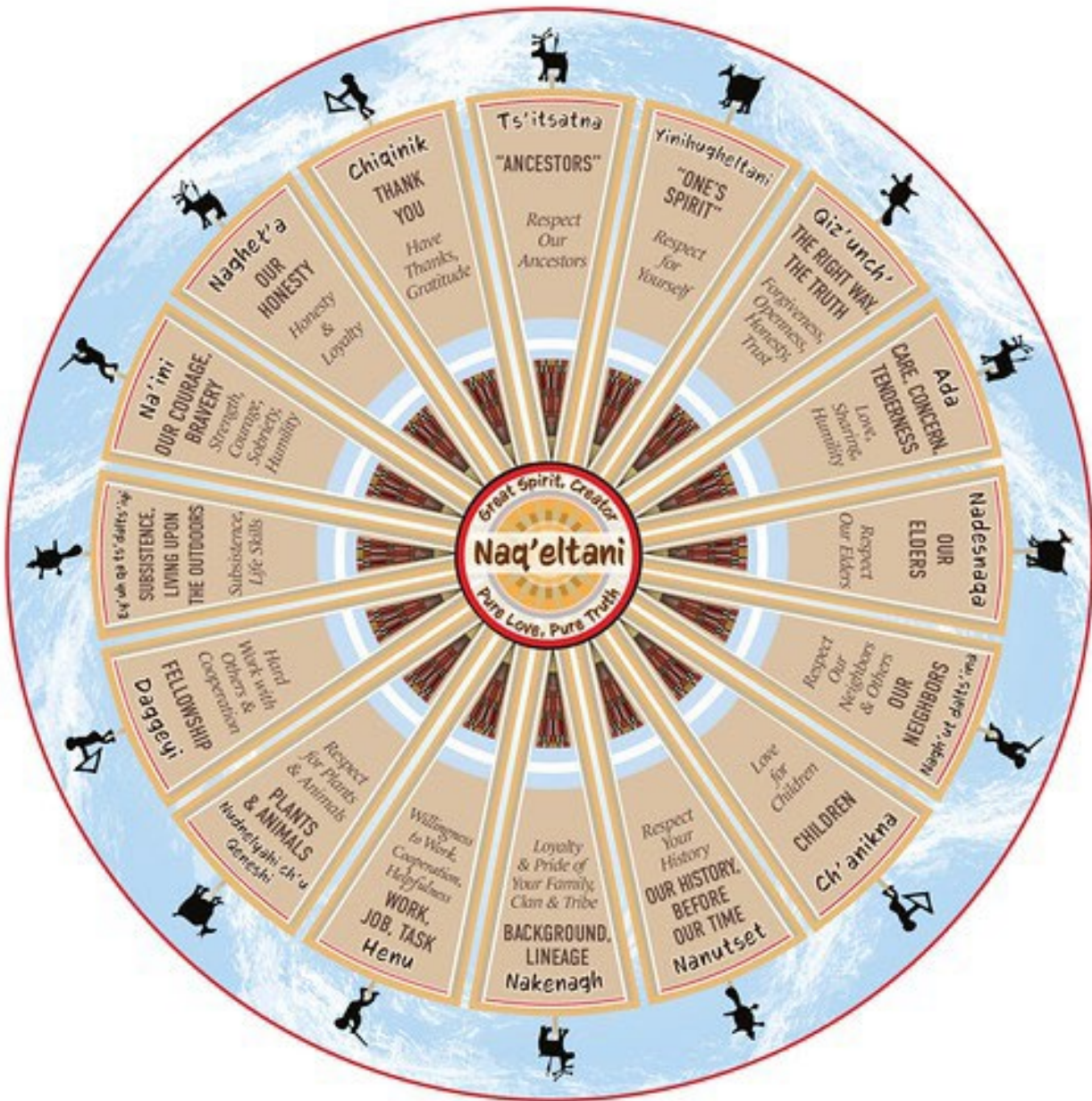


# TRIBAL COURT CODE OF THE KENAITZE INDIAN TRIBE



Qiz'unch' Tribal Court

Mailing: P.O. Box 988, Kenai, Alaska 99611

Physical: 508 Upland Street, Kenai, Alaska 99611

(907) 335-7219

# TRIBAL COURT CODE

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# CHAPTER 1 KENAITZE TRIBAL COURT STRUCTURE

## SECTION 1: NAME OF CODE

This law shall be referred to as the Kenaitze Indian Tribe Tribal Court Code (“the Tribal Court Code”).

## SECTION 2: NAME OF COURT

The Kenaitze Indian Tribe’s Tribal Court shall be referred to as the Kenaitze Tribal Court (“the Tribal Court”).

## SECTION 3: PURPOSE

### *A. History*

Since time immemorial, we the Kahtnuht’ana Dena’ina, including the Kenaitze Indian Tribe, have resolved dispute and conflict, maintained community peace and delivered justice within our Ełnena (homeland) through the use of our Traditional Kahtnuht’ana Laws, Customs, Practices and Traditional Values.

### *B. Modern Purpose*

The purpose of the Tribal Court Code is to honor and acknowledge our prior Customs, History, Traditions and Experience for the purpose of preserving, strengthening and continuing the Tribal Court into the future. To ensure the efficient and fair administration of justice, the Tribal Court shall continue to resolve conflicts and disputes and enforce Tribal Laws through the application of Cultural Traditions, Customary and Traditional Values, Written Law, Codes and Ordinances.

## SECTION 4: AUTHORITY

The Kenaitze Indian Tribe, represented by the duly elected governing body of the Kenaitze Tribal Council, has the authority to operate the Tribal Court pursuant to its inherent sovereign authority and the powers set forth in the Kenaitze Tribe’s Constitution, By-Laws, Ordinances, Resolutions and Codes.

## SECTION 5: JURISDICTION

The Tribal Court shall have the authority to exercise jurisdiction that is recognized by their valid existing rights as a sovereign nation. These powers include, but are not limited to, matters relating to the governmental processes internal to the Kenaitze Indian Tribe and over matters arising:

1. In the Kenaitze Indian Tribe’s Dena’ina Indian Country, including but not limited to, all lands and waters customarily and traditionally used by the Dena’ina people; and
2. Over all Kenaitze Tribal Members, enrolled or eligible for enrollment, regardless of where they live or do business; and

3. Over all persons and entities who enter into consensual relations with the Kenaitze Indian Tribe or Tribal Members, or whose activities affect the political integrity, economic security or the health or welfare of the Kenaitze Indian Tribe or Tribal Members; and
4. With all persons and entities who consent to the jurisdiction of the Kenaitze Tribal Court.

#### SECTION 6: COURT STRUCTURE

The Tribal Court will consist of a panel of judges. The judges shall be appointed by a majority vote of the Kenaitze Indian Tribal Council. A quorum of no less than two (2) and no more than five (5) judges shall be convened to hear and decide a case. It shall be a preference that at least one (1) Tribal elder judge preside over every case that comes before the Tribal Court. In emergency situations or due to disqualification as outlined in the Tribal Code, the presiding judge may solicit from a list of Kenaitze Tribal Members who have already prequalified or from qualified judges from an associated tribe to act as a judge to make a quorum.

##### *A. Chief Judge*

The Tribal Court will select a Chief Judge to be approved by the Tribal Council. The role of the Chief Judge is to manage the judicial function of the Tribal Court as referenced in the Tribal Court Chief Judge Job Description.

#### SECTION 7: JUDGES

##### *A. Qualifications*

In order to be qualified to serve as a Tribal Court Judge, a person must, at a minimum:

1. Be an enrolled Kenaitze Tribal member; and
2. Be domiciled within the Kenaitze Tribe's customary and traditional Dena'ina Tribal Territory; and
3. Be at least 31 years of age; and
4. Not have been convicted of a non-violent crime within the previous two (2) years, unless otherwise approved by the Tribal Council; except that fishing, hunting and gathering violations will not exclude a person from serving as a judge; and
5. Not have been convicted of violent crime within the previous ten (10) years, unless otherwise approved by the Kenaitze Indian Tribal Council; and
6. Not have been convicted of any crime involving sexual assault, molestation, sexual abuse or sexual exploitation in his/her lifetime; and
7. Agree to participate in judicial trainings as they are made available by the Kenaitze Indian Tribe; and
8. Submit to a Criminal Background Investigation and Child Protection Clearance and sign a Drug and Alcohol Free Workplace Statement; and
9. Not be a current Kenaitze Indian Tribal Council member.

##### *B. Selection of Judges*

Judges shall be appointed by the affirmative vote of the Kenaitze Indian Tribal Council. Selection of the judges shall be at the discretion of the Kenaitze Indian Tribal Council.

*C. Terms*

Judges shall serve on the Tribal Court unless and until they resign or are removed as described in [Section D](#) as set forth below.

*D. Judicial Disciplinary Proceedings*

Any judge may be dismissed, suspended, removed or fined if a majority of the Kenaitze Indian Tribal Council determines that substantial evidence exists. A judge may be placed on interim suspension until this process is complete. In dismissing, suspending, removing or fining a judge, the following procedure must be followed:

1. The person or people desiring to remove the judge shall file a Grievance Petition with the Kenaitze Indian Tribal Council.
2. The Kenaitze Indian Tribal Council shall notify the judge of the Grievance Petition within 20 days. The notice shall be in writing and shall contain a copy of the Petition.
3. The judge may request that the Kenaitze Indian Tribal Council hold a special meeting so that the judge may present his/her side to the Tribal Council. The judge and the petitioner(s) shall be allowed to present witnesses and evidence to the Tribal Council.
4. Once the Kenaitze Indian Tribal Council makes a decision regarding the Grievance Petition, it shall issue a written decision, explaining the reason(s) for its decision. A copy of the decision shall be given to the both the judge and petitioner(s).

*E. Filing Judicial Vacancies*

Should a judicial vacancy occur through death, resignation, removal or otherwise, the Kenaitze Indian Tribal Council shall appoint a qualified Kenaitze Indian Tribal member or Tribal Council member to fill the vacancy.

*F. Judicial Ethics*

No judge shall be involved in a case where he/she:

1. Has a direct personal, political or financial interest defined as the possibility of a Court transaction that may lead to personal gain, through favors or financial or political gain; or
2. Has an immediate family member that is a party to the case. Immediate family members are defined as by blood or legal means, a spouse, mother, father, sister, brother, son, daughter or member of the judge's household; as well as a grandparent, grandchild, domestic partner, in-law, step, foster relationship and legal guardianship; or
3. Does not think he/she can be fair or impartial for any reason.

Tribal Court Judges shall have an affirmative duty to recuse him/herself if any part of Section 7(F) applies. Tribal Court Judges shall adhere to the Judicial Code of Conduct.



## SECTION 8: ELDERS AND OTHER ADVISORS

The Tribal Court may confer with and/or request oral or written responses from Kenaitze Indian Tribal Elders, Kenaitze Indian Tribal Council Members, and/or other cultural leaders which may be kept for and relied upon by future generations.

## SECTION 9: LEGAL AND PROFESSIONAL CONSULTATION

If a consult with an attorney or other professional is necessary for a judge to carry out his/her duties, a request shall be made to the Chief Judge. The Chief Judge shall follow Kenaitze policies and procedures for engaging the services of that professional.

## SECTION 10: APPEALS

Parties to Tribal Court proceedings shall be permitted to appeal the Tribal Court's final decision. The Tribal Council shall appoint Judges from another Tribe, or retired Kenaitze Tribal Judges to serve as the Appellate Court when necessary. A person may not serve as a judge on the Appellate Court if he or she is already serving as a judge on the Tribal Court.

### *A. Starting an Appeal*

To appeal a final decision of the Tribal Court, the appealing party must file a Petition to Appeal with the Tribal Council Office Manager and provide a copy to the Tribal Court Clerk. A copy shall also be provided to all parties to the case.

- i. Time Limit: A Petition to Appeal must be filed within 30 days of the date written on the Tribal Court's final order.
- ii. Contents of the Petition: The Petition must state with specificity all of the reasons that the party is appealing. A copy of the Tribal Court's final Order must be attached to the Petition.
- iii. No New Facts or Evidence: Parties to an appeal are not permitted to present new facts or evidence to the Appellate Court.
- iv. Filing Fee: A party shall be required to pay \$50 to the Tribal Council.

### *B. Appointing an Appellate Court Panel*

Within 10 business days of a Petition to Appeal being filed, the Kenaitze Tribal Council shall call a special meeting to appoint the panel. Within 5 business days of finalizing the panel, the Appellate Court shall convene to review the Petition.

### *C. Hearing on Petition, Frivolous Petitions*

- i. Unless the Appellate Court finds the Petition to be frivolous (see [subsection \(ii\)](#), below), it shall schedule a hearing within 30 days of reviewing the Petition. Notice must be provided to both parties at least 20 days in advance of the hearing. Notice shall also be sent to the Tribal Court Clerk. At the hearing, both parties shall be permitted adequate time to present their position on the issues that are on appeal. The parties are not permitted to present new evidence at this hearing.

1. If the Appellate Court wishes for the parties to submit their position in writing prior to the hearing, it may direct them to do so. They shall be permitted adequate time to prepare their written statements. Each party shall be given a chance to respond to the other party's statement.
  2. The original or a true copy of the Tribal Court record of the case at-issue, including recordings and/or transcripts of hearings, shall be made available for review by the Appellate Court and both parties. The party that is appealing the case shall bear the initial cost of copying the file. The parties may refer to the record in the hearing and/or their written statements. The Appellate Court may also consult the record.
- ii. Frivolous Appeals: The Appellate Court may dismiss the Petition to Appeal without hearing from the other party if it finds the Petition to be frivolous, i.e., there is no sound basis for reviewing the Tribal Court's Order. If the Appellate Court finds an appeal to be frivolous, it shall issue a written order dismissing the Petition to Appeal and state with specificity why the appeal is frivolous.

*D. Role of the Appellate Court*

It is the role of the Appellate Court to consider only the issues set forth in the Petition to Appeal and determine whether an error has been made as to those issues. It shall not consider any new facts or evidence, i.e., facts or evidence that were not presented to the Tribal Court.

- i. Fact Issues on Appeal: If the appeal is regarding an issue of fact or the Tribal Court's fact-finding, the Appellate Court can take action adverse to the Tribal Court's decision only if it finds that the Tribal Court has abused its discretion. This is because the Tribal Court, as the trial court that heard all of the witnesses and saw all of the evidence, is in the best position to make findings regarding the facts. If the Appellate Court finds that the Tribal Court has abused its discretion, it can direct the Tribal Court to re-visit its ruling or it can overturn its ruling.
- ii. Issues of Tribal Law, Custom or Procedure on Appeal: If the petition to appeal alleges that the Tribal Court has made an error in applying or interpreting Tribal Law, Custom or Procedure, the Appellate Court shall review the applicable law, custom and/or procedure to determine whether the Tribal Court has correctly applied or interpreted the law. If the Appellate Court finds that an error was made, it can direct the Tribal Court to review its ruling or it can overturn the ruling.

*E. Decision of the Appellate Court*

- i. After the Appellate Court has held a hearing, reviewed the parties' written statements (if any), and made any necessary review of the record, it shall issue a written decision either affirming the Tribal Court's ruling, directing that the Tribal Court re-visit its ruling, or overturning the Tribal Court's ruling. If the Appellate Court affirms the Tribal Court's ruling, it shall explain in detail why it is affirming

the ruling. If the Appellate Court is directing the Tribal Court to review its ruling, it shall state with specificity why it feels the Tribal Court erred and what part of the ruling must be re-visited. If the Appellate Court overturns the Tribal Court's ruling, it shall explain in detail why it is overturning the ruling.

Note: The Appellate Court may also find itself in the position of affirming one part of the Tribal Court's ruling and overturning or directing the Tribal Court to re-visit a different part of its ruling. This is acceptable as long as the Appellate Court specifies what part of the ruling it agrees with and what part it disagrees with.

- ii. A copy of the Appellate Court's decision shall be sent to all parties and to the Tribal Court.

#### *F. Confidentiality*

Any case that is made confidential in the Tribal Court including but not limited to, Child In Need of Aid cases, Guardian/Conservator cases, and Elder Protection Cases, shall remain confidential during the Appellate Court process. If any information regarding the Appellate Court's ruling is made public, all names and personal information shall first be changed and/or redacted.

#### *G. Code of Conduct*

When acting as judges for the Appellate Court, Kenaitze Tribal Council Members shall adhere to the Judicial Ethics set forth in [Section 7\(F\)](#) of this Code. They shall also be required to take the Oath of Confidentiality and Oath of Office as set forth in Sections [12](#) and [13](#) of this Code. The Appellate Court shall also have available to it the consultants and advisors set forth in Sections [8](#) and [9](#) of this Code.

### SECTION 11: OTHER COURT PERSONNEL

#### *A. Tribal Court Administrator*

The Kenaitze Tribal Council may create the position of Tribal Court Administrator. The purpose is to oversee the daily functions of the Tribal Court as referenced in the Tribal Court Administrator Job Description.

#### *B. Tribal Court Clerk*

The Kenaitze Tribal Council may create the position of Tribal Court Clerk, who shall be supervised by the Tribal Court Administrator. The Tribal Court Clerk shall serve at the direction of the Tribal Court Judges as referenced in the Tribal Court Clerk Job Description.

### SECTION 12: OATH OF OFFICE

The Tribal Court Judges, Tribal Court Staff, Tribal Council and all others called upon by the Tribal Court or Tribal Council shall take the following oath of confidentiality:

"I, \_\_\_\_\_ do solemnly affirm that I will support, defend and uphold the Constitution and By-Laws of the Kenaitze Indian Tribe and support and defend the best interests

of the Kenaitze Indian Tribe; that I will support, uphold and enforce the Law and Order of the Tribe, Resolutions and Ordinances duly passed by the Kenaitze Indian Tribe; that I will not discuss any confidential matters outside of the Tribal Court unless I am otherwise permitted by the Tribal Court; and that I will faithfully and impartially discharge the duties of my office to the best of my ability.”

#### SECTION 14. FULL FAITH AND CREDIT AND COMITY

The Kenaitze Indian Tribe and the Tribal Court may give full faith and credit, comity or other reciprocal recognition to the laws and judicial acts of other Tribes, the United States, individual states and local governments, which equally extend the same full faith and credit, comity, and other recognition to the Laws and Judicial acts of the Kenaitze Indian Tribe and the Tribal Court.

#### SECTION 15. SUPREME LAW: THE SOVEREIGN DENA'INA PRINCIPLES OF REGULATION

In the event of an otherwise unresolvable dispute, the Sovereign Dena'ina Principles of Regulation, which includes written and unwritten Tribal Traditions, will take precedence over all other laws, codes and regulations.

Before a court issues a decision on the basis of the Sovereign Dena'ina Principles of Regulation, it will give the people involved an opportunity to be heard about any question over what those principles are or how they should be applied.

#### SECTION 16. AMENDMENTS

Amendments to this Code may be made only if 1) the amendments are proposed by a Tribal Member or a Tribal Council Member and 2) a majority of the Tribal Council votes in favor of the amendments.

All amendments to this Tribal Court Code shall be noted in the footnotes, including the language changed, the date of the change and effective date, if necessary.

## CHAPTER 2 KENAITZE TRIBAL COURT PROCEDURES

### SECTION 1. PURPOSE

The purpose of the Kenaitze Tribal Court Procedures Ordinance is to provide a fair and equitable process for the operation of the Tribal Court that is consistent with the Kenaitze Tribal Constitution and Ordinances, the requirements of the Indian Civil Rights Act and compatible with the written or unwritten Traditional Values and practices of the Kenaitze Indian Tribe. The procedures provided in this Ordinance shall be the guidelines and policies of the Tribal Court unless otherwise specifically provided for by the Kenaitze Constitution or Tribal Ordinance.

### SECTION 2. DEFINITIONS

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

**Assets** means the money, personal property or other things of value that a debtor possesses or has a right to, now or in the future, which may be executed against by the Kenaitze Tribal Court, upon application of a creditor, to satisfy a debt incurred by the debtor.

**Banishment** means sending a person out of the Traditional Territory of the Kenaitze Indian Tribe for a period of time or permanently.

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

**Creditor** means the person or entity to whom a money judgment has been awarded. This may include an individual person(s), an organization or the Kenaitze Indian Tribe.

**Day** means calendar day, unless otherwise specified as a business day. Business days exclude the Kenaitze Indian Tribe's recognized holidays.

**Debt** means a sum of money due by certain and express agreement, including a specified sum of money owing to one party from another, including not only obligations of a debtor to pay, but a right of a creditor to enforce and receive such payment.

**Debtor** means the person against whom a money judgment has been awarded.

**Disposable Earnings** means that part of the debtor's gross Earnings for a pay period remaining after deductions required by state and federal law, such as social security taxes, federal and state income taxes, and any tribal taxes, all of which must be listed on the debtor's wage statement.

**Earnings** means compensation payable for personal services, whether designated as wages, salary, commission, bonus or otherwise.

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

**Exemptions** means any funds or property that has cultural significance, used to carry out one's primary trade or business, provisions and fuel for the comfortable maintenance of the home for three months' time, 75% of weekly disposable earnings, salary or other compensation regularly paid for personal services for pay period, or any other monies or resources necessary to support the individual or family as determined by the tribal court.

**Garnishment** means the legal process through which the earnings of a debtor are required to be withheld by a garnishee for payment of a judgment.

**Garnishee** means the employer or entity named in a garnishment application as the one who owes earnings or other funds to the debtor.

**Good Cause (Reasonable Suspicion):** Generally, good cause is adequate or substantial grounds or sufficient reason for a ruling or other action by the Tribal Court. In relation to neuropsychological examinations, good cause means gathering sufficient evidence, either through direct observation, recordings, or reliable reporting that an individual is displaying signs and symptoms consistent with a neuropsychological disability.

**Judgment** means any final judgment, decree or order from the Tribal Court, decree or order from another tribal court, federal or state court of competent jurisdiction. It includes a judgment decree or order for child support or spousal maintenance or awarding money, resources, labor or community service to one or more parties

**Neuropsychological Examination:** A detailed assessment of mental, intellectual, cognitive, and general motor functioning of an individual that cannot generally be obtained through other diagnostic means. It includes the use of standardized assessment tools. Those tools are integrated with other data to determine whether cognitive decline has occurred, to differentiate neurologic from psychiatric conditions, to identify neurocognitive etiologies, and to determine the relationship between neurologic factors and difficulties in daily functioning. These examinations are conducted by licensed medical professionals trained in this type of assessment. A neuropsychological examination should also evaluate an individual's ability to learn, reason, comprehend, and engage in normal problem-solving skills. Neuropsychological examinations are routinely used to evaluate an individual's need for further psychological or medical intervention as identified by organic or functional traumatic brain injuries; substance-induced co-occurring disorders and dementia. Neuropsychological examinations should only be performed by a clinically trained psychologist with an internship or certification in neuropsychological assessment, testing, and diagnosis.

**Nonexempt Earnings** means the portion of disposable earnings subject to garnishment under the Kenaitze Tribal Court Code.

**Parties** means person or persons that the Kenaitze Tribal Court considers to be involved in an issue that has been brought before the Court. A person who is a Petitioner may choose not to be a party to a case if it is specifically permitted by tribal ordinance or if the Kenaitze Tribal Court permits it.

**Petitioner** is the party filing a Petition.

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

**Respondent** is the party responding to a Petition.

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

**Service** means the act of providing notice of a hearing or court order to a party or witness by mail or hand delivery. Electronic means of service shall only be used if the party or witness requests it.

**Tribal Conflict Resolution Program** means the use of alternative methods to resolving disputes. This may include, but is not limited to, talking circles.

### SECTION 3. RIGHTS OF PARTIES

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

- The right to be notified of the time, date and place of court hearings, except in cases of emergency when a party is not reasonably available to be notified;
- The right to be notified of the date by which a written response is required to be filed with the Court;
- The opportunity to be heard including the chance to talk, the chance to present evidence and witnesses, the chance to ask questions of the other party and the other party's witnesses;
- The right to be heard by fair and impartial judge or judges;

- The right to copies of documents submitted to the Tribal Court and Tribal Court generated documents (at their own expense);
- The right to request a Change of Order if new evidence or circumstances change;
- The right to appeal the final decision to the Kenaitze Appellate Court.

#### SECTION 4. CONFIDENTIALITY

All children's cases and hearings shall be confidential. Hearings involving adults may be open to the public if the parties and the Judges agree. Only the parties, Tribal Judges, and Tribal Court Clerk may have access to court records, unless the Tribal Court or Tribal Law specifies otherwise. The Kenaitze Appellate Court shall have access to all records involving cases that are appealed to it.

#### SECTION 5. RECORDING HEARINGS

The Tribal Court shall keep a record of all cases consisting of a recording and/or written notes of all panel style hearings, all original documents filed with the Tribal Court and all Orders entered by the Tribal Court.

#### SECTION 6. FAILURE TO APPEAR FOR A HEARING

If parties have been given reasonable notice of a hearing but fail to appear for the hearing, the Tribal Court may 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 Tribal Court may recess during any type of court hearing.

#### SECTION 8. TESTIMONY AND ASSOCIATED COSTS

Witnesses may testify in person, or, with the Tribal Court's permission, by telephone or virtually. The Kenaitze Tribal Court may summon witnesses to testify at the hearings by issuing a subpoena.

#### SECTION 9. EVIDENCE AND AFFIDAVITS

The Tribal Court shall hear all evidence it finds proper. The Tribal Court may order evidence to be brought before the Tribal Court by issuing a subpoena. The Tribal Court may accept sworn Affidavits as evidence in cases, if the witness is not available to testify.

#### SECTION 10. EMERGENCY HEARINGS

Emergency hearings shall involve matters where harm or damage to a person or property may likely occur if the Tribal Court had to wait. In cases of emergencies, the Tribal Court may hold a hearing as soon as reasonable proof of imminent harm is provided to the Tribal Court. Notice of emergency hearings shall be given to parties who are reasonably available to receive Notice, but the Tribal Court may proceed without Notice if parties are not available to receive it. Court Orders issued during emergency hearings shall be written and of limited duration of up to 30 days unless



otherwise stated in the Tribal Code, or shall stand only until a regular hearing with reasonable Notice is held.

#### SECTION 11. SEARCH WARRANTS

The Tribal Court shall comply with the Indian Civil Rights Act in requiring tribal 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. Unsupported suspicion is not sufficient. Search warrants shall specifically state where the search may be done, what items are to be looked for, when the warrant expires and whether or not the search may take place at night.

##### *A. Application for Search Warrants*

In order to do searches of people, dwellings, vehicles or other private property, a person designated by the Tribal Council to conduct searches shall fill out a Petition for a Search Warrant. The application shall state why he or she believes a search warrant is needed. The application shall state the name of the person who saw or has knowledge of a civil violation or item, if it is the basis for reason to believe that a search is needed. The person applying for the search warrant shall swear that the statements in the Petition are true to the best of their knowledge.

##### *B. Issuing a Search Warrant*

The approval of two Tribal Court Judges shall be necessary to issue a search warrant. The Tribal Court Judges must be convinced that the person applying for the search warrant has “probable cause,” meaning evidence of circumstances that would lead a reasonable person to believe that a civil violation was or is being committed.

#### SECTION 12. JUVENILES

##### *A. Application of Tribal Laws to Juveniles*

The civil laws of the Kenaitze Indian Tribe and the Tribal Court procedures generally apply to juveniles the same as they do to adults, provided that specific ordinances may apply solely to juveniles and that a Kenaitze Tribal Youth Court may be established and operated under its own written procedures.

##### *B. 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 Tribal Court may request a parent or guardian to be present at their child's hearing, or the Tribal 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 Tribal Court may appoint a spokesperson for a minor child.

##### *C. Sealing of Juvenile Court Records*

All juvenile court records shall be sealed and nothing in such records can be used against the juvenile in any criminal or other action or proceeding except in subsequent Tribal Court proceedings brought under Tribal Law.

## SECTION 13. TRIBAL COURT FINANCES

### *A. Fees*

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

### *B. Payment of Fines or Fees*

Fines or fees shall be paid in cash, check, or money order. Checks or money orders shall be made out to the “Kenaitze Indian Tribe”, and a receipt shall be issued.

## SECTION 14. BEGINNING A TRIBAL COURT CASE

Cases generally begin by filing a Petition with the Tribal Court Clerk. The Petitioner shall write sufficient information about the circumstances and reasons why the Tribal Court should take the case. Cases may also come to the court through referrals or transfer of jurisdiction from another court. After receipt of the Petition, the Tribal Court Clerk shall notify all judges of the filing of the Petition and schedule a meeting for the Judges to consider the Petition. If the Judges decide to take a case, they will determine whether the case is appropriate for a panel style hearing or the Tribe’s Traditional Conflict Resolution Program. A majority of the judges (no less than three (3) judges) at the meeting is necessary to make this decision, excluding any judge who recuses him/herself. After this meeting, Tribal Court Clerk shall contact the parties regarding future hearings and proceedings.

### *A. Decision to not take a Case*

If the decision is made to not take the case, the Tribal Court Clerk shall write a letter of denial to the Petitioner, or referring entity, as soon as possible after the decision is made.

### *B. Referral to the Traditional Conflict Resolution Program (TCRP) during a Case*

At any time during a case, the Tribal Court may refer the case to the TCRP if the Judges feel that the program is appropriate for the case. The parties may request a referral to the TCRP. If such request is made, the Judges that are presiding over the case will make a decision as to whether the program is appropriate. See [Section 17](#) for more information on TCRP.

## SECTION 15. NOTICE

### *A. Notice for hearings*

Parties shall be given reasonable notice for all scheduled Tribal Court hearings. The Tribal Court Clerk, or designee, shall personally serve or mail notice to all parties before hearings. In the case of non-emergency hearings, the Tribal Court shall make every effort to provide the parties with seven (7) days’ notice, unless otherwise specified by Tribal Law. If, at a hearing the Tribal Court gives a party oral notice of an upcoming hearing date and time, the Tribal Court shall not be required to send written notice to the parties regarding that hearing. However, some child welfare matters require written notice. See the Title IV-E Procedural Guide.

*B. Notice When Hearings Are Rescheduled*

If the Tribal 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.

*C. Notice for Emergency Hearings*

Notice of emergency hearings shall be given to parties who are reasonably available to receive notice. If parties are not reasonably available to receive notice, the Tribal Court may hold a hearing without notice being given.

*D. Notice for Witnesses*

Each party shall be responsible for serving notice to their own witnesses. Each party is also responsible for giving the other parties and the Tribal Court Clerk at least 72 hours' notice that they have asked witnesses to attend a hearing.

SECTION 16. PROCEDURES FOR PANEL STYLE HEARINGS

*A. Opening a Hearing*

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

- Ask the Tribal Court Clerk to begin the recording and/or take notes;
- State the case number and the date, time, and place of the hearing;
- Ask all persons in the courtroom or at any teleconference sites to state their name and relationship to the case for the record;
- Ask if the 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 Tribal Court may either proceed with the hearing or reschedule;
- Determine if there are any parties who should have been notified but were not notified. If it is determined that there is a party that was not notified, the hearing shall be rescheduled to allow for reasonable notification;
- Inquire as to whether the parties have been advised of their rights and, if they have not been advised, so advise them;
- In cases that are closed to the public, all present at the hearing shall be instructed to maintain confidentiality outside the Tribal Court Courtroom proceedings;
- Civil violations: In cases of civil violations, the Respondent shall be asked how he or she pleads: guilty, not guilty or no contest. The Presiding Judge shall make sure the Respondent understands the pleas. The Respondent shall say what his or her plea is. If the Respondent pleads guilty or no contest, the Judges may question the Respondent and any participants in the courtroom to gain information that will help them create an appropriate sentence during their deliberations. They may also counsel the Respondent at that time. If the Respondent pleads not guilty, a hearing shall be held at this time unless the Tribal 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 Tribal Court shall enter a plea of not guilty.

*B. Hearing Process*

The Judges shall generally maintain order in the courtroom and direct the order of speaking. If anyone is connected to the hearing by teleconference, all hearing participants shall state their name prior to speaking, and any visual evidence presented to the Tribal Court shall be described. The parties may present witnesses and evidence in the order chosen by the Judges. 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, the Judges will deliberate. The Judges may choose to issue an Order immediately or they may deliberate over several days or weeks. After reaching a decision, the Tribal Court will issue either a written or oral order.

SECTION 17. PROCEDURES FOR TRANSFERRING CASES TO THE TRIBAL TRADITIONAL CONFLICT RESOLUTION PROGRAM

*A. Referral*

Once the Tribal Court Judges have decided that the case is appropriate for the Traditional Conflict Resolution Program, they shall decide who the Facilitator will be. The Tribal Court and/or Tribal Court Clerk shall provide the parties with further contact information regarding the Facilitator and the next step in the proceeding.

*B. Decisions of the TCRP*

Decisions of TCRP shall be immediately reported to the Tribal Court and shall be written as Orders of the Tribal Court. If the TCRP is not able to reach a resolution, the case shall be immediately referred back to the Tribal Court for a panel style hearing. In all cases, the TCRP shall report back to the Tribal Court at the completion of the case or upon the last meeting with the parties. The Tribal Court can request status reports from the TCRP Facilitator at any time during the pendency of the case.

SECTION 18. OPTIONS FOR ORDERS AND SENTENCES

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

*A. Fines*

Fines for violation of a Kenaitze Indian Tribal Ordinance shall not exceed \$5,000 or equivalent work sentence. Fines may increase for successive violations of the same ordinance. The Tribal Court may garnish wages, permanent fund or dividend checks (with the exception of regional Native corporation dividends), general assistance or confiscate property in the case of unpaid fines as further described in [Section 25 Garnishments](#) of this Chapter.

*B. Community Service*

The Tribal Court Judges may order various types of consumer service work to be completed by the offender. The goal of the service sentence shall be to provide a benefit to the Kenaitze Indian Tribal community including, but not limited to, the needy, the Elders, the youth and the victim of the offense. Work sentences shall be completed within 30 days, unless otherwise directed by the Tribal Court, after the Respondent receives notice.

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

*C. Banishment*

An Order of temporary or permanent banishment shall only be used to protect the Kenaitze Indian Tribal territory or 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.

*D. Drug and Alcohol Treatment or Other Counseling*

The Tribal Court may order an assessment for drug and alcohol treatment and may require that the recommendations of the assessment be followed. The Tribal Court may also order other personal counseling. Unless otherwise ordered by the Tribal Court, the party ordered shall be responsible for any and all cost of the assessment and/or treatment.

*E. Counseling by Judges and Elders*

The Judges of the Tribal Court may counsel persons brought before them in a helpful spirit. The Tribal Court may bring Kenaitze Elders into the Courtroom to counsel people.

*F. Restitution*

The Tribal Court may order an offender to make restitution to his or her victims. Restitution is defined to include payment of money, repairing property, and apologies. Restitution payments shall be processed by the Tribal Court Clerk. Non-monetary restitution shall be supervised by a person designated by the Tribal Court. The Tribal Court may garnish wages, permanent fund dividend or other dividends received (with the exception of regional Native corporation dividends), general assistance, or confiscate property in the case of unpaid restitution as further described in [Section 25 Garnishments of this Chapter](#).

*G. Traditional Activities*

The Tribal Court may order a person to participate in seasonally appropriate traditional activities such as fishing, trapping, hunting and participating in culture camps and/or other tribally sponsored or approved traditional activities.

*H. Child Welfare Orders*

The Tribal Court may garnish wages, permanent fund dividend or other dividends received, village or regional Native corporation dividends, general assistance, or confiscate property to secure child support, unless otherwise restricted by federal law. Some child welfare orders may require specific judicial determinations and findings. See the Kenaitze Indian Tribe's Domestic Relations Code and Title IV-E Procedural Guide.

*I. Reimbursement*

The Tribal Court may order a person to reimburse either the Kenaitze Indian Tribe, another person or an organization to satisfy a judgment issued against that person. The Tribal Court may garnish wages, permanent fund dividend or other dividends received (with the exception of regional Native corporation dividends), general assistance, or confiscate property in the case of unpaid reimbursements as further described in [Section 25 Garnishments of this Chapter](#).

*J. Neurophysiological and Psychological Evaluations*

Upon recommendation from a licensed behavior health professional, the Tribal Court may order a neuropsychological or a psychological examination. If the Tribal Judges believe that a party's mental, intellectual, cognitive, and/or general motor functioning is impaired, then the Tribal Judges may order counselling.

The Tribal Court shall include in its written order the basis for requiring a neuropsychological or psychological examination. The Tribal Court shall bear the cost of any neuropsychological or psychological examination ordered for biological parents of a Tribal Member child, upon signing of the appropriate releases by the party ordered to undergo the examination.

Any report or summary of results from the neuropsychological or psychological examination shall be presented to the Tribal Court by the Psychologist or Neuropsychologist who administered and prepared the report or summary. In the event the Psychologist or Neuropsychologist who administered the evaluation is unavailable to provide the results to the Tribal Court, another licensed behavioral health professional who is able to perform neuropsychological or psychological exams may do so with the written consent of the patient

The neuropsychology or psychology examination test results, diagnosis, and recommendations provided to the Tribal Court shall remain confidential and not shared with anyone without the permission of the party tested or written authorization from the Tribal Court.

## SECTION 19. WRITTEN ORDERS, TIMEFRAME FOR COMPLYING WITH ORDERS

### *A. Written Orders*

All final orders made by the Tribal Court shall be written unless otherwise specified by ordinance. In ongoing cases, the Tribal Court shall be permitted to issue oral or written Orders as it sees fit. All written Orders and notations shall be filed in the Tribal Court case records. The Tribal Court Clerk or other designated person shall personally give or mail a copy of the Order to all parties to the case.

### *B. Time Frame for Complying with Orders*

For cases involving civil violations, all sentences shall be accomplished within 30 days after the person has been notified of the Order, unless the Court provides otherwise. For other cases, the Order shall specify timeframes for compliance.

## SECTION 20. REQUEST TO CHANGE ORDER

Parties may request a hearing to consider changing an Order. To make such a request, a Party shall file a Request to Change Order form with the Tribal Court Clerk. The request shall state the reason the person believes a change should be made. The requesting person shall present new evidence or information to the Tribal Court to support the request. The request must be made within a reasonable time after the change in circumstances has occurred and if the Tribal Court finds that too much time has elapsed, it may deny the request for that reason. Upon receipt of a Request to Change Order, the Judges will decide whether the Tribal Court will hear the Request. A minimum of two judges is necessary to make this decision. The Tribal Court may deny the request or set a hearing date to consider it and notify all Parties.

## SECTION 21. PROOF OF COMPLIANCE WITH ORDERS

Records of proof of compliance with Orders of the Tribal Court shall be kept by the Tribal Court Clerk in the Tribal Court files. Once parties are notified, they shall have 30 days to complete the requirements of an Order unless otherwise specified in the Order. Proof that the action has been completed shall be given to the Tribal Court Clerk within 14 days of completion of the act unless otherwise specified by Court Order. The Tribal Court Clerk shall certify the proof of compliance. Financial restitution ordered to be paid to another party shall be processed by the Tribal Court Clerk. Payment of a fine to the Tribal Court Clerk and a recording of the payment shall be proof in itself of payment. The Tribal Court Clerk shall report any failures to comply with Court Orders to the Tribal Court. Failure to comply with an Order of the Court in civil violation cases shall be considered contempt of court as described in [Section 22 of this Chapter](#).

## SECTION 22. CONTEMPT OF COURT

Definition: Contempt of Court may include but is not limited to general disobedience or disrespect to any order or directive of the Court, whether made within the presence of the judges or outside of a court proceeding.

*A. Reasons Persons may be found in Contempt of Court*

The Court may find a person in contempt of court if he or she:

1. Violates the Oath of Confidentiality;
2. Fails to fully comply with an Order of the Tribal Court;
3. Lies to the Court;
4. Disrupts Court proceedings; and/or
5. Publishes, through any means including but not limited to posting or commenting on any social media platform or other medium by which any person may read, hear, view, or otherwise become aware of any confidential court proceeding, including any identification of parties or judges.

*B. Judge*

If a Judge is alleged to have violated any of the provisions set forth above in Section A, the grievance procedures set forth in Chapter 1 [Section 7\(D\)](#): Judicial Disciplinary Proceedings shall be followed.

*C. Confiscating Personal Property*

The Tribal Court may seize a person's personal property if that person is found in contempt of court. The seized property shall remain under the care of the Kenaitze Indian Tribe until the person complies with the Court Order to the satisfaction of the Tribal Court. If the person does not comply with the Court Order within the time limits set by the Tribal Court, the Tribal Court may sell the confiscated property after providing at least 30 days' notice of the proposed sale to the person.

SECTION 23. ELDERS AND OTHER TRADITIONAL ADVISORS

Parties to the case shall be permitted to bring Elders and other traditional advisors with them to a hearing, in a supportive role.

SECTION 24. ATTORNEYS AND OTHER COUNSEL

Parties to a case shall be permitted to bring attorneys or other counsel, including any treatment providers or professionals ("counselors"), with them to a hearing. The hiring and payment of counselors shall be the sole responsibility of the party wishing to retain counsel. Pursuant to the customary practices and traditional law of the Kenaitze Indian Tribe, it shall be the preference of the Court to hear directly from a party and not his/her representative, however, an attorney or other counselor may present a written request to the court to speak, along with a limited waiver of relevant confidential information signed by the party, stating the reason they are requesting to speak on behalf of the party. An attorney or other counsel (including treatment providers) may make a request on behalf of a party they reasonably believe cannot adequately advocate for him/herself. Attorneys or other counsel may not speak directly to the Tribal Court or other parties unless the Court specifically invites him/her to speak.



Unless otherwise requested by a party or his/her representative, copies of notices and other case documents will continue to be sent directly to the party. If a person is requesting that documents be sent to his/her representative, both the party and the representative shall submit a signed writing which includes the representative's name, phone number, address, and the name of the person that he or she is representing.

#### SECTION 25: GARNISHMENTS

If the Tribal Court issues an order imposing a fine, restitution or reimbursement, the amount due may be garnished as set forth below.

##### *A. Application*

A creditor who obtains a Tribal Court order for fines, restitution or reimbursement may make an application with the Kenaitze Tribal Court for garnishment. After receipt of the garnishment application, the Tribal Court will set a hearing on the garnishment request.

##### *B. Notice*

After issuance of the Tribal Court order for hearing, the Tribal Court Clerk staff shall provide a copy of the application, a copy of the judgment order and garnishment answer to the debtor via mail.

##### *C. Answer*

Within ten (10) business days after receipt of the notice described in [Section B above](#), the debtor may file an answer with the Tribal Court. The debtor may assert any reasonable defense to the garnishment including, but not limited to, financial considerations, disability or other hardship. If the debtor believes any funds or property should be exempt from garnishment, the debtor shall include a list of any such items in their response.

##### *D. Hearing*

After reasonable notice has been given to both parties, the Tribal Court shall hold a hearing on the creditor's application for garnishment. At the hearing, the Tribal Court shall determine whether a garnishment judgment should be issued. The Tribal Court may deny the garnishment request if a hardship exists. If the debtor fails to appear at the hearing, the Tribal Court may enter a default judgment and issue an order for garnishment, unless good cause is shown for the failure to appear. If the creditor fails to appear at the hearing, the Tribal Court may dismiss the application for garnishment, unless good cause is shown for the failure to appear.

##### *E. Garnishment Order*

When the Tribal Court issues a garnishment judgment, the judgment shall be sent to the creditor and debtor. If the funds to be garnished are held by a third party, a copy of the order shall be sent to the third party garnishee by the Tribal Court Clerk.

*F. Garnishee Obligations*

When the third-party garnishee receives the Tribal Court order of garnishment, the garnishee shall pay those funds in their possession, up to the amount of the judgment, in a manner prescribed by the Tribal Court. Failure to respond to the garnishment order (e.g. dispersal of garnished funds), may subject the garnishee to appropriate sanctions, as determined by the Tribal Court.

*G. Satisfaction of Garnishment Judgment*

The Tribal Court will prescribe the manner of payment and the proof which by which satisfaction is completed. When the Tribal Court has confirmed the satisfaction of the garnishment judgment, a Satisfaction of Judgement Order shall be issued and sent to the creditor, debtor and garnishee.