

Native Village of Eyak



**TRIBAL JUDICIAL CODE**

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# Chapter 1

## Native Village of Eyak Tribal Court Structure

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## Section 1: Establishment and Purpose of the Native Village of Eyak Tribal Court

The Native Village of Eyak Traditional Council is the governing body of a federally recognized tribe and hereby establishes the Native Village of Eyak Tribal Court. The governing body of the Native Village of Eyak has the authority to operate a Tribal Court by its inherent sovereignty as a federally recognized tribe under any powers delegated to the Native Village of Eyak Tribal Council to exercise under Article V, of the Constitution of the Native Village of Eyak. The Native Village of Eyak Tribal Court is hereby reorganized according to the structure outlined in this ordinance.

The purpose of the Native Village of Eyak Tribal Court is to restore the health, safety, and welfare of the Native Village of Eyak people by addressing problems through a fair and consistent application of unwritten Native Village of Eyak cultural traditions and written tribal ordinances. This ordinance outlines the structure of the Native Village of Eyak Tribal Court. Today we begin to write down a living document that will grow with us and be amended by the Native Village of Eyak to meet the needs of the People.

## Section 2: Definitions

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

- A. **NVE Native Village of Eyak, Tribal Council and Traditional Council** shall be used interchangeably to refer to the Native Village of Eyak's governing body.
- B. **Tribal Member** is an enrolled, residential, active member of the Native Village of Eyak.
- C. **Tribal Citizen** is anyone eligible to become a tribal member of the Native Village of Eyak, as defined by the NVE constitution and enrollment ordinance.
- D. **Resident Citizen** is anyone residing within the NVE boundaries.
- E. **Judge** those appointed to hear cases for the tribal court.
- F. **Clerk** The court clerk is appointed by the tribal council to be the primary clerk of the court. The tribal council or court shall designate an alternate clerk when needed.
- G. **Petition** is a request, by any means determined by the court to seek resolution through the court system.
- H. **First degree relatives** are parents, children, spouse or significant other, grandparents, grandchildren, siblings, parents-in-law.
- I. **Panel Style Hearing** is the main type of hearing in the NVE Tribal Court in which a panel of three judges will be required to hear cases and pronounce judgments.
- J. **Circle Peacekeeping** is a specialty court in which a judge presides and facilitates the circle, but everyone is heard and sentencing is by consensus of circle participants.
- K. **Keeper of the Circle** is a judge appointed to moderate hearings for circle peacekeeping.

## Section 3: Jurisdiction of the Native Village of Eyak Tribal Court

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

1. Within the Native Village of Eyak's traditional boundaries
2. Over all tribal citizens, enrolled or eligible, regardless of where they live or do business
3. Over all persons and entities who enter into consensual relations with the NVE or tribal citizens, or whose activities affect the political integrity, economic security, or the health or welfare of the NVE or tribal citizens
4. Over all persons who are granted hearing by the court
5. Over any matters so implied or delegated by Congress

## **Section 4: The Native Village of Eyak Tribal Court System**

### **Standing Tribal Court Structure:**

The tribal court shall be composed of 5 judges. Judges may also be members of the tribal council. The pool of judges shall consist of 1 Chief Justice and 4 Alternate Judges. Judges will be appointed through a super-majority affirmative vote of at least four Tribal Council members. The standing members of the pool of judges are members who are currently trained in tribal governance, courts as well as ICWA and CINA cases. Judges appointed by the tribal council who have no training and previous tribal court experience shall stay in the alternate pool until they attend required training and have been mentored by members of the standing judge pool in at least 5 court cases and are appointed into standing judge status by a super majority affirmative vote of the tribal council.

### **NVE Judge Qualifications:**

- Must be a tribal member of the NVE, as set forth in the NVE Tribal Enrollment Ordinance
- Honorable, respected, upstanding tribal members
- 21 years of age or older
- To serve on any domestic relations cases, they shall not have been found guilty of, or entered a plea of no contest to any felonious offense or two or more of any of the misdemeanor offenses under federal, state or tribal law involving crimes of domestic violence, sexual assault, molestation, exploitation, contact or prostitution, crimes against persons or offenses committed against children
- They will serve as Circle Peace Keepers in Circle Peacekeeping specialty court sessions

Term Limit: 5 years, but will be eligible for reappointment by 4 affirmative votes of council.

Judge vacancy: the council may appoint a qualified individual to serve the remainder of the unexpired term by 4 affirmative votes.

### **NVE Chief Justice Requirements:**

- Must have served 1 term as an Alternate Tribal Court Judge
- During time as an Alternate Tribal Court Judge, must have consistently attended training opportunities. Attendance information can be provided by Tribal Court staff

Term Limit: The Chief Justice will be appointed by a majority vote of the Tribal Council. Duration of time as Chief Justice will coincide with existing term as Tribal Court Judge. A Tribal Court Judge can only hold the position of Chief Justice for a maximum of 2 terms unless no other judge expresses interest to fill the position. The judge may then remain in the position as an interim Chief Justice until the position is filled. Once the appointment for a new Chief Justice is complete, the individual may apply to be reappointed at an Alternate Tribal Court Judge.

#### Visiting Judges:

The council may appoint visiting judges from outside the community for a particular case when they determine that it is in the best interest of the Native Village of Eyak to do so.

- Appointment of visiting judges will be made by an affirmative vote of at least 4 council members.
- Visiting judges may be judges from other tribal courts or attorneys certified by bar associations to hear cases in situations where the NVE court has significant conflicts of interests or when a case has extreme legal complications.
- A written agreement shall be put in place stating the terms of any financial arrangements made.
- The visiting judges shall apply the laws of the NVE to the fullest extent possible.
- At least 1 judge hearing the case will be from the NVE court, unless there are significant conflicts of interest.

#### Intertribal Courts:

The court may join with other tribal courts to form intertribal courts for specific cases involving persons who are members of or are eligible for membership in the NVE and in another tribe. The court may also participate in a permanent intertribal court, provided that the council determines it is in the best interest of the NVE to do so. The relationship between the court and such intertribal court is to be clearly described in written documentation.

#### Native Village of Eyak Court of Appeals:

The structure and procedures for the Native Village of Eyak Court of Appeals are outlined in Chapter 3 of the Native Village of Eyak Tribal Judicial Code.

#### Specialty Courts:

The council may establish specialty courts by resolution.

## Section 5: Quorum of the Native Village of Eyak Tribal Court

#### Quorum for review meeting:

Two judges are required to determine if a petition, referral or option to transfer a case is to be heard by the court.

#### Quorum to hear cases:

Three judges are necessary to hear a case when a panel style hearing is held.

## **Section 6: Conflict of Interest**

Judges shall recuse themselves from hearing a case for the following reasons:

- case involves first degree relatives and anyone living in the same household (except in emergency situations where temporary decisions are made)
- cases in which they have any significant, direct, personal financial or other interest
- case in which they cannot make a fair and sound judgment for any reason

If the Chief Justice must recuse themselves due to conflict of interest, they shall appoint an Alternate Tribal Court Judge.

## **Section 7: Decision Making by the Native Village of Eyak Tribal Court Judges**

- consensus when possible
- through a majority vote when consensus is not possible
- referrals to justice circles of their design for their consensus decision

## **Section 8: Advisors to the Native Village of Eyak Tribal Court**

The judges may confer with elders, council members or other appropriate consultants during hearings. They may also call upon elders to give answers to questions put to them, which shall be recorded for future generations.

## **Section 9: Native Village of Eyak Tribal Court Clerk**

The council shall appoint the court clerk and designate an alternate when needed. The duties of the clerk as outlined in this code may include:

- receiving petitions filed with the court
- maintaining court calendar and case files
- contacting judges to set up a review meeting
- sending notification to parties and judges of hearing dates
- recording hearings
- setting up teleconference calls when necessary
- drafting court orders for the review and signature of judges
- maintaining records of court finances
- answering phone calls and receiving mail for the court

## **Section 10: Oath of Confidentiality, Fairness, and Impartiality**

The judges, court clerk, participants of circles used for sentencing and any other employees or other officials who participate in a case involving minors shall take an oath of confidentiality, fairness, and impartiality. The only exception to this will be for mandatory reporters who are required to report any information about harm to a minor to proper officials.

"I \_\_\_\_\_, do solemnly swear and affirm that I will not discuss the proceedings of this case outside of the chambers of courtroom or peacemaking circle. I will maintain respect due the court by striving for fairness and impartiality in the proceedings that come before me."

Violators of this oath may be subject to

- removal under Chapter 1 Section 11 of this code
- termination from employment if they are NVE employees
- contempt of court as described in Chapter 2 Section 21 of this code

## **Section 11: Forfeitures and Removal of Judges**

### **Forfeitures:**

Judges shall automatically forfeit their position if they are convicted of a felony under state or federal law while in office.

### **Removal:**

- 1) When the council determines that it is in the best interest of the NVE to remove a judge:
  - the judge being considered for removal will be given an opportunity to speak in an executive session of the council
  - removal must be affirmed by a minimum of 4 votes
- 2) Tribal members may remove judges by filing a petition to the court signed by at least 30% of the qualified NVE voters. The removal must then be affirmed by majority vote of the council after the judge is given an opportunity to speak in an executive session of the council.

## **Section 12: Amendments**

Amendments must be proposed by a tribal member or a council member and a super majority of the council vote in favor of the amendments.



## Chapter 2

### Native Village of Eyak Tribal Court Procedures

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## Section 1: Purpose

The purpose of the Native Village of Eyak Tribal Court Procedures chapter is to ensure a fair and equitable process for the operation of the court that is:

- consistent with the Native Village of Eyak Tribal Constitution and ordinances
- the requirements of the Indian Civil Rights Act of 1968, as amended
- compatible with the unwritten values and practices of the Native Village of Eyak

The procedures provided are the guidelines and policies of the court unless otherwise specifically provided for by the Native Village of Eyak Constitution or Native Village of Eyak Tribal Ordinance.

## Section 2: Definitions

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

- A. **Banishment** is the removal of a person from NVE property and/or means dis-enrolling and disowning a tribal member for a period of time or permanently.
- B. **Judge** Those appointed to hear cases for the court.
- C. **Clerk** The court clerk is appointed by the council to be the primary clerk of the court. The council or court will designate an alternate clerk when needed.
- D. **Emergency circumstances** mean circumstances in which it is reasonably apparent that there is imminent danger of harm to a person or property.
- E. **Parties** mean Petitioner(s) and Respondent(s) and any other persons or entities the court considers to be parties in a particular case. Petitioners may choose not to be a party to a case if it is specifically permitted by NVE Tribal Ordinance or if the court permits.
- F. **Petitioner** is the party filing a Petition to use the court.
- G. **Proof of Service** is the written or otherwise documented evidence that parties have been notified of an action of the court, such as notification about a hearing.
- H. **Respondent** is person/s or entity/ies involved in an issue brought before the court by a petitioner/s or against whom a complaint is filed.
- I. **Restitution** means compensating a person who has been damaged or injured, by paying money or performing services to compensate for damage or injury. Restitution can include apologizing, payment of medical bills or other bills, repair of property, or replacement of property. The court may also order people to do other appropriate things to provide restitution.
- J. **Review Meeting** is the initial meeting of the court to decide whether or not to take a case.
- K. **Civil Violation** means failing to comply with tribal laws and involves conduct inappropriate to an orderly society, but it is not a criminal offense.

### **Section 3: Rights of Parties**

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

- Parties shall have the right to be notified of court hearings, except in cases of emergency circumstances when a party is not reasonably available to be notified
- Right to copies of documents submitted to the court and court generated documents
- Opportunity to be heard
- Opportunity to present witnesses and evidence
- Opportunity to question any witnesses
- Right to a fair hearing
- Right to request a change of order if new evidence or circumstances change in the case
- Right to request a change of order or to appeal the final decision to the Native Village of Eyak Court of Appeals
- Right to appeal the final decision to the Native Village of Eyak Court of Appeals

### **Section 4: Confidentiality**

All cases and hearings involving children shall be confidential. Hearings involving adults may be open to the public if the parties and the court agree. Unless a case is appealed to the Native Village of Eyak Court of Appeals, only the court, judges and clerk shall have access to the court records without the court's permission. The Native Village of Eyak Court of Appeals shall have access to all records involving cases that are appealed to it.

### **Section 5: Recording hearings**

The court shall keep records of all cases consisting of

- Audio recordings of hearings
- Written notes of all panel style hearings
- Original documents filed with the court
- Records of actions the court has taken

Peacemaking Circle specialty courts may not be audio recorded, but the consensus agreement of the circle shall be documented in writing.

### **Section 6: Failure to Appear for a Hearing**

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

### **Section 7: Recesses during Hearings**

The court may recess at any time during any type of hearing.

## **Section 8: Testimony and Associated Costs**

Witnesses may testify in person or with the court's permission by telephone/video conference. The court shall summon witnesses to testify at the hearings by issuing a subpoena. Any travel or telephone costs associated with the testimony of witnesses summoned by the court shall be paid by the Native Village of Eyak. Costs associated with witnesses brought before court by parties shall be paid for by the parties.

## **Section 9: Evidence and Affidavits**

The court shall hear all evidence it finds proper. Hearsay evidence given under oath shall be considered improper evidence. The court may order evidence to be brought before the court by issuing a subpoena. The court may accept sworn affidavits as evidence in cases if the witness is not available to testify.

## **Section 10: Emergency Hearings**

Emergency hearings involve matters where harm or damage to a person or property may likely occur if the court had to wait.

- The court shall hold a hearing as soon as reasonable proof of imminent harm to a person or property is provided.
- Notice of emergency hearings shall be given to parties who are reasonably available to receive it, but the court may proceed without notice if parties are not available to receive it.
- Orders, decisions of the court and consensus agreements issued during emergency hearings shall be written and are of limited duration of up to 30 days unless otherwise stated in the NVE Tribal Judicial Code and will be valid only until a regular hearing with reasonable notice is held.

## **Section 11: Search Warrants**

The court shall comply with the Indian Civil Rights Act of 1968, as amended, in requiring search warrants when necessary to search for evidence under circumstances that would lead a reasonable person to believe that a civil violation was or is being committed. Suspicion unsupported by any facts is not sufficient. Search warrants shall specifically state where the search may be done, what items are to be searched for, when the warrant expires, and whether or not the search may take place at night.

### **Application for Search Warrants:**

The application shall be filled out by a court designated individual who shall state why the search is needed and shall state names of individuals who have, under oath, witnessed or have knowledge of an illegal activity or illegal items.

### **Issuing a Search Warrant:**

Search warrants may only be issued by the court judges. The judges must be convinced that the applicant for the search warrant has probable cause, meaning evidence of circumstances which would lead a reasonable person to believe that an offense was or is being committed.

## **Section 12: Juveniles**

### **Application of Native Village of Eyak Tribal Laws to Juveniles:**

The civil laws of the Native Village of Eyak and the court procedures generally apply to juveniles the same as they do to adults, provided that specific age-related ordinances may apply solely to juveniles and that the Native Village of Eyak Tribal Youth Court may be established and operated under its own written procedures.

### **Parents or guardians attending hearings:**

In cases involving civil violations by minor children, written notification shall be given to the child of an upcoming hearing and written notification also given to parents or guardians. The court may request a parent or guardian to be present at their child's hearing or, the court may request parents or guardians to leave a hearing if the judges believe that it is in the best interest of the child. The court may appoint a spokesperson for a minor child.

## **Section 13: Native Village of Eyak Tribal Court Finances**

### **Accounting:**

A separate line item account shall be established by the council for the finances of the court.

### **Fees:**

The court may charge fees for use of the court. Such fees shall be equal for equal types of cases and matters, and shall be made known to any person who files paperwork for use of the court.

### **Payment of fines and/or fees:**

Fines or fees can be paid in cash, credit card, or money order. Money orders should be made out to the Native Village of Eyak Tribal Government and given to the clerk who issues a receipt.

## **Section 14: Beginning a Native Village of Eyak Tribal Court Case**

Cases generally begin by filing a petition to use the court with the clerk. The petitioner must write sufficient information about the circumstances and reasons why the court should hear the case. Cases may also come to the court through referrals or transfer of jurisdiction from another court.

### **Review Meeting:**

Upon receipt of a petition, referral, or option to transfer a case, the clerk contacts all available judges qualified to hear the case. A minimum of 2 judges, the Chief Justice and one Tribal Court Judge, determine whether or not to hear a case. If the Chief Justice is not available, then an Alternate Tribal Court Judge can act in the Chief Justice's place.

### **Decision to take a case:**

During the review meeting, if it is decided to hear a petition in the court, the judges present at this meeting decide by consensus which 2 judges will be seated for this case alongside the Chief Justice. The Alternate Judges are chosen by consensus of the judges.

- The Chief Justice will act as the presiding judge for subsequent hearings resulting from the initial case whenever possible.
- The presiding judge will maintain control of the courtroom in a fair manner.
- Persons in the court may only speak at the direction of the presiding judge.

### **Pre-hearing conference:**

- Judges will review all information provided to them and determine if there are any parties who should have been notified but were not notified and if so, they may reschedule the hearing until all parties are present.
- Parties who wish to have witnesses testify at a hearing must give the court reasonable (not less than 10 days) notice before a hearing date.
- The clerk will then notify the other parties of witnesses who have been asked to attend.
- If judges recommend a circle style hearing, the clerk and at least one judge shall meet with the party to determine if they want a hearing in front of a panel of judges or a circle style hearing.

### **Scheduling hearings:**

- Hearings shall be held no more than 30 days after a petition is filed.
- The court shall send notices to parties if they find it necessary to hold a hearing at a later date.

### **Decision to decline a case:**

When the judges decline to hear a case the clerk shall send a letter of denial to the petitioner or referring entity within three business days after the decision is made.

## **Section 15: Notice**

### **Notice of Hearing:**

Parties shall be given reasonable notice for all scheduled court hearings.

- The clerk, or designee, shall personally serve or mail notice, along with the petition and appropriate paperwork to all parties before hearings.
- The notice shall be delivered at least 10 days or mailed at least 14 days before a hearing except as otherwise provided for in the Native Village of Eyak Tribal Judicial Code.
- A proof of service shall be filed and noted in the court file.

### **Notice of Rescheduled Hearing:**

If the court changes the time of a hearing for any reason, the involved parties shall be given reasonable notice of the rescheduled hearing.

If a hearing is rescheduled, notification may be made telephonically and noted in the case file.

#### **Notice for emergency hearings:**

In the case of emergency hearings, notice shall be given only to those parties reasonably available to receive it. If parties are not reasonably available to receive notice, the court may hold a hearing without notice being given per Chapter 2, Section 10 of this code.

#### **Notice for witnesses:**

Each party shall be responsible for serving notice on their own witnesses.

## **Section 16: Procedures for Panel Style Hearing**

### **Opening a hearing:**

- 1) The presiding judge shall open the court hearing and ask that a prayer or words from an elder be given.
- 2) The presiding judge shall then:
  - ask the clerk to begin recording
  - state the case number and the date, time, and place of hearing
  - ask all persons in the courtroom or at any tele/video conference sites to state their name and relationship to the case for the record
  - ask how parties were notified of the hearing
  - determine if there are any parties who were notified but are not at the hearing. If a party was notified but is not at the hearing, the court may either proceed with the hearing or reschedule.
  - state the rights of all parties including the:
    - Right to be notified of court hearings
    - Right to copies of documents submitted to the court and court generated documents
    - Opportunity to be heard
    - Opportunity to present witnesses and evidence
    - Opportunity to question witnesses
    - Right to a fair hearing
    - Right to request a change of order if new evidence or circumstances change in the case
    - Right to appeal the final decision to the Native Village of Eyak Court of Appeals
- 3) All parties shall sign or swear a pledge of truthfulness.
- 4) In cases that are closed to the public, all present at the hearing shall be instructed to maintain confidentiality outside the Native Village of Eyak courtroom proceedings.
- 5) The presiding judge shall then read the Petition to the court.



### **Civil violations:**

In cases of civil violations, the respondents shall be asked to plead: guilty, not guilty or no contest and the presiding judge shall make sure the respondent understands the pleas. If the respondent pleads guilty or no contest, the judges may question the respondent and any participants in the courtroom to gain information that will help them create an appropriate sentence during their deliberations. They may also counsel the respondent at that time. If the respondent pleads not guilty, the hearing shall be held at this time unless the court finds it appropriate to delay in order for parties to gather witnesses and evidence. If the respondent is present but will not say anything, the court shall automatically enter a plea of not guilty.

### **Hearing process:**

- The presiding judge shall maintain order in the courtroom and direct the order of speaking. Persons in the courtroom may only speak at the direction of the presiding judge.
- The presiding judge will first ask to hear from the petitioner and then from the respondent.
- If anyone is connected to the hearing by tele/video conference, all hearing participants shall state their name prior to speaking, and any visual evidence presented to the court shall be described.
- Petitioners and respondents may present witnesses and evidence in the order chosen by the presiding judge.
- Each party shall be permitted to question each other and all witnesses.
- Judges may question anyone in the courtroom.
- When the judges determine that all parties have had sufficient opportunity to speak and present everything they feel is relevant to the case, they shall convene at another place to deliberate.

### **Deliberations:**

- Judges shall take all evidence presented into consideration during their deliberations and make their decision by consensus when possible.
- If consensus is not possible, the decision shall be made by majority vote.
- In cases of civil violations where a party entered a plea of not guilty, the Judges shall decide if the information provided is sufficient to lead them to reasonably believe the person is guilty and decide on an appropriate sentence from Chapter 2 Section 17 of this code.

### **Decision in writing:**

Consensus decisions shall be documented and recorded onto appropriate forms unless otherwise specified by ordinance.

## **Section 17: Options for Orders and Sentences**

The court may issue orders concerning child custody arrangements, domestic relations issues, and any other type of case where an order is appropriate. Unless the Native Village of Eyak

Tribal Judicial Code sets a specific penalty for a particular civil violation, the judges or specialty court shall determine the specific orders for a particular case.

The judges shall consider the rights, wellness and restoration of any victims and seek a holistic plan for the wrongdoer. They may choose from the following options:

#### **Fines:**

Fines shall not exceed \$5,000 or equivalent work sentence. Fines may increase for repeat violations of the same ordinance. The court may garnish wages, permanent fund or dividend checks, village or regional native corporation dividends, general assistance, or confiscate property in the case of unpaid fines.

#### **Community Service:**

- Work sentences may include cutting wood, yard work or other labor for people in need of assistance in the community, for the churches or for the community hall.
- Sentences may include working in the school or nursing home, building maintenance or repair, food bank distribution, washing cars and cleaning grounds and cleaning up trash in the Native Village of Eyak.
- The judges may order other types of community work as well.
- Community service sentences shall benefit the victim of an offense, the needy, residents within NVE boundaries as a whole, elders, churches, or youth.
- Judges shall not order work sentences that only benefit themselves personally or other NVE officials.

Work sentences shall not displace persons employed in the community or employment opportunities. Work sentences shall be completed within 30 days of an order, unless otherwise directed by the court.

Community work may contribute towards payment of fines ordered by the court in accordance with the fee schedule.

#### **Impounding vehicles:**

- To get a vehicle out of impound, the owner shall pay fees in the amount subject to fee schedule.
- The fees may be paid by community work service hours if the court permits.
- The owner is responsible for the impound fee even if the owner was not involved with the civil violation, except in cases of vehicle theft.
- The Native Village of Eyak is not liable for any damages to vehicles while they are impounded.

#### **Banishment:**

An order of temporary or permanent banishment shall only be used to protect the Native Village of Eyak Government property and/or Native Village of Eyak residents from harm. The length of time a person is banished shall be determined by the severity of the case or upon the completion of treatment that is ordered.

### **Drug and alcohol treatment and other counseling:**

- The court may order an assessment for drug and alcohol treatment and may require that the recommendations of the assessment be met.
- The court shall consider the cost to the person and possible waiting periods for getting into treatment, when they order such treatment, and may pay such costs if funding is available.
- The court may also order other personal counseling or participation in talking circles of their design.

### **Restitution:**

- The court may order respondents to make restitution to their victim/s.
- Restitution should be directly related to what has been damaged and is defined to include payment of money, repairing or replacing property and apologies.
- Restitution payment shall go through the clerk.
- Non-monetary restitution shall be supervised by a person designated by the court.

### **Counseling by Judges and Elders:**

- The judges may counsel persons brought before them using helpful and guiding intentions
- The judges may also request elders into the courtroom to counsel people in the same manner.

### **Traditional Activities:**

The court may order a person to participate in seasonally appropriate traditional activities such as fish camps, trapping, hunting, food preparation, culture camps, and other tribally sponsored or approved traditional activities.

### **Apologies:**

- The court may order wrongdoers to make apologies to victims and/or to the whole community at meetings or gatherings.
- The judges may specify if the apologies shall be in writing or oral or both.

### **Other Restorative Justice Sentences:**

The court may create any reasonable and equitable sentence that is intended to be restorative and fitting to the offense committed to provide accountability for the offender and restitution and healing to the victim, offender, and the community.

## **Section 18: Written Orders, Consensus Agreements and Timeframe for Compliance**

### **Written Orders:**

All orders made by the court shall be written on order forms unless otherwise specified by ordinance. All written orders and notations shall be filed in the case records. The clerk or

designee shall personally deliver or mail a copy of the order to all parties of the case and file a proof of service.

#### **Consensus Agreements:**

All consensus agreements made by circle peacemaking shall be made in writing and the terms of compliance specified.

#### **Timeframe for complying with Orders and Consensus Agreements:**

Sentences involving civil violations shall be accomplished within 30 days after the respondent has been notified of the order, unless the court specifies otherwise. For other cases, the order shall specify timeframes for compliance.

### **Section 19: Request to Change Order**

Parties may request the court for a hearing to consider changing an order. To make such a request, they shall

- file a Request to change order form with the clerk
- pay the fee in accordance with the fee schedule.
- the request shall state the reason the party believes a change should be made
- the requesting party shall present new evidence or information to the court to support the request
- upon receipt of a request to change order, the clerk shall schedule a meeting with the judges to decide whether to hear the request or not
- a minimum of three judges is necessary to make this decision
- the court may deny the request or set a hearing date to consider it after notification of parties

### **Section 20: Proof of Compliance with Orders**

- The proof of compliance form along with orders of the court shall be kept by the clerk in the court files
- Parties shall have 30 calendar days to complete the requirements of an order unless otherwise specified in the order
- The proof of compliance form shall be given to the clerk within 14 calendar days of completion of an order unless otherwise specified by the court order
- The clerk shall certify the proof of compliance form
- Financial restitution ordered to another party shall be made through the clerk of the court
- The clerk shall report any failures to comply with court orders to the court
- Failure to comply with an order of the court in civil violation cases shall be considered contempt of court as described in Section 21 of this chapter

## **Section 21: Contempt of Court:**

### **Reasons persons may be found in Contempt of Court:**

A person may be found in contempt of court if he or she:

1. violates the Oath of Confidentiality, Fairness, and Impartiality
2. fails to fully comply with an order or consensus agreement of the court
3. lies to the court
4. disrupts court proceedings

### **Judges in Contempt:**

- If a judge is found to be in contempt of court, that judge shall not participate in any decision making processes concerning that particular case
- The remaining judges shall determine how to handle the matter based on the facts of the situation, and may remove the judge from a particular case or from the court entirely in accordance with Chapter 1, Section 11 of this code.

### **Confiscating personal property:**

- The court may seize personal property if that person is found in contempt of court
- The property shall remain confiscated and under the care of the Native Village of Eyak until the person complies with the court order
- If the person does not comply with the court order within the time limits set by the court, the court may sell the confiscated property after providing at least a 30 day notice of the proposed sale to the owner.

### **Remanding a case to referring agency:**

In the instance of parties failing to comply fully with orders, the court may remand the case to the referring agency as per prior agreements with the agency and as determined by the judges.

## CHAPTER 3

### Native Village of Eyak Court Of Appeals

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#### Section 1: Purpose of the Native Village of Eyak Court of Appeals

The Native Village of Eyak Court of Appeals is established to assure a fair judicial process in the Native Village of Eyak Tribal Government system. The purpose of the court of appeals is not to re-hear cases, but to review cases that are appealed for possible inconsistent application of Native Village of Eyak tribal law and/or violations of due process. The court of appeals has discretion whether or not to take a case that is appealed.

The court of appeals, upon receipt of appeal shall review the case from the Native Village of Eyak Tribal Court and make a preliminary determination that there is sufficient evidence that there may have been an inconsistent application of Native Village of Eyak Tribal law or a violation of due process.

#### Section 2: Structure of the Native Village of Eyak Court of Appeals

The council members who did not serve on the case being appealed shall appoint a panel of three judges who also did not serve on the case being appealed or otherwise have a conflict of interest. If there are not enough judges who do not have such conflict of interest, the council may appoint adults who reside within the Native Village of Eyak. All provisions for court judges in Chapter 1, Section 4 also apply to appellate judges. Appellate judges shall take the Oath of Confidentiality, Fairness, and Impartiality found in Chapter 1, Section 10.

#### Section 3: Clerk of the Native Village of Eyak Court of Appeals

The clerk shall be the same person as the tribal court clerk or a council or court designee.

## **Section 4: Beginning an Appeal**

A petition for appeal must be filed with the clerk of the court of appeals within 30 days after receiving an order from the tribal court. Appeals filed after 30 days from the receipt of an order shall not be considered. The petitioner shall be called the “appellant.”

## **Section 5: Notice of Petition to Appeal**

The petition for appeal form shall require the name and address of the person(s)/entity who is appealing the case, the name of the case, and case number. A copy of the court order shall be attached to the petition, and shall contain a statement of why the appellant believes that the case should be heard by the court of appeals.

## **Section 6: Appellate Court Procedure and Decisions**

### **Beginning a Case:**

- The clerk shall notify the council that an appeal has been filed
- The clerk shall then make copies of the tribal court record and the petition for the court of appeals.
- The clerk shall set a date for the court of appeals to review these materials and to determine if there is sufficient evidence that NVE Tribal Law may have been inconsistently applied and/or if there may have been a violation of due process
- If the court of appeals decides that there is not sufficient evidence, the decision of the tribal court stands and no hearing is scheduled
- If no hearing is held the court of appeals shall issue an order to the appellant stating the support of the tribal court’s decision.

### **Setting a Hearing Date:**

Once the court of appeals has completed a review of the case records and has decided that it will hear a case the clerk shall

- set a hearing date
- give notice to all parties
- the notice shall be personally delivered at least 10 days or mailed certified at 14 days prior to a hearing, and proof of service filed in the case records

At the hearing, all parties may discuss the issues written in the appeal concerning whether or not the tribal court made a mistake in applying tribal law or violated due process rights.

The parties may only present new evidence in the appeal if the court of appeals permits it.

### **Decisions of the Native Village of Eyak Court of Appeals:**

After the court of appeals hears a case, the presiding judge or clerk shall fill out a decision of appeal that shall be filed in the court of appeals record and a copy filed in the tribal court file. The clerk shall assure that all parties in the case are provided with a copy of the decision of appeal and file a proof of service in the case record.

**Options for Decisions of the Native Village of Eyak Court of Appeals:**

1. Uphold the procedures and decision of the Native Village of Eyak Tribal Court
2. Order the Native Village of Eyak Tribal Court to re-hear the case in a way that is consistent with specific instructions written in the decision of appeal
3. Dismiss the case in the most serious of circumstances.

**CERTIFICATION:**

I, hereby certify that I, Darrel Olsen, am Chairman of the Native Village of Eyak Traditional Tribal Council, consisting of 5 duly elected members, and that this **Tribal Judicial Code** was considered and APPROVED by the council on April 16, 2019 and that the vote was 3 For, 1 Against, 0 Abstaining, and 0 Absent and that the foregoing resolution has not been rescinded or amended in any way.

Darrel Olsen  
Darrel Olsen, Chairman

Pam Smith  
Pam Smith, Secretary-Treasurer

5-21-2019  
Date

5/21/19  
Date