

## NORTHERN ARAPAHO CODE

### TITLE 17. NORTHERN ARAPAHO TRIBAL COURTS

#### Chapter 1 - Preliminary Provisions

##### Section

- 101 Inherent Tribal Authority
- 102 Name of Code
- 103 Prior Inconsistent Codes, Ordinances or Resolutions Repealed
- 104 Findings
- 105 Construction
- 106 Definitions
- 107 Sovereign Immunity Preserved
- 108 Severability
- 110 Effective Date

#### Chapter 2 - Jurisdiction of the Tribe

##### Section

- 201 Jurisdiction; Tribal Policy
- 202 Territorial Jurisdiction
- 203 Personal Jurisdiction
- 204 Jurisdiction Over Property
- 205 General Subject Matter Jurisdiction
- 206 Concurrent Jurisdiction
- 207 Exclusive Jurisdiction

#### Chapter 3 - Tribal Courts and Laws - General Provisions

##### Section

- 301 Findings
- 302 General
- 303 Courts Authorized by the Northern Arapaho Tribe
- 304 Copies of Laws
- 305 Records of Court Open to Public Inspections; Exceptions
- 306 Adoption by Reference Not a Waiver of Sovereign Power of the Tribe
- 307 Limitations
- 308 Tribal Notice Law
- 309 Court Administrator
- 310 Bonding of Court Personnel
- 311 Direct Contempt of Court
- 312 Indirect Contempt of Court
- 313 Civil Penalties for Contempt of Court
- 314 Attorneys and Representatives
- 315 Standards of Conduct for Attorneys and Representatives
- 316 Compensation of Witnesses
- 317 Issuance of Subpoenas

318 Service of Subpoenas; Return of Service

Chapter 4 - Magistrate Court

Section

- 401 Court Established; Jurisdiction
- 402 Appointment and Qualifications of Magistrates
- 403 Training
- 404 Removal of Magistrates
- 405 Powers and Duties of Magistrates
- 406 Disqualification of Magistrates
- 407 Oath of Office of Magistrates
- 408 Clerks of Court
- 409 Duties of Clerks
- 410 Oath of Clerks
- 411 Seal of the Tribal Court
- 412 Rules of Civil Procedure
- 413 Tribal Court Judge as Magistrate

Chapter 5 - Northern Arapaho Tribal Court [RESERVED]

Chapter 6 - Authorization of the Wind River Tribal Courts

Section

- 601 Findings
- 602 Purpose
- 603 Authorization
- 604 Proceedings in the Former Shoshone and Arapaho Tribal Court  
or in the Northern Arapaho Tribal Court Deemed to be  
Proceedings in the Wind River Tribal Courts
- 605 Coordination with Bureau of Indian Affairs Police

Chapter 7 - Court of Appeals

Section

- 701 Incorporation by Reference
- 702 Appeals by the Tribe Are a Matter of Right

## CHAPTER 1: PRELIMINARY PROVISIONS

**Section 101 - Inherent Tribal Authority.** The Northern Arapaho Tribe is a sovereign, federally recognized Indian Tribe with authority from time immemorial to legislate for the administration of justice. This Code is enacted pursuant to the Tribe's inherent powers of self-government and is a general act intended as a unified coverage of its subject matter, and no part of it shall be deemed impliedly repealed by subsequent legislation if it can be reasonably avoided.

**Section 102 - Name of Code.** This law shall be known as the Tribal Courts Code of the Northern Arapaho Tribe of the Wind River Indian Reservation and may be referred to as the Northern Arapaho Tribal Courts Code. Citation to this Code shall be to Title 17 of the Northern Arapaho Code (N.A.C.) and section (17 N.A.C. [section]).

**Section 103 - Prior Inconsistent Codes, Ordinances or Resolutions Repealed.** Any codes, ordinances, authorizations or resolutions of the Tribe which conflict with the provisions of this Code are hereby repealed to the extent that they are inconsistent with or conflict with this Code. Those which do not conflict will remain in effect.

**Section 104 - Findings.** Enactment of this Code is necessary for the Tribe to provide for the administration of justice and is essential to the health, education and general welfare of the Tribe, its members, and persons within its jurisdiction.

**Section 105 - Construction.** The provisions of this Code shall be construed so as to promote the policies and objectives expressed in this Code. The masculine gender includes all other genders. References to any portion of this Code apply to all amendments or additions made hereafter.

**Section 106 - Definitions.** As used in this Code:

(a) "Agency or official" means agencies, programs, instrumentalities, enterprises or other entities of the Northern

Arapaho Tribe or their officers, employees, contractors or agents acting in their official capacity, but does not include members of the Northern Arapaho Business Council or Chairman of the General Council.

**(b)** "Code" means the Northern Arapaho Tribal Courts Code, Title 17 of the Northern Arapaho Code.

**(c)** "Business Council" means the Northern Arapaho Business Council unless otherwise specified.

**(d)** "Person" includes, without limitation, individuals, general partnerships, limited partnerships, limited liability companies, corporations, trusts, business trusts, real estate investment trusts, estates, and other associations or entities.

**(e)** "Real Property" includes land, any interest, leasehold or estate in land, and any improvements on it.

**(f)** "Reservation" means the Wind River Indian Reservation of the Northern Arapaho Tribe, Wyoming.

**(g)** "Territory" or "territorial" means areas within the Reservation and such other areas without such boundaries as may have been or may hereafter be added to the Reservation or held in restricted status or trust for the Tribe or tribal members under any law of the United States or otherwise and to the aboriginal territories of the Tribe.

**(h)** "Tribal Court" means the Northern Arapaho Tribal Court, Court of Appeals, or Magistrate Court, as the context requires, or any other courts duly authorized by the Tribe.

**(i)** "Tribe" means the Northern Arapaho Tribe unless otherwise specified.

**Section 107 - Sovereign Immunity Preserved.** Nothing in this Code shall be construed as a waiver of sovereign immunity of the Tribe or its agencies or officials unless specifically denominated as such.

**Section 108 - Severability.** If any provision of this Code, any regulations promulgated hereunder, or any application hereof is

held invalid by a court of competent jurisdiction, the valid provisions of this Code and the valid regulations shall continue in full force and effect.

**Section 109 - Effective Date.** The provisions of this Code shall be effective on the date of enactment certified by the Northern Arapaho Business Council unless otherwise specifically provided in each chapter or section.

## **CHAPTER 2: JURISDICTION OF THE TRIBE**

**Section 201 - Jurisdiction; Tribal Policy.** It is hereby declared that as a matter of tribal policy and legislative determination, public and tribal interests demand that the Tribe provide all persons within the jurisdiction of the Tribe with an effective means of redress for conflicts between tribal members and other persons who through their residence, presence, business dealings, other acts or failures to act, or other significant minimum contacts with the Tribe, its territory or its residents commit acts affecting the interests of the Tribe or incur obligations to persons entitled to the Tribe's protection. Such means of redress may be provided by the Tribe pursuant to its ongoing delegation of authority to the Tribal Courts, except as expressly modified by this Code.

**Section 202 - Territorial Jurisdiction.** The jurisdiction of the Tribe shall extend to the territory of the Tribe to the greatest extent permitted by applicable law. The jurisdiction of the Tribe shall extend beyond its territorial limitation, to effectuate the jurisdictional provisions set forth below, to the greatest extent permitted by applicable law.

### **Section 203 - Personal Jurisdiction.**

**(a)** The Tribe shall have personal jurisdiction over the following persons to the greatest extent permitted by applicable law:

**(1)** Any person residing, located or present within the territory of the Tribe for any civil cause of action;

(2) Any person who transacts, conducts or performs any business or activity within the territory of the Tribe, either in person or by an agent or representative, for any civil cause of action;

(3) Any person who owns, uses or possesses any property within the territory of the Tribe for any civil cause of action;

(4) Any person who commits tortious conduct within the territory of the Tribe, either in person or by an agent or representative, for any civil cause of action arising from such act, conduct or omission; and

(5) Any enrolled or non-enrolled member of any indigenous Indian tribe who commits a criminal offense prohibited by the laws of the Tribe by his conduct or the conduct of another for which they are legally accountable, if:

(A) The conduct occurs either wholly or partly within the territory of the Tribe;

(B) The conduct which occurs outside the territory of the Tribe constitutes an attempt, solicitation or conspiracy to commit an offense within the territory, and an act in furtherance of the attempt or conspiracy occurs within the territory; or

(C) The conduct which occurs within the territory of the Tribe constitutes an attempt, solicitation or conspiracy to commit in another jurisdiction an offense prohibited by the laws of the Tribe or such other jurisdiction.

(b) None of the foregoing bases of jurisdiction is exclusive, and jurisdiction over a person may be established upon any one or more of them as applicable.

(c) Jurisdiction may also be established pursuant to a delegation or recognition of the same as a matter of federal law.

**Section 204 - Jurisdiction Over Property.** The Tribe shall have jurisdiction over any real or personal property located within

the territory of the Tribe to the greatest extent permitted by applicable law, including to determine the ownership thereof or rights therein or to determine the application of such property to the satisfaction of a claim for which the owner of the property or other interested parties may be liable.

**Section 205 - General Subject Matter Jurisdiction.** The Tribe shall have general subject matter jurisdiction over all civil causes of action arising within the territory of the Tribe and over all offenses prohibited by the laws of the Tribe which occur within such territory to adjudicate and determine the rights and responsibilities of all parties to the greatest extent permitted by applicable law.

**Section 206 - Concurrent Jurisdiction.** Unless otherwise specified herein, the jurisdiction invoked by this Code over any person, cause of action, area or subject shall be concurrent with any valid jurisdiction over the same of the courts of the United States, any tribe or state, or any subdivision thereof; provided, however, that this Code does not recognize, grant or cede jurisdiction to any other governmental entity in which jurisdiction does not otherwise exist in law.

**Section 207 - Exclusive Jurisdiction.** The Northern Arapaho Tribe shall have exclusive jurisdiction over any person, cause of action, area, or subject to the greatest extent permitted by applicable law including, without limitation, exclusive jurisdiction to determine and declare the laws of the Tribe and the rights or obligations of persons thereunder.

### **CHAPTER 3: TRIBAL COURTS AND LAWS - GENERAL PROVISIONS**

**Section 301 - Findings.** The population of the Tribe and the services, programs, enterprises and regulations of tribal government are expanding steadily and require the establishment of Northern Arapaho courts to provide for the fair and orderly appeals of actions by agencies or officials of the Tribe and otherwise for the proper administration of justice.

**Section 302 - General.** To aid in the exercise of its jurisdiction, the Tribe may from time to time establish and vest with certain tribal courts authority to hear and dispose of certain matters specified by the laws of the Tribe. The Tribe may also divest or redefine the authority of such courts from time to time in the interests of justice.

**Section 303 - Courts Authorized by the Tribe.** The provisions of this Code and other laws of the Tribe shall govern any court established or authorized by the Tribe. Only such courts as have been expressly authorized by the Tribe through this Code to exercise any jurisdiction or authority of the Tribe are entitled to do so. Any determinations, rulings or other actions of a court not duly authorized shall have no force or effect.

**Section 304 - Copies of Laws.** Copies of the Northern Arapaho Code, and any amendments thereto, shall be posted on a website of the Tribe and kept available for public inspection during regular business hours at the office of the clerk of any Tribal Court or of the Business Council.

**Section 305 - Records of Court Open to Public Inspections; Exceptions.** The files and records of the courts of the Tribe shall be open for public inspection, except that the files and records of adoptions, incompetency proceedings, and Tribal Juvenile Court proceedings shall not be open to public inspection, but may be inspected with proper specific judicial authorization. Specific documents may be sealed or otherwise protected against public disclosure by order of the court for good cause shown. The Tribal Courts are and shall function as courts of record.

**Section 306 - Adoption by Reference Not a Waiver of Sovereign Power of the Tribe.** The adoption by reference of any law, code or other document by reference into this Code shall in no manner constitute a waiver or cession of any sovereign power of the Tribe to the jurisdiction whose law or code is adopted, or in any way diminish such sovereign power, but shall result in the law or code thus adopted becoming the law of the Tribe.

**Section 307 - Limitations.** Limitations applicable in the Tribe's courts shall be strictly adhered to in accordance with the specific provisions setting such limitations or deadlines for the filing of actions or appeals.

**(a) General Limitations.** Any action brought by or against the Tribe, any individual who is a member of the Tribe, or a tribal officer or employee, filed in courts authorized by the Tribe must be commenced within four (4) years of the date that the cause of action accrued.

**(b) Equitable Tolling.** The limitation period set out in paragraph 307(a) may be equitably tolled in the event that a potential plaintiff has pursued his or her rights diligently, but extraordinary circumstances have prevented, impaired or delayed him or her from asserting a claim. Extraordinary circumstances may include but are not limited to:

    (1) Defendant conduct that significantly interferes with a plaintiff's ability to assert a claim in a timely manner;

    (2) Circumstances that make it impossible or nearly impossible for a plaintiff to assert a claim in a timely manner;

    (3) Existence of a disability or impairment that delays a plaintiff from the ability to assert a claim in a timely manner; or

    (4) Pendency of other actions or proceedings that limit or delay a plaintiff from the ability to assert a claim in a timely manner.

**(c) Savings.** Notwithstanding the provisions in paragraph 307(a), if a plaintiff timely commences an action according to the law of the forum in which the action is filed, but that action is dismissed or otherwise fails for reasons not on the merits, a new action may be filed in courts authorized by the Tribe within one (1) year of the dismissal or failure.

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**COMMENT** - The provisions found in this section of the Northern Arapaho Code amended the Limitation in Civil Actions set forth in the Shoshone and Arapaho Law and Order Code (S&A LOC) Section 1-8-6 and the Northern Arapaho Code,

Title 17 - Northern Arapaho Tribal Courts, Section 307 - Limitations, to the extent of jurisdiction of the Tribe. Subsequently, the Tribe rescinded its authority for the Shoshone and Arapaho Tribal Courts to exercise any jurisdiction on behalf of the Tribe except on a limited and temporary basis.

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**Section 308 - Tribal Notice Law.**

**(a) Notice Required.**

**(1) Duty of Parties.** A party raising a challenge to tribal sovereignty, jurisdiction or the validity of any tribal law shall give written notice thereof to the Business Council and the attorney for the Tribe. Such notice shall identify the proceeding in which the challenge or issue is raised and shall include a brief written explanation of the grounds upon which tribal sovereignty or jurisdiction or the validity of any tribal law is being questioned. A copy of the pleading(s) raising the issue shall be included with the notice.

**(2) Timing of Notice and Proof of Service.** Service of the notice shall be made simultaneously with the filing of the pleading giving rise to the notice requirement. A copy of the notice shall be filed in the case file. Service of the notice shall be by a method of delivery which requires the recipient's signature upon delivery. Proof of service shall be filed with the court in which the matter is pending within ten (10) days after service has been accomplished.

**(3) Late Notice.**

**(A)** If a party discovers that notice under this Rule should have been but has not been given, the party with the duty of providing notice will promptly notify the Tribal Court of the omission and shall give notice as required by this Section.

**(B)** If the Tribal Court determines that notice should have but has not been given, it may order the appropriate party to provide the notice and may make other orders as are reasonable and necessary to remedy the omission.

**(4) Stay of Proceedings.** The Tribal Court may stay

any proceeding at any stage to allow compliance with the notice requirement and may make such orders as are reasonable and necessary to allow opportunity for the Tribe to proceed as provided by this Section.

**(5) Proceedings After Final Judgment.** Failure of a party to give notice as required herein may be considered by the Tribal Court in evaluating motions for a new trial or for relief from a judgment or order.

**(6) Civil Sanctions.** The Tribal Court may impose sanctions as permitted by law on any party for willful failure to give notice as required hereunder. In addition, the Tribal Court may use other reasonable means to cure any significant harm to compelling tribal interests caused by failure to give notice as required.

**(b) Tribal Participation Following Notice.**

**(1) Access to Court File.** The Tribe is allowed access to the Court file after receipt of the required notice and may copy any part of the file. Upon the Tribe's timely written request, the Tribal Court may require any party to serve copies of subsequent case filings upon a designated tribal representative.

**(2) *Amicus Curiae*.** Upon timely motion, the Tribe may appear as *amicus curiae* in any proceeding raising a challenge to tribal sovereignty, jurisdiction or the validity of any tribal law.

**(3) Timeliness.** Unless the Tribal Court orders otherwise, where timely and proper notice has been given under this Rule, any motion by the Tribe to appear as *amicus curiae* must be filed within twenty (20) days of receipt by the Tribe of such notice.

**(c) Failure to Provide Notice.**

**(1) No Waiver of Rights.** The failure of a party to give notice as required by this Section is not a waiver or modification of any rights otherwise timely asserted by the party, but may subject the party to sanctions as provided herein.

**(2) Notice Does Not Substitute for Pleadings.** Any notice given under this Rule is not a substitute for, or a waiver or modification of, any other pleading requirements.

**Section 309 - Court Administrator.** The Business Council may appoint a court administrator whose job it will be to aid in administering the court, scheduling cases, processing and safe keeping papers related to the court system, and other responsibilities as the Business Council may direct to assure the orderly and efficient operation of the court. This shall include supervision of all clerks, preparing, submitting and administering the budget, and other general clerical duties.

**Section 310 - Bonding of Court Personnel.** All clerks and other personnel who handle funds shall be bonded at the Tribe's expense to secure the honest collection of bonds, fines and other monies which may be paid into the court system.

**Section 311 - Direct Contempt of Court.** Any person coming under the jurisdiction of the Tribal Court guilty of disorderly, contemptuous or insolent behavior toward any Tribal Court Judge, Magistrate or judicial officer, while they are engaged in the trial or consideration of a case, or in rendering any judgment, or engaged in any judicial proceedings, or who commits any action which would tend to interrupt such judicial proceedings, or to impair the respect rightfully due to the court shall be deemed guilty of contempt of court. If the offender is present during court proceedings, he may be arrested immediately and removed from the court room. Any violations of the foregoing shall be deemed a misdemeanor and may be prosecuted pursuant to applicable criminal law. Any violations of the foregoing shall also be subject to civil penalty imposed pursuant to this Chapter.

**Section 312 - Indirect Contempt of Court.** Any person coming under the jurisdiction of the Tribal Court duly subpoenaed and obliged to attend court as a witness who fails to do so shall be considered guilty of contempt, unless he shall show reasonable cause to the satisfaction of the Tribal Court Judge or Magistrate for his failure to attend and testify. No person shall be punished for contempt in this regard until an opportunity has been given him to be heard in his own defense; and for this

purpose the Judge or Magistrate shall request a warrant to arrest and bring the defendant before him for such hearing. Any violation of the foregoing without reasonable cause for absence at the time of the hearing shall be deemed a misdemeanor and may be prosecuted pursuant to applicable criminal law. Any violations of the foregoing shall also be subject to civil penalty imposed pursuant to this Chapter.

**Section 313 - Civil Penalties for Contempt of Court.** Any individual found by the Tribal Court Judge or Magistrate to be in contempt pursuant to this Code may be fined not more than Five Thousand Dollars (\$5,000) for each such violation, and any business organization or other entity may be fined not more than Twenty Thousand Dollars (\$20,000) for each such violation. Judgment may be entered against the violator and shall be recognized by other courts of record on the Reservation and such other jurisdictions as may be appropriate for enforcement or execution of such judgment.

**Section 314 - Attorneys and Representatives.**

(a) Any person appearing as a party in any judicial proceeding before the court shall have the right to be represented by an attorney licensed in good standing by the bar of any state. Any such person may, in the alternative, request permission from the Tribal Court Judge or Magistrate to allow a lay representative to assist him, which the Judge or Magistrate will grant liberally in the interests of justice.

(b) Except to the extent otherwise expressly authorized by the law of the Tribe, the Tribe shall have no obligation to provide or pay for an attorney or any other representative; such obligation shall rest entirely with the person desiring such representation.

(c) Any person appearing as a lay representative shall be subject to standards of competence, honesty and confidentiality as determined by the Tribal Court Judge or Magistrate. The Judge or Magistrate may in his discretion permit, condition, or revoke the authority of a lay representative to appear or proceed in the matter.

(d) Whenever it is made to appear to the Tribal Court Judge

or Magistrate that any attorney has been disbarred or suspended from the practice of law in the state to which reference for leave to practice before the Tribal Court was made, he shall immediately be given notice that he shall be suspended from practice before the court.

(e) If an attorney is found to be in contempt of court before the Tribal or Magistrate Court, then in addition to any other sanction imposed, the court may order him to appear within ten (10) days and show cause why he should not be barred from further appearances or practice before the Court.

(f) The Tribal Court Judge or Magistrate may, upon receiving a written, verified complaint which alleges improper or unethical behavior of an attorney or representative, order him to appear and defend himself at a hearing to consider all relevant matters, and order the suspension from practice of such an attorney or representative if such appears reasonably necessary or appropriate.

(g) All suspensions from practice before the court shall be for an indefinite period unless ordered otherwise. At the end of the specified period or one (1) year, the person suspended from practice may petition the court for permission to re-apply or terminate the suspension. Upon a showing that he now appears willing to conduct himself in a proper manner or has been reinstated to practice if disbarred or suspended elsewhere, the court may allow the reapplication and terminate the suspension.

**Section 315 - Standards of Conduct for Attorneys and Representatives.** Every attorney, lay counselor, advocate or representative who holds themselves out as being available to act as such shall conform their conduct in every respect to the requirements and suggested behavior of the Code of Professional Responsibility as adopted by the American Bar Association. The Tribal Court may require or establish an oath or fees for attorneys or representatives as it deems reasonable by Rule of Court.

**Section 316 - Compensation of Witnesses.** The party requesting that a witness be subpoenaed or appear voluntarily is responsible for compensating that witness, if he so appears. No witness may demand or receive reimbursement for expenses or payment in excess

of rates established by the federal courts located in Wyoming.

**Section 317 - Issuance of Subpoenas.** The clerk shall issue subpoenas to compel the attendance of witnesses or such other persons, or the production of property or records, as the Tribal Court Judge or Magistrate may direct for a trial, hearing or other proceeding before the court.

**Section 318 - Service of Subpoenas; Return of Service.**

(a) Subpoenas may be served by any person over eighteen (18) years of age not a party to the action.

(b) Except by order based upon good cause shown therefor, no subpoena shall be served between the hours of 9:00 p.m. and 7:00 a.m.

(c) The person serving a subpoena shall endorse upon the copy served his name, title and the place, date and time of service.

(d) The person serving a subpoena shall make a return to the clerk stating the name of the case, the name of the person served, the place, time and date of service, and shall subscribe his name thereto under penalty of perjury for the intentional making of a false return.

**CHAPTER 4: MAGISTRATE COURT**

**Section 401 - Court Established; Jurisdiction.** The Magistrate Court is hereby established and shall have exclusive jurisdiction with regard to all matters referencing "Tribal Court" or "Northern Arapaho Tribal Courts" in Title 3 (Gaming); Title 10 (Family Support); Sections 804 and 805 of Title 14 (SORNA) and Title 15 (Taxation). All references to "Tribal Court" or to "Northern Arapaho Tribal Courts" in such provisions shall mean the "Magistrate Court," except to the extent the Business Council may have appointed a Tribal Court judge to serve as Magistrate pursuant to Section 413 of this Chapter.

**Section 402 - Appointment and Qualifications of Magistrates.**

**(a)** The Business Council shall appoint one (1) Magistrate and may appoint one (1) alternate Magistrate, for terms not to exceed four (4) years. A Magistrate shall not be removed prior to the expiration of his term except as provided hereinafter. Compensation for Magistrates shall be determined by contract between the Magistrate and the Business Council.

**(b)** Each Magistrate must be a licensed member of the bar of any state and must maintain such license in good standing during the term of his appointment. The Business Council may grant preference in the appointment of Magistrates to those who are members of a federally recognized Indian Tribe or a descendant thereof.

**(c)** No Magistrate shall have been convicted of a felony or a misdemeanor involving moral turpitude.

**Section 403 - Training.** All Magistrates shall receive at least fifteen (15) hours of training each year which is relevant to the performance of their duties under this Code.

**Section 404 - Removal of Magistrates.** Any Magistrate may be removed from office prior to the expiration of his term by an affirmative vote of at least five (5) members of the Business Council, but only upon the grounds of breach of contract or neglect of duty or gross misconduct, and only after the holding of a public hearing at which the Magistrate, after being given at least five (5) days' notice, is given an opportunity to answer all charges and present evidence in defense.

**Section 405 - Powers and Duties of Magistrates.**

**(a)** The Magistrate shall be responsible for the administration of the Magistrate Court and shall supervise such administration as is necessary for the effective functioning of the court. The Magistrate shall be responsible for the assignment of cases and the management of the court's calendar and business.

**(b)** The Magistrate shall administer justice and discharge

all duties imposed upon him by law and shall hear and decide matters of a judicial nature and enter judgments and orders disposing of such matters.

(c) All Magistrates of the court shall conform their conduct to the Code of Judicial Conduct as adopted by the American Bar Association.

(d) The Magistrate is authorized to:

(1) Preserve and enforce order in his immediate presence and in proceedings before him, when he is engaged in the performance of his official duty;

(2) Compel obedience to his lawful orders;

(3) Compel the attendance of persons to testify in a proceeding before him and to bring any material along;

(4) Administer oaths to persons in proceedings before him and in any other case where such shall be necessary in the exercise of his powers and duties; and

(5) Punish for contempt to assure the effectual exercise of these powers.

#### **Section 406 - Disqualification of Magistrates.**

(a) A Magistrate shall disqualify himself from hearing any matter in which he has a direct interest or in which any party to the matter is a relative by blood in the fourth degree (first cousins) or where he feels that he will not be able to render a just decision.

(b) Any party to a legal proceeding may request a change of Magistrate by filing an affidavit giving sufficient, reasonable grounds why another Magistrate is necessary.

#### **Section 407 - Oath of Office of Magistrates.**

(a) Every Magistrate prior to taking office or acting in such office shall take the following oath of affirmation:

"I, \_\_\_\_\_, do solemnly affirm that I will support and defend the laws of the United States which apply; that I will support, defend and uphold the laws and treaties of the Northern Arapaho Tribe and support and defend the best interest of the Northern Arapaho Tribe and members; and that I will faithfully and impartially discharge the duties of my office to the best of my ability."

(b) Said oath may be administered by the Chairman of the Business Council or another Magistrate of the court.

**Section 408 - Clerks of Court.** There shall be one or more clerks in the court system as are reasonably necessary to fulfill the duties of clerk(s) set forth in this Code. Such clerk(s) may be appointed by the Magistrate and may be an employee of the Magistrate, unless otherwise determined by resolution of the Business Council.

**Section 409 - Duties of Clerks.** It shall be the duty of the clerk(s) of the court to supervise and keep all records, files, dockets or other records required to be kept by the laws of the Tribe, by rule of court, tribal ordinance or resolution, or as otherwise established, and further to keep a written record of all proceedings of the court, administer oaths, to further assist the court, facilitate the performance of the duties of the court and Magistrate, and aid private citizens or other persons in their dealings with the court.

**Section 410 - Oath of Clerks.**

(a) Every clerk shall take the following oath upon assuming office:

"I, \_\_\_\_\_, having been appointed clerk of the Northern Arapaho Magistrate Court, do solemnly affirm that I will truly, faithfully, honestly and impartially discharge all of the duties of my office to the best of my ability and understanding."

(b) Such oath shall be administered by a Magistrate of the court.

**Section 411 - Seal of the Magistrate Court.**

(a) The seal of the Magistrate Court shall contain the words "Magistrate Court for the Northern Arapaho Tribe" in a circular fashion and the word "Seal" shall be in the center thereof.

(b) The clerk (or court administrator if one is appointed) shall be the custodian of the seal, which shall be kept in the clerk's or Magistrate's office and shall be attached to all writs, orders or other instruments that he is or may be required or permitted to sign or certify in his official capacity as clerk of the court.

**Section 412 - Rules of Civil Procedure.** Any procedures or matters not specifically set forth herein shall be handled in accordance with the rules of civil procedure for the United States District Courts insofar as such are not inconsistent with these rules and with general principles of fairness and justice as prescribed and interpreted by the Magistrate or other Tribal Court; provided, however, that nothing in this Code provides a right to trial by jury before the Magistrate Court, nor rights regarding class actions, derivative actions, actions relating to unincorporated associations, or other matters outside the subject matter jurisdiction of the Magistrate Court. The Magistrate may adopt special rules of court from time to time in the interests of justice and shall provide the Business Council and Tribal Attorneys with copies of the same at least thirty (30) days in advance of their effective date.

**Section 413 - Tribal Court Judge as Magistrate.** The Business Council may by written resolution appoint any Tribal Court judge duly appointed by the Council to simultaneously serve as Magistrate pursuant to this Section. In that event, proceedings before the Tribal Court shall be deemed to be proceedings before the Magistrate Court for matters within the jurisdiction of the Magistrate Court and the "Magistrate Court" heading on court documents shall not be necessary and, further, those provisions governing the oath and removal of Magistrates, appointment and oaths of clerks, and seal of the Magistrate Court shall not apply so long as similar requirements applicable to the Tribal Court, and its judges and clerks, are met.

## CHAPTER 5: NORTHERN ARAPAHO TRIBAL COURTS

[RESERVED]

## CHAPTER 6: AUTHORIZATION OF THE WIND RIVER TRIBAL COURTS

### Section 601 - Findings.

**(a)** The Tribe is an independent, federally recognized Indian Tribe with inherent authority to establish, regulate and empower courts of the Tribe to hear and determine matters appropriately decided by judicial process.

**(b)** In 1988, the Tribe empowered on an on-going basis the Shoshone and Arapaho Tribal Courts to hear and determine a range of matters set forth in the S&A LOC. The Northern Arapaho Business Council and the Eastern Shoshone Business Council both approved that Code. Since that time, the legislative authority of the Shoshone Business Council has been rescinded by that Tribe and is currently exercised exclusively by that Tribe's general council. Also since that time, a series of substantial problems with the S&A LOC developed or became apparent which the Northern Arapaho Tribe sought to remedy in cooperation with the Eastern Shoshone Tribe, but could not.

**(c)** In 1995, the Northern Arapaho Tribe enacted, and the National Indian Gaming Commission later approved, what is now codified as 3 N.A.C. 101, et seq. This law established the Northern Arapaho Gaming Agency and regulates persons and activities related to gaming under the jurisdiction of the Northern Arapaho Tribe. In 2006, the U.S. Department of the Interior approved a gaming compact for the Shoshone Tribe. Since that time, each Tribe has had its own, separate gaming agency and laws, established and governed independently by each Tribe.

**(d)** In 1996, the Tribe enacted, and the U.S. Housing and Urban Development agency approved, what is now codified as 4 N.A.C. 101, et seq. This law established the Northern Arapaho Housing Authority and regulates persons and activities related to housing under the jurisdiction of the Northern Arapaho Tribe. The former (Shoshone and Arapaho) Wind River Housing Authority had been established by Title XIII, Chapter 1, of the S&A LOC. In *Eastern Shoshone Tribe v. Northern Arapaho Tribe*, 926 F.Supp.

1024 (D.Wyo.1996), the U.S. District Court rejected the argument of the Shoshone Tribe that the Northern Arapaho Tribe could not act or legislate independently in matters affecting the reservation generally. The Northern Arapaho Tribe argued that the joint council was merely a joint powers board operating with the consent of each Tribe but without any authority independent of each Tribe. The Shoshone Tribe had presented a "common sovereignty" theory which the Court flatly rejected. The Shoshone Tribe did not appeal that ruling, which is final and binding. Since that lawsuit, each Tribe has had its own, separate housing authority and laws, established and governed independently by each Tribe.

(e) In 2007, the Northern Arapaho Tribe enacted its Family Support Code, 10 N.A.C. 101, et seq. This law established the Northern Arapaho Child Support Enforcement agency and regulates persons and activities related to child support under the jurisdiction of the Northern Arapaho Tribe. Thereafter, the Shoshone Tribe established its own laws and agency for family support matters. Since that time, each Tribe has had its own, separate family support agency and laws, established and governed independently by each Tribe.

(f) In 2010, a major effort was undertaken to revise S&A LOC Title VII (Code of Offenses). Eventually, proposed changes were submitted by referendum vote to members of the Shoshone Tribe on August 31, 2010. As the vote was structured, each proposed change was voted on individually. According to the official results, eight of the proposed changes were approved. However, at least one of the draft amendments was incorrectly numbered. The apparent intent included creating a new chapter IX in the Code of Offenses, setting out procedures for requiring treatment, counseling, and other services for "expectant mothers" found to be using drugs or alcohol. Because of the perceived problems with the ballot, the Shoshone Attorney General questioned whether the vote was valid. Other Shoshone officials believed the changes were effective. The information needed to determine the status of the Title VII amendments is not available through the former joint secretary's office nor otherwise available publically. There is no official record of these efforts or the outcome. The entire process highlighted difficulties and uncertainties that were inherent in attempting to enact laws through the former JBC structure.

(g) In 2011, the Northern Arapaho Tribe enacted, and the U.S. Department of Justice approved, 14 N.A.C. 101, *et seq.*, its Sex Offender Registration and Notification (SORNA) Code. The Shoshone Tribe opted not to enact any law on the subject. Pursuant to 14 N.A.C. 101, *et seq.*, the Northern Arapaho Tribe requires sex offenders to register with the Tribe and independently regulates their conduct and related matters throughout the Reservation.

(h) In addition to provisions of Northern Arapaho law referenced above, the Tribe has enacted its own, separate laws governing labor rights, religious freedom, education and a wide range of other matters.

(i) In 2014, the Northern Arapaho Tribe enacted 6 N.A.C. 103, *et seq.*, dissolving the former joint powers board known as the joint business council. Thereafter, the Bureau of Indian Affairs awarded a judicial services contract to the Shoshone Business Council, which falsely claimed to represent both the Shoshone and Arapaho Tribes. As a result, the Shoshone Business Council attempted to unilaterally control the Shoshone and Arapaho Tribal Courts, including such Court's exercise of jurisdiction over members of the Northern Arapaho Tribe and others, in derogation of the sovereign authority of the Northern Arapaho Tribe.

(j) As a direct result of such action by the Bureau of Indian Affairs, in concert with the Shoshone Business Council, additional separation of the judicial authorities of the Northern Arapaho Tribe from those of the Shoshone Tribe was imperative and in the best interests of the Tribe and those within its jurisdiction. An orderly transition to greater independence of the judiciary of the Northern Arapaho Tribe was in the best interests of the Tribe and those within the jurisdiction of the Tribe.

(k) In 2017, the Northern Arapaho Tribe and the Eastern Shoshone Tribe formed a new cooperative entity known as the Wind River Inter-Tribal Council and agreed to re-authorize the former Shoshone and Arapaho Tribal Court, and the Northern Arapaho Tribal Court, as the new Wind River Tribal Courts.

**Section 602 - Purpose.** The primary purpose of this Chapter is to provide for the fair and orderly transition of jurisdiction

exercised by the Northern Arapaho Tribal Courts to the Wind River Tribal Courts.

**Section 603 - Authorization.** The Wind River Tribal Courts are hereby authorized to exercise the sovereign authority of the Northern Arapaho Tribe, subject to the general laws of the Tribe and to the following specific provisions:

**(a)** The Tribe preserves its immunity from any determinations or rulings of the Tribal Court which may restrict or diminish the sovereign authority of the Tribe.

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**COMMENT** - Similar provisions in (a) above were also codified in 17 N.A.C. 425 in 2014.

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**(b)** All references in the S&A LOC to the former joint powers board known as the joint business council or "JBC" mean and refer to the Northern Arapaho Business Council and the Eastern Shoshone Business Council, when both Tribes approve any proposed resolution, law, or other action, whether acting through the Wind River Inter-Tribal Council or otherwise.

**(c)** Provisions of law in the S&A LOC not specifically addressed in the Northern Arapaho Code are incorporated herein by reference. Any provisions of the S&A LOC which conflict with the provisions of the Northern Arapaho Code shall be of no force or effect with respect to the Northern Arapaho Tribe, and the provisions of the Northern Arapaho Code shall govern. Unless specifically provided otherwise, provisions of the Northern Arapaho Code which address a particular subject preempt provisions of the S&A LOC which may address the same subject matter.

**(d)** Establishment of the Northern Arapaho Environmental Office, 19 N.A.C. 101, et seq., does not diminish or withdraw the authority of the Wind River Environmental Quality Commission to seek funding, administer program(s) or engage in lawful activities regarding Treatment as a State pursuant to Section 105 of the Clean Air Act.

**(e)** Only those specific judges appointed by the Business Council by resolution are authorized to act on behalf of the

Tribe in the fulfillment of their judicial duties through the Wind River Tribal Courts. Nothing in the S&A LOC, this Code, or other law authorizes any entity other than the Northern Arapaho Tribe to appoint or authorize judicial officers on behalf of the Tribe.

**(f)** Neither the authorization provided herein, nor any other law or act of the Tribe, authorizes or ratifies:

**(1)** The award of funds by the Bureau of Indian Affairs, or any other entity, to the Shoshone Business Council for the operation of the Shoshone and Arapaho Tribal Courts; or

**(2)** Any unilateral action by the Shoshone Business Council, whether purporting to act as a "joint" council or otherwise, with respect to the former Shoshone and Arapaho Tribal Courts including, without limitation, the appointment of judges or other staff to such court.

**Section 604 - Proceedings in the Former Shoshone and Arapaho Tribal Court or in the Northern Arapaho Tribal Court Deemed to be Proceedings in the Wind River Tribal Courts.** Proceedings, judgments, or orders of the former Shoshone and Arapaho Tribal Court or of the Northern Arapaho Tribal Court are recognized as valid and fully enforceable as if they were proceedings, judgments, or orders of the Wind River Tribal Courts. Matters filed in such courts shall be treated as matters filed in the Wind River Tribal Courts and shall proceed accordingly without the need for parties to re-file pleadings or for the Wind River Tribal Courts to issue new judgments or orders. This provision shall apply to all such proceedings, including criminal, juvenile, child protection, family violence, family or child support, and all other matters. In the event that it assists in the enforcement of judgments or orders of the former Shoshone and Arapaho Tribal Court or of the Northern Arapaho Tribal Court, the Wind River Tribal Courts may re-issue the same *sua sponte* or for good cause shown or may issue rules of the Wind River Tribal Courts that aid in the implementation of this Section.

**Section 605 - Coordination with Bureau of Indian Affairs Police.**

**(a)** The Tribal Courts are authorized to enter into

cooperative agreements with the Bureau of Indian Affairs (BIA) for the purpose of providing effective and efficient law enforcement services.

**(b)** The terms "officer" or "police officer" shall mean any member of the Indian Police of the BIA, any member of the Tribal Police Department if the Tribe chooses to operate such department, or any authorized law enforcement officer pursuant to Northern Arapaho Business Council action.

**(c)** Prior to or within one (1) year after employment, an officer must have successfully completed a full course of instruction at an accredited Police Academy approved by the Tribe.

**(d)** Officers shall enforce this Code and carry out the orders of the court as provided in this Code. Officers shall also promptly serve all notices which the courts request and serve subpoenas in criminal cases, unless other persons or entities are designated to do so by a judge.

**(e)** Officers shall use reasonable force in discharge of their duties; deadly force is authorized only to protect human life.

**(f)** "Probation officer" shall mean the person filling the position of probation officer or, in the event of a vacancy, the person(s) appointed to assume the duties of such officer.

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**COMMENT** - These provisions were adapted from S&A LOC 1-1-4 (Enforcement of Code; Service of Notices, Orders; Warrants); S&A LOC 1-7-2 (criminal subpoenas); and S&A LOC 6-4-1 (Law Enforcement Officers).

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## **CHAPTER 7: COURT OF APPEALS**

**Section 701 - Incorporation by Reference.** Provisions of the S&A LOC governing the former Shoshone and Arapaho Tribal Court of Appeals which are not specifically addressed in this Code shall apply to the Wind River Tribal Court of Appeals and are incorporated herein by reference. Any provisions of the S&A LOC which conflict with the provisions of this Code shall be of no

force or effect with respect to the Northern Arapaho Tribe, and the provisions of this Code shall govern.

**Section 702 - Appeals by the Tribe Are a Matter of Right.** In any proceeding in which the Northern Arapaho Tribe or any of its agencies, departments, enterprises, boards, or entities is a party, or in which individuals are parties in their official capacities as employees, officials, or other agents of the Tribe, they, the Tribe, or its entities shall have the right to appeal to the Wind River Tribal Court of Appeals any matter properly within the jurisdiction of such Court.

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**COMMENT** - Section 702 amends S&A LOC 15-1-5(3), which only permits appeals in civil matters with the permission of the Court of Appeals.

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History: Title 17. The Northern Arapaho Tribal Courts Code was enacted by the Northern Arapaho Tribe by resolution of the Northern Arapaho Business Council dated March 14, 2014, Resolution No. NABC-2014-371. Section 307 was amended by Resolution No. NABC-2014-442 dated October 28, 2014. Chapters 5, 6 and 7, and technical amendments to conform the remainder of the Code to the new chapters, were enacted by Resolution No. NABC-2015-605 dated December 29, 2015. 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. Amendments setting terms and conditions for judicial officials were enacted on November 7, 2016, by Resolution No. NABC-2016-740. Substantial changes were enacted on April 24, 2018, by Resolution No. NABC-2018-962, authorizing the Wind River Tribal Courts to assume the authority and obligations of the Northern Arapaho Tribal Courts, and of the former Shoshone and Arapaho Tribal Courts, amending sections 701 and 702, and repealing the remaining sections in Chapter 7 (Court of Appeals) of this Title.