A party may request an Expedited Appeal unless the right to appeal is foreclosed by this Law and Order Code or other applicable Tribal or federal law:

- A. Injunctions: Trial Court order denying or granting an injunction.
- B. Mandamus: Trial Court order directing the Tribe or a Department or Agency or a Tribal Official, 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 he has been illegally deprived; provided nothing in this section will not be construed as a waiver of sovereign immunity under section 1-2-5.
- 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.

2-5-2. Filing a Request for an Expedited Appeal. The Request for an Expedited Appeal must be filed within three (3) business days of issuance of the Trial Court Order with the Clerk of Court. A Supreme Court Judge will decide in writing whether the appeal will be processed as an expedited appeal, dismissed or processed as an ordinary appeal. If processed as an expedited appeal, a written decision on the appeal must be issued as soon as possible, but not later than ten (10) business days after the Request for and Expedited Appeal is filed.

2-5-3. Standards on Immediate Appeal. The Supreme Court must determine the appropriate standard of review on an expedited appeal. The Supreme Court may affirm, modify, reverse, or remand the Trial Court's order. The order may be modified or reversed only if there was no evidence to support the order.

2-5-4. Expedited Appeal Briefing and Oral Argument

- A. **Opening Brief.** The Appellant must submit their brief to the Clerk of Court and Appellee within five (5) business days from the date of the Court's acceptance of the Expedited Appeal.

B. **Reply Brief.** The Appellee must submit their Reply Brief within ten (10) days business days of the Court's acceptance of the Expedited Appeal.

C. **Oral Argument.** The parties may be required to present oral arguments at the Supreme Court's request. Oral arguments will not be scheduled unless briefs have been submitted.

D. **Failure to Brief.** The Supreme Court will decide the issue on the pleadings before the Court when a party or the parties have failed to brief the issue before the Court.

2-5-5. Written Decision. The Supreme Court's decision must be in writing and must contain: standard of review; relevant findings of facts; conclusions of law; decision and direction for the trial court if appropriate. The Written Decision must be issued as soon as reasonably possible.

2-5-6. Appeal Available. The disposition of an expedited appeal does not preclude an appeal of the Trial Court's final decision.

Chapter 6. CODE OF JUDICIAL CONDUCT

2-6-1. Code of Judicial Conduct.

A. Our Legal System

1. Fundamental principle that courts are independent branches of government in which fair and competent judges interpret and apply the laws that govern us. A judge shall respect and comply with the law at all times and shall act in a manner that promotes public confidence in the integrity and impartiality of the judiciary and the office of the judicial employee.
2. A judge shall not participate in legislative or executive decision-making except where such participation is in accordance with the tradition of the Tribe.
3. Built into the Code of Judicial Conduct are the principles:
 - a. that judges must treat their judicial offices as public trusts;
 - b. that judges must strive to maintain and enhance the public's confidence in our legal system; and
 - c. that as an adjudicator of facts and the law, a judge resolves disputes that is highly visible symbol of government under the rule of law;
 - d. a judge must act an administrator in his office to facilitate the performance and responsibilities of other judges and court officials.
 - e. a judge must uphold the same standards of fidelity and diligence of the judiciary employees, and others subject to the judge's direct and control to observe the same standards of fidelity and diligence applicable to the judge.

B. The Code of Judicial Conduct contains:

1. Standards of ethical conduct for judges;

2. Standards of ethical conduct for judicial employees;
3. Broad statements called canons; and
4. Rules under each canon
5. The Canons are designed to provide guidance to judges, judicial employees, and candidates for judicial office and to provide a structure for regulating judges' conduct through disciplinary action.

a. For purposes of this Code:

- i. "judicial employees" refers to all employees of the judicial branch, including interns, externs, and other volunteer court employees, as well as judges unless stated otherwise.

C. Misconduct: The Judicial Canons regulate:

1. The activities of judges on and off the bench;
2. The activities of judicial employees while performing duties within the judiciary office;
3. Improper courtroom behavior;
4. Improper/illegal influence;
5. Impropriety off the bench;
6. Other improper activities; and
7. Physical or mental disability.

2-6-2. Canon 1.

A Judge should uphold the integrity and independent of the Judiciary and of the Judicial Employee's Office.

An independent and honorable judiciary is indispensable to justice in the Northern Cheyenne Tribal Court and within the Northern Cheyenne Nation. A judge should participate in establishing, maintaining and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. A judicial employee shall hold high standards of conduct so that the integrity and independence of the judiciary may be preserved and the office of the judicial employee may reflect a devotion to serving the public. The provisions of this Code shall be construed and applied to further that objective. The standards of this Code shall not affect or preclude other standards which may be promulgated by order of the court.

2-6-3. Canon 2.

A judge and judicial employees shall avoid impropriety and the appearance of impropriety in all his activities.

- A. A judge shall not engage in any activities that would put into question the propriety of the judicial employee's conduct in carrying out official duties.
- B. A judge should respect and comply with the law and should conduct himself at all time in a manner that promotes public confidence in the integrity and impartiality of the judiciary.
- C. A judge should not allow his family, social, or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should avoid at all times discussions, other talk or communications concerning on-going or pending cases with litigants or other interested persons unless both parties or their counselors are present or have been accorded and waived equal opportunity to meet and engage in the discussions. He shall not accept gifts, money, or gratuities under circumstances in which said gift, money or gratuity are or may be intended to influence his conduct.
- D. A judge should not hold membership in any organization that practices invidious discrimination on the basis of race, sex, religion, or national origin.
- E. A judicial employee shall not allow family, social, or other relationships to influence official conduct or judgment. A judicial employee shall not lend the prestige of the office to advance or to appear to advance the private interests of others. A judicial employee shall not use their public office for private gain.

2-6-4. Canon 3.

A judge shall adhere to appropriate standards while performing the duties of his office impartially and diligently.

- A. Adjudicative responsibilities: The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties; the following standards apply:
1. A judge should be faithful to the law and maintain professional to the law and maintain professions competence in it. He should be unswayed by partisan interests, public clamor, or fear of criticism.
 2. A judge should maintain order and decorum in proceedings before him.
 3. A judge should be patient, dignified, and courteous to litigants, jurors, witnesses, lawyers, and other with whom he deals in his official capacity, and should require similar conduct of lawyers, and his staff, court officials, and others subject to his direction and control.
 4. A judge shall be committed to self-improvement and to participating in training made available to him.
 5. A judge should accord very person who is legally interested in a proceeding, or the person's lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte communications on the merits, or procedures affecting the merits, of pending or impending proceeding. A judge may, however obtain the advice of a disinterested expert on the law applicable to a proceeding before the judge if the judge

gives notice to the parties of person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond. A judge may, with consent of the parties, confer separately with the parties and their counsel in an effort to mediate or settle pending matters.

6. A judge should dispose promptly of the business of the court.

7. A judge should avoid public comment on the merits of a pending or impending action, requiring similar restraint by court personnel subject to the judge's direction and control. This proscription does not extend to public statements made in the course of the judge's official duties, to the explanation of court procedures or to a scholarly presentation made for purposes of legal education.

B. Administrative Responsibilities:

1. A judge should diligently discharge the judge's administrative responsibilities, maintain professional competence in judicial administration, and facilitate the performance of the administrative responsibilities of other judges and court officials.

2. A judge should require court official, staff, and others subject to the judge's direct and control to observe the same standards of fidelity and diligence applicable to the judge.

3. A judge should initiate appropriate action when the judge becomes aware of reliable evidence indicating the likelihood of unprofessional conduct by a judge or lawyer.

4. A judge should not make unnecessary appointments and should exercise that power only on the basis of merit, avoiding nepotism and favoritism.

5. A judge with supervisory authority over other judges should take reasonable measures to assure the timely and effective performance of their duties.

C. Disqualification:

1. A judge shall disqualify himself or herself in a proceeding in which the judge's impartiality might reasonably be questioned, including but not limited to instances in which:

a. the judge has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

b. the judge served as lawyer in the matter in controversy, or a lawyer with whom the judge previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been material witness;

c. the judge knows that, individually or as fiduciary, the judge or the judge's spouse or minor child residing in the judge's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be affected substantially by the outcome of the proceeding;

d. the judge or the judge's spouse, or a person related to either within the third degree of relationship, or the spouse of such person:

- i. is a party to the proceeding, or an officer, director or trustee of a party;
 - ii. is acting as a lawyer in the proceeding;
 - iii. is to the judge's knowledge likely to be a material witness in the proceeding;
 - iv. is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding; or
 - e. the judge has served in governmental employment and in such capacity participated as counsel, advisor, or material witness concerning the proceeding or has expressed an opinion concerning the merits of the particular case in controversy.
2. A judge should keep informed about his personal and fiduciary financial interests and make reasonable effort to keep informed about the personal financial interests of his spouse and minor children residing in his household.
3. For the purposes of this Canon:
 - a. A degree of relationship is calculated according to the civil law system wherein the following relatives are within the third degree of relationship: parent, child, grandparents, grandchild, great grandparent, great grandchild, sister, brother, aunt, uncle, niece, and nephew. The listed relatives include whole and half blood relatives and most step relatives;
 - b. "Fiduciary" includes such relationships as executor, administrator, trustee, and guardian;
 - c. "Financial Interest" means ownership of legal or equitable interest, however small, or a relationship as director, advisor, or other active participant in the affairs of a party except that:
 - i. ownership in a mutual or common investment fund that holds securities is not a Financial Interest in such securities unless the judge participates in the management of the fund;
 - ii. an office in an educational, religious, charitable, fraternal, or civic organization is not a Financial Interest in securities held by the organization;
 - iii. the proprietary interest of a policy holder in a mutual insurance company, or a depositor in a mutual savings association or similar proprietary interest, is a Financial Interest in the organization only if the outcome of the proceeding could substantially affect the values of the interest; and
 - iv. ownership of government securities is a Financial Interest in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.
 - d. "Proceeding" includes pretrial, trial, appellate review, or other stages of litigation.
4. Notwithstanding the preceding provisions of this Canon, if a judge to whom a matter has been assigned would be disqualified, after substantial judicial time has been devoted to the

matter because of the appearance or discovery after the matter was assigned to him, that he individually or as a fiduciary, or his spouse or minor child residing in his household, has a Financial Interest in a party other than an interest that could be substantially affected by the outcome, disqualification is not required if the judge, spouse or minor child, as the case may be, divests himself or herself of the interest that provides the grounds for the disqualification.

5. Remittal of Disqualification: A judge disqualified by the terms of Paragraph C.1 above, except in the circumstances specifically set out in Subparagraphs a through e, may, instead of drawing from the proceeding, disclose on the record the basis of disqualification. If the parties and their lawyers, after such disclosure and opportunity to confer outside of the presence of the judge, all agree in writing or on the record that the judge should not be disqualified and the judge is then willing to participate, the judge may participate in the proceeding. The agreement shall be incorporated in the record of the proceeding.

2-6-5. Canon 4.

A judge may engage in activities to improve law, the legal system and he administration of justice

A. A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

1. He may speak, write, lecture, teach and participate in other activities concerning the law, the legal system and the administration of justice;
2. He may appear at a public hearing before an executive or legislative body or official on matter concerning the law, the legal system and the administration of justice to the extent that it would generally be perceived that a judge's judicial experience provides special expertise in the area. A judge acting *pro se* may also appear before or consult with such officials or bodies in matters involving the judge or judge's interest and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice; and
3. He may serve as a member, officer, or director of an organization or governmental agency devoted to the improvement of the law, the legal system or the administration of justice. He may make recommendations to public, tribal and private fund-granting agencies on projects and programs concerning the law, the legal system and the administration of justice.

B. A judge should not use to any substantial degree judicial chambers, resources or staff to engage in activities permitted by this Canon 4.

2-6-6. Canon 5.

A judge should regulate his extra-judicial activities to minimize the risk of conflict with his judicial duties.

A. A judge should conduct-extra judicial activities so they do not cast reasonable doubt on the judge's capacity to act impartially as a judge, demean the judicial office or interfere with proper performance of judicial duties.

1. Avocational Activities. A judge may write, lecture, teach and speak on non-legal subjects, and engage in the arts, sports, and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.
2. Civic and Charitable Activities. A judge may participate in civic and charitable activities that do not reflect adversely upon the judge's impartiality or interfere with the performance of judicial duties.
3. Financial Activities:
 - a. A judge should refrain from financial and business dealings that tend to reflect adversely on the judge's impartiality, interfere with the proper performance of judicial duties, exploit the judicial position or involve the judge in frequent transactions with lawyers or other persons likely to come before the court on which the judge serves.
 - b. Subject to the requirements of Subparagraph 1 above, a judge may hold and manage investments, including real estate and engage in other remunerative activity, but should not serve as an officer, director, active partner, manager, advisor or employee of any business other than a business closely held and controlled by members of the judge's family. For this purpose, "members of the judge's family" means persons related to the judge or the judge's spouse within the degree of relationship calculated according to the civil law system and any other relatives with whom the judge or the judge's spouse maintains a close familial relationship and the spouse of any of the foregoing.
 - c. A judge should manage investments and other financial interests to minimize the numbers of cases in which the judge is disqualified. As soon as the judge can do so without serious financial detriment, the judge should divest himself of investments and other serious financial detriment and the judge should divest himself of investments and other financial interests that might require frequent disqualification.
 - d. A judge should not solicit or accept anything of value from anyone seeking official action from or doing business with the court or other entity served by the judge, or from anyone whose interests may be substantially affected by the performance or nonperformance of official duties; except that a judge may accept a gift as permitted by the Judicial Conference gift regulations. A judge should endeavor to prevent a member of a judge's family residing in the household from soliciting or accepting a gift except to the extent that a judge would be permitted to do so by the Judicial Conference regulations.
 - e. For the purposes of this section "members of the judge's family residing in the judge's household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of the judge's family, who resides in the judge's household.
 - f. A judge should report the value of any gift, bequest, favor, or loan as required by statute of the Northern Cheyenne Nation.

- g. A judge is not required by this Code to disclose his income, debts, or investments.
- h. Information acquired by a judge in the judge's judicial capacity should not be used or disclosed by the judge in financial dealings or for any other purpose not related to the judge's judicial duties.
- i. Part time Judges and Judicial Officers may appear as counsel in civil and criminal actions in any court or before any governmental agency, except the courts or governmental agencies of the Northern Cheyenne Nation.
- j. A judge should not accept appointment to a governmental committee, commission, or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system, or the administration of justice unless appointment of a judge is required by an Act of Congress. A judge should not, in any event, accept such an appointment if the judge's governmental duties would interfere with the performance of judicial duties or tend to undermine the public confidence in the integrity, impartiality or independence of the judiciary. A judge may represent the judge's country, state or locality on ceremonial occasions or in connection with historical, educational and cultural activities.
- k. A judge should not use judicial chambers, resources, or staff to engage in activities permitted by this Canon 5, except for uses that are *de minimis*.
- l. A judge shall not request subordinate staff to participate in or contribute to any civic or charitable activity, but may provide information to them about a civic or charitable fund-raising campaign.
- m. A judicial employee shall not use or permit the use of the prestige of the office to solicit funds.
- n. A judicial employee shall not request or accept funds from lawyers or persons likely to come before the judicial employee, the court, or the office the judicial employee serves, except as an incident to a general fund-raising activity.

2-6-7. Canon 6.

A judge should refrain from political activity appropriate to his judicial office.

- A. A judge should not:
 - 1. act as a leader or hold any office in a political organization within the Northern Cheyenne Nation; or
 - 2. make speeches for a political organization within the Northern Cheyenne Nation or candidate or publicly endorse a candidate for public office; or
 - 3. solicit funds for a Northern Cheyenne political organization or candidate, with the exception of his own campaign; however,

4. a judge should resign his office if and when he is elected to any other political office in the Northern Cheyenne Nation.
 5. a judicial employee may engage in nonpartisan political activity only if such activity does not tend to reflect adversely on the dignity or impartiality of the court of office of the judicial employee and does not interfere with the proper performance of his official duties. A judicial employee may not engage in such activity while on duty or in the judicial employee's workplace.
- B. Notwithstanding the above, the judge shall be free to exercise his duties as a citizen and shall be able to participate by voting in any and all state, local and tribal elections.

2-6-8. Canon 7.

Ideal Judge.

A judge should be assured without being offensive; firm but fair, not yielding to every entreaty, but yielding to some; calm under pressure; moving the case or calendar, but not shoving people; listening, inquisitive without being obnoxious; firm, but not abusive; and diligent and intelligent without being arrogant.

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