

NORTHERN ARAPAHO CODE

TITLE 7. PEACEMAKER CODE

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CHAPTER 1: GENERAL RULES

Section 101 - Purposes. These rules are intended to give formal support, structure and enforcement to traditional Northern Arapaho methods of resolving disputes through mediation and the use of traditional ways without the imposition of judges or lawyers.

Section 102 - Authority; Short Title; Definitions. This Code is enacted pursuant to the inherent authority of the Northern Arapaho Tribe (Tribe) to govern and provide for the well being of its people. There is a long-standing custom within the Tribe for appointment of members of a community who are respected as being elders, wise in traditional ways, spiritual, or otherwise respected for the purpose of resolving disputes. This Code is enacted for the purpose of formalizing some of that custom and usage. 7 N.A.C. 101 through 7 N.A.C. 702 may be cited as the Northern Arapaho Peacemaker Code. To the extent applicable and not in conflict with the provisions of this Code, the definitions of terms provided in the Shoshone and Arapaho Law and Order Code shall be used in the interpretation of this Code.

COMMENT - In addition to the Tribe's inherent authority to govern its members and the broad authority of the Tribal Court over persons and claims on the Wind River Reservation, federal regulations recognize and apply as law the customs and traditions of tribes in Courts of Indian Offenses operated under federal regulations, including customs regarding marriage, probate, and civil actions generally. See 25 C.F.R. 11.600(b)(2) (marriage), 11.711 (probate), 11.100(f) (custom generally applied as law) and 11.500(a) (custom generally applied as law).

Section 103 - Establishment of Peacemaker Court. The Peacemaker Court of the Northern Arapaho Nation is hereby established as a department of the Northern Arapaho Tribal Court ("Tribal Court") or any Tribal Court duly authorized by the Northern Arapaho Tribe of the Wind River Indian Reservation, Wyoming. The chief judge of the Tribal Court shall supervise the activities of the Peacemaker Court and shall exercise supervisory control over any Peacemaker appointed pursuant to these rules.

COMMENT - This Code and the rules regarding the Peacemaker Court are modeled on the Navajo Nation Peacemaker Code.

Section 104 - Scope. Subject to the limitations under Section 203, a judge of the Tribal Court may appoint a Peacemaker in a community where the parties to the dispute are members of the Tribe or Indians residing on the Wind River Indian Reservation, Wyoming, or where the matter in dispute involves certain personal and community relationships including, but not limited to, the following:

- (a) Marital disputes and disputes involving family strife;
- (b) Disputes among parents and children;
- (c) Minor disputes between neighbors as to community problems such as nuisances, animal trespass or annoyance, disorderly conduct, breaches of the peace and like matters;
- (d) Alcohol use or abuse by family members or neighbors;
- (e) Conduct causing harm, annoyance or disunity in the immediate community;
- (f) Minor community business transactions of a sum of One Thousand Five Hundred Dollars (\$1,500) or less; and
- (g) Any other matter which the chief or associate judge of the Tribal Court finds should or can be resolved through the use of the Peacemaker Court.

Section 105 - Authorities of Tribal Court and Peacemaker.

(a) **Disclaimer of Jurisdiction.** By enacting this Code, the Tribe asserts no claim of jurisdiction whatsoever with respect to the Eastern Shoshone Tribe or its members, activities, rights, obligations or properties. However, the Tribe encourages the Tribal Court to explore the potential benefits of mediation on a case-by-case basis with respect to any of the matters set forth

in Section 104, regardless of the status of the parties as members or non-members of the Tribe.

(b) Primary Role as Mediator. The Tribal Court may order that parties to a dispute before that Court participate in mediation by a Peacemaker pursuant to this Code. However, Peacemakers are primarily mediators and cannot decide a disputed matter unless all parties to the dispute agree to such authority. If any matter referred to a Peacemaker is not resolved within thirty (30) days or such other reasonable time as the parties may agree or the Tribal Court may require, the Peacemaker shall be relieved of further responsibility, and the dispute shall proceed pursuant to the laws of the Northern Arapaho Tribe.

(c) Compulsory Civil Process. The Peacemaker may request and the Tribal Court may issue appropriate subpoenas or other civil process compelling attendance of witnesses or production of documents or things reasonably necessary to assist the Peacemaker. Such civil process shall issue and be subject to the rules of civil procedure. Disputes resolved pursuant to this Code may be approved as judgments or orders of the Tribal Court and are fully enforceable pursuant to this Code and other applicable law.

Section 106 - Counsel Forbidden. Members of the Shoshone & Arapaho Tribal Bar and all attorneys are barred from attending any proceeding of the Peacemaker Court. Such members and attorneys may assist persons with respect to protective orders, complaints and judgments under Sections 401, 402, 403, 404, 405, 406 and 502.

Section 107 - Interpretation and Implementation of Rules. These rules will be interpreted liberally and informally with the goal of providing a fair, informal, inexpensive and traditional means of resolving local disputes within the communities of the Northern Arapaho Nation and the Wind River Indian Reservation, Wyoming. The rules will be used and applied as close to and in accordance with Northern Arapaho tradition and custom as is possible.

CHAPTER 2: PEACEMAKERS

Section 201 - Appointment and Qualifications.

(a) **General Qualifications.** Any person who has the respect of the community of his or her residence, an ability to work with Tribal members, a reputation for integrity, honesty, humanity, and an ability to resolve local problems shall be eligible to be appointed by the Tribal Court as a Peacemaker.

(b) **Nomination by Tribe.** The Northern Arapaho Business Council (NABC) may select and certify the names of individuals as proposed Peacemakers. The individuals selected by the Tribe must agree to serve under the direction of the Tribal Court and work with individuals under the supervision of the Court. The clerk of the Tribal Court shall maintain a roll of Peacemakers, and Peacemakers shall be appointed by the Tribal Court from that roll. The Tribe may add or delete names to or from the list from time to time.

(c) **Action Where No Tribal Nomination.** Where NABC fails to nominate Peacemakers for the Tribal Court or there is an insufficient number of Peacemakers, the Tribal Court may prepare a list, or supplemental list, of potential Peacemakers from qualified persons known to it or any person recommended as being qualified as a Peacemaker.

(d) **Agreement as to Peacemaker.** Subject to approval by the Tribal Court, the parties to any dispute may agree to a given individual as a Peacemaker for the resolution of their dispute. In such cases the Peacemaker need not be a member of the Wind River Reservation Tribes or be Indian, but such an individual must be agreed to by all the parties to the dispute.

(e) **Appointment by Tribal Court.** Final selection and appointment of a Peacemaker in any specific matter must be made by the Tribal Court.

Section 202 - Powers of Peacemakers. Peacemakers are officers of the Tribal Court when acting as a Peacemaker and performing the functions of the Peacemaker Court under these rules, and they shall have the privileges and immunities of court officers. Peacemakers shall have the power to:

(a) Mediate disputes among persons involved in the peacemaking process by attempting to get them to agree as to the nature and scope of the problems affecting them and to agree on what should be done to resolve those problems;

(b) Use traditional Northern Arapaho culture and other ways of mediation and community problem-solving;

(c) Instruct or lecture individuals on the traditional Northern Arapaho teachings relevant to their problem or conduct;

(d) Compel persons involved in a dispute, affected by it, or in any way connected with it to meet to discuss the problem being worked on and to participate in all necessary peacemaking efforts; and

(e) Use any reasonable means to obtain the peaceful, cooperative and voluntary resolution of a dispute subject to peacemaking. No force, violence or the violation of rights secured to individuals by the American Indian Civil Rights Act will be permitted.

(f) If parties to a dispute agree in writing or orally before the Tribal Court, a Peacemaker may arbitrate a dispute by hearing all sides of it and then issuing a decision. Any such decision will have the effect of a court judgment when submitted to the Tribal Court for entry as a written judgment. Such decision may be appealed pursuant to the rules of the Tribal Court regarding civil appeals.

Section 203 - Limitations; Peacemakers Not Judges.

(a) Peacemakers shall only have the authority to use traditional and customary Northern Arapaho methods and other accepted non-judgmental methods to mediate disputes and obtain the resolution of problems through agreement. Peacemakers shall not have the authority to decide a disputed matter unless all parties to the dispute agree to such authority.

(b) Appointed Peacemakers shall not have authority to hear any appeal from any decision of:

(1) The NABC;

(2) The Tribal Court including, but not limited to, any appeal from a final decision of the Tribal Appellate Court; or

(3) Employers, when the decision of the employer is regarding any rights or obligations of the employer or employee governed by personnel policies or procedures of the employer.

Section 204 - Duties of Peacemakers.

(a) Upon notice to an individual of his or her appointment as a Peacemaker for an individual matter, the Peacemaker shall notify the Tribal Court of any disqualification or inability to serve in the matter or acceptance of the appointment. The clerk of the Tribal Court may be notified in writing or by telephone. If the Tribal Court is not notified within ten (10) days of the mailing of the notice, another Peacemaker may be appointed.

(b) The Peacemaker will informally contact the parties to the dispute and any other persons involved, advise all interested persons of his or her authority, and make other necessary arrangements to conduct peacemaking sessions. The Peacemaker may conduct a reasonable number of sessions in an attempt to achieve peacemaking, and may conduct peacemaking efforts using procedures and techniques which are accepted in the community. Where the parties involved accept or practice a given religious belief, discipline or following, the accepted methods and teaching of that religious way may be used.

Section 205 - Reports to Tribal Court. Either at the conclusion of the peacemaking or at such time as the Peacemaker finds there can be no resolution of the matter, the Peacemaker must report the results of his or her efforts to the Tribal Court. The reports may be informal, and if the chief judge permits, they may be given orally rather than in writing. The chief judge or (at the direction of the judge) the clerk of the Tribal Court may make an informal (including handwritten) notation of an oral report in the file of the matter.

CHAPTER 3: PROCEDURE

Section 301 - Request for Peacemaking. Any individual may ask the assistance of the Peacemaker Court by filing a written request with the Tribal Court. The request may be informal and handwritten, and it may be made either on a form provided by the Tribal Court or in any way which gives the Tribal Court the following information:

(a) The name and address of the person who requests the use of the Peacemaker Court;

(b) The names of the persons involved in the dispute and their addresses and location;

(c) The reason the individual wants to use the Peacemaker Court and a short statement of the problem involved;

(d) The names and addresses of each person who should be contacted by the Peacemaker and involved in the peacemaking; and

(e) A statement that all the individuals involved directly in the dispute are members of the Wind River Indian Reservation or are Indians residing among members of the Wind River Indian Reservation, or that non-Indians are involved as parties to the dispute.

Section 302 - Who Can Request Peacemaking. Persons who are injured, hurt or aggrieved by the actions of another may request the services of the Peacemaker Court if the parties, injury and dispute are subject to the jurisdiction of the Peacemaker Court.

Section 303 - Place of Peacemaking. Peacemaking must take place in the area, location or region of all the parties involved in the dispute, or the location of the person complained of where the parties live in more than one area, location or region. Where more than two areas are involved, the Tribal Court may designate the location where the matter will be heard.

Section 304 - Duties of Clerks of Court. All clerks of the Tribal Court will assist parties before the Peacemaker Court by providing information about the Tribal Court, assisting

individuals in filling out requests, assisting the Peacemakers in making reports and obtaining subpoenas, advising individuals how to obtain a protective order or file a complaint, and giving whatever kind of assistance individuals may need to make the Peacemaker Court effective and to carry out the purposes of this Code.

Section 305 - Appointment of Peacemaker.

(a) The Tribal Court may appoint a Peacemaker in the sound discretion of the Tribal Court, but only with the concurrence of the parties. Upon the filing of a request for peacemaking, the clerk of the Tribal Court will immediately present the request to the chief or associate judge. The judge may:

(1) Grant the request on the basis of the information provided in the request;

(2) Grant or deny the request after informally interviewing the person making the request in open court or in chambers; or

(3) Order an informal conference among the parties to the problem in chambers prior to making a decision on the request.

(b) If the request is granted, the judge will so indicate on the face of it or in a separate order, and the Tribal Court will appoint a named Peacemaker to conduct peacemaking proceedings.

Section 306 - Notice to Begin Proceedings. Notice of the appointment of the Peacemaker will be given by sending copies of the request and order to the named Peacemaker by first class mail. If the clerk of the Tribal Court does not receive notification from the Peacemaker of acceptance of the appointment within ten (10) days, the clerk shall so advise the judge for the purpose of appointing another person as Peacemaker. The Peacemaker shall advise the parties, witnesses and participants of his or her appointment, and the copies of the request and order sent to the Peacemaker shall be evidence of his or her authority.

Section 307 - Compensation of Peacemaker. The parties agreeing to appointment of a Peacemaker shall pay into Tribal Court a reasonable sum, to be determined by the Tribal Court, as compensation in full for the Peacemaker's expenses and services. The Tribal Court may develop procedures and forms for use in implementing this Section.

Section 308 - Subpoenas. The Peacemaker may obtain from the clerk of the Tribal Court any necessary subpoena for the attendance of parties, witnesses or other interested persons. Such subpoenas shall be served in accordance with the S&A LOC Rules of Civil Procedure.

Section 309 Fees. No filing fee shall be charged for Tribal Court appointments under these rules or for subpoenas. A fee of \$10 will be charged for any judgment or protective order entered with respect to Peacemaker Court proceedings.

CHAPTER 4: ACTIONS BY THE TRIBAL COURT

Section 401 - Protective Orders. Any party, witness or participant in the Peacemaker Court may petition the Tribal Court for a protective order ending the peacemaking process or putting limitations upon it. A petition for a protective order may be made in writing, and must be made in writing if the party, witness or participant seeking the order has counsel. Otherwise it may be made orally in open court. The grounds for a protective order are:

- (a) Harassment by the Peacemaker or harassment by another which is not properly handled by the Peacemaker;
- (b) Invasion of personal privacy to an unreasonable extent;
- (c) Conduct by the Peacemaker in the peacemaking process which is degrading, inhuman, dangerous, assaultive or otherwise violative of basic human rights; or
- (d) Conduct of the Peacemaker in violation of Section 501 (Conduct of Peacemakers - General Standards).

Section 402 - Action by the Tribal Court.

(a) Upon considering the petition for a protective order, which may be heard ex parte, the Tribal Court may issue an immediate order staying peacemaking proceedings, and must issue an order for the purpose of conducting a hearing on the petition for a protective order. Upon a full hearing, following notice to the parties, the Tribal Court may terminate peacemaking proceedings or place reasonable limitations upon them.

(b) No orders issued by the Tribal Court pursuant to this Section may be appealed unless and then only to the extent such orders require participation in Peacemaker proceedings by a party who has declined the opportunity to participate.

Section 403 - Judgments. Where the parties in Peacemaker Court reach an agreement they wish to have confirmed and recorded by a formal judgment or order of the Tribal Court, they may present a draft judgment to the Tribal Court for its consideration. The Tribal Court may enter a judgment only when the following conditions have been met:

(a) The Tribal Court has jurisdiction over the parties and the subject matter of the agreement;

(b) All necessary persons and the parties have actual knowledge of the proposed judgment and have either agreed to it or have agreed to be bound by the Peacemaker's decision under Section 202 (f) (arbitration).

(c) The proposed judgment contains the complete agreement of the parties or the complete arbitration decision and contains sufficient information so a dispute as to the meaning of the judgment is not likely to arise in the future; and

(d) The proposed judgment would be otherwise proper and enforceable by the Tribal Court.

Section 404 - Method of Presenting Proposed Judgment. Except regarding arbitration decisions under Section 202 (f), judgments shall be in the form of consent decrees and shall not be valid unless and until signed by the parties and approved by the Tribal Court. The parties need not be represented by counsel to present

a proposed judgment, and the Tribal Court may prepare a proposed judgment following an informal oral conference with the parties. Where necessary, the Tribal Court may require a member of its staff to assist the Peacemaker in preparing a proper form of judgment.

Section 405 - Form of Judgment. All judgments must contain the following information:

(a) The names and jurisdictional information with regard to each party (i.e., tribal affiliation, residence, consent to jurisdiction);

(b) A statement of the fact that all necessary persons and the parties to the dispute have actual knowledge of it and that they have all agreed to the proposed judgment or have agreed to be bound by the Peacemaker's decision under Section 202 (f) (arbitration);

(c) A statement that the judgment is based upon Peacemaker Court proceedings, and the name and tribal affiliation of the Peacemaker;

(d) A general description of the dispute; and

(e) The actual judgment of the Tribal Court.

Section 406 - Enforcement of Judgment. A judgment of the Tribal Court upon Peacemaker Court proceedings may be enforced as any other judgment of the Tribal Court may be enforced.

CHAPTER 5: CONDUCT OF PEACEMAKERS

Section 501 - General Standards. Peacemakers shall be bound by the Canons of Judicial Ethics which apply to judges of the Tribal Court insofar as such canons are consistent with the nature and purpose of the Peacemaker Court. Peacemakers shall not participate in any matter in which they have a personal or financial interest or close relation to a party, and they shall conduct themselves with honesty, integrity and in harmony with traditional Northern Arapaho or other traditional and customary ways.

Section 502 - Complaints regarding Peacemakers. Complaints against Peacemakers shall be made in writing to the chief judge of the Tribal Court and, to the extent practical, such complaints shall be treated as any complaint against a court or a judge.

Section 503 - Action on Complaint. Upon a finding that a Peacemaker has violated an ethical or tribal standard, the chief judge may strike the name of the individual from the Peacemaker rolls. Where criminal activity is involved, the chief judge may refer the matter further to the proper forum for possible prosecution.

CHAPTER 6: TRANSFER OF CASES FROM TRIBAL COURT TO PEACEMAKER COURT

Section 601 - General Policy. Certain civil and criminal actions in Tribal Court may be transferred to the Peacemaker Court where they fall within one of the kinds of matters within the jurisdiction of the Peacemaker Court described in Section 104, or where it is in the interest of justice to make such a referral for good cause shown.

Section 602 - Civil Matters. Civil actions falling within the provisions of Section 104 may be referred to Peacemaker Court with the written stipulation of all the parties to the action or for good cause shown to the Tribal Court.

Section 603 - Criminal Matters. Any criminal matter may be transferred to the Peacemaker Court where:

- (a) The case does not involve injury to a person or property;
- (b) Where the victim to the alleged offense consents;
- (c) Where the offense is a victimless crime; or
- (d) Where there is a finding of guilty, the victim consents to peacemaking, and peacemaking would be an appropriate condition

of probation for achieving harmony and reconciliation with the victim.

Section 604 - Criminal Probation. The Tribal Court may, as a condition of criminal probation, require the defendant to submit to the Peacemaker Court for traditional and customary counseling, instruction and lectures appropriate to his or her offense. The Tribal Court may require the defendant to pay a reasonable fee as required of other parties before the Peacemaker Court pursuant to Section 307.

Section 605 - Transfer on Condition. Any case may be transferred to the Peacemaker Court on any reasonable condition, with a stay of proceedings before the Tribal Court and the Tribal Court may reassume jurisdiction over a case upon breach of or the failure to satisfy any condition imposed.

CHAPTER 7: MISCELLANEOUS PROVISIONS

Section 701 - Forms. The chief judge, with the advice and assistance of the NABC, may adopt standard forms for the implementation of these rules.

Section 702 - Plain Language Version of Rules. Informal or plain language rules of the Peacemaker Court may be adopted by the Tribal Court for the use of persons not trained in law or formal legal language. In the event of conflict between such rules and this Code, the terms of this Code shall govern.

History: 2004. Title 7. The Peacemaker Code was enacted by the Northern Arapaho Tribe by resolution of the Northern Arapaho Business Council dated November 4, 2004, Resolution No. 2004-8836. Technical amendments for the purpose of clarifying references to tribal courts were enacted on August 17, 2016, by Resolution No. NABC-2016-702, and additional technical amendments were enacted on August 31, 2016, by Resolution No. NABC-2016-713.