

**Title Eleven Article One**  
**Rules for the Kaw Nation Court**

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§ 1. AUTHORIZATION

There is hereby established, ordained, and activated pursuant to the Constitution of the Kaw Nation the Judicial Branch of the Government of the Nation with a lower Court known as the District Court and an upper Court known as the Supreme Court.

§ 2. DEFINITIONS

The following words have the meanings given below when used in this Title, unless a different meaning is obvious from the context:

- (a) "Clerk" shall mean the Clerk of the Court.
- (b) "Code" shall mean the Statutory laws of the Kaw Nation.
- (c) "Constitution" shall means the Constitution of the Kaw Nation.
- (d) "District Court" shall mean the lower or general trial Court operating within the jurisdiction of the Nation created pursuant to the Kaw Constitution Article V, §1.
- (e) "He", "him", and "his" shall mean the masculine, feminine and neuter forms as appropriate unless a particular masculine, feminine or neuter form is necessary for the phrase to have meaning.
- (f) "Jurisdiction" shall mean the Indian Country within the territorial jurisdiction of the Tribe.
- (g) "Supreme Court" shall mean the Court of last resort to which appeals may be taken from the District Court. The judicial decisions of the Supreme Court are final and are not subject to further appeal.
- (h) "Tribe" refers to the Kaw Nation unless otherwise indicated.

§ 3. TERRITORIAL JURISDICTION

The Territorial Jurisdiction of the Courts shall extend to all territory described as Indian Country within the meaning of Section 1151 of Title 18 of the United States code over which the Tribe has authority, including tribal or individual, trust, non-trust and restricted land, and including all land owned by tribal agencies in their own name, all waters, minerals and wildlife, and any other such land, or interest in land, which may be subsequently acquired by virtue of Executive Order, a declaration or regulation of the United States Department of Interior, a declaration or order of a court of competent jurisdiction, by purchase, gift, relinquishment, or by any other lawful means.

§ 4. CIVIL JURISDICTION

The Courts shall have general civil jurisdiction over all civil actions arising under the

Constitution, laws, or treaties of the Tribe including the tribal common law, over all general civil claims which arise within the tribal jurisdiction, and over all transitory claims in which the defendant may be served within the tribal jurisdiction. Personal jurisdiction shall exist over all defendants served within the territorial jurisdiction of the Court, or served anywhere in cases arising within the territorial jurisdiction of the court, or served anywhere in cases arising within the territorial jurisdiction of the Tribe, and over all persons consenting to such jurisdiction. The act of entry within the territorial jurisdiction of the Court shall be considered consent to the jurisdiction of the court with respect to any civil action arising out of such entry. The act of entry upon the territorial jurisdiction by an extraterritorial seller, merchant, or their agent(s) shall be considered consent by the seller or merchant to the jurisdiction of this Court for any dispute arising out of any sale or commercial transaction regardless of where the sale or transaction was entered into or took place.

§ 5. CRIMINAL JURISDICTION

The Courts shall have original jurisdiction over all criminal offenses enumerated and defined in any ordinance adopted by the Tribe insofar as not prohibited by federal law.

§ 6. PROBATE JURISDICTION

To the extent permitted by federal law the Courts shall have probate jurisdiction over all of the real and personal property located within the jurisdiction of the court at the time of death, and the personal property, wherever located, of any person who is domiciled within the boundaries of the jurisdiction of the Court at the time of death.

§ 7. JUVENILE JURISDICTION

The Juvenile Division of the District Court shall have the exclusive original jurisdiction in all proceedings and matters affecting dependent or neglected children, children in need of supervision, or children under the age of eighteen (18) accused of crime, when such children are found within the jurisdiction of the Court, or when jurisdiction is transferred to the Court pursuant to law. The Supreme Court shall hear appeals in juvenile cases as in other civil actions.

§ 8. LAW TO BE APPLIED

The Courts shall apply the Tribal Constitution, and the provisions of all statutory law heretofore or hereafter adopted by the Tribe. In matters not covered by Tribal Statute, the Court shall apply traditional tribal customs and usages, which shall be called the Common Law. When in doubt as to the Tribal Common Law, the Court may request the advice of counselors and tribal elders familiar with them. In any dispute not covered by the Tribal Constitution, Tribal Statute, or Tribal Common Law, the Court may apply any laws of the United States or any State which would be cognizable in the court of general jurisdiction therein, and any regulation of the Department of Interior which may be of general or specific applicability. Upon this Code becoming effective, neither Part 11 of Title 25 of the Code of Federal

Regulations, except those Sections thereof which are effective when the Tribe receives certain funding from the Bureau of Indian Affairs, nor State law shall be binding upon the Court unless specifically incorporated into tribal law by Tribal Statute or be a decision of the Tribal Courts adopting some federal or state law as Tribal Common Law.

§ 9. AMENDMENTS

The Tribal Council shall have the authority to alter, amend, or repeal any provision of this Title or to add new sections to this Title in its discretion.



# Chapter One

## District Court

### § 101. DISTRICT COURT: JUDGES

Pursuant to the Kaw Constitution Article V, §1 there is hereby created a District Court which shall consist of the Chief Judge, and such District Judges, Special Judges, and Magistrates as may be appointed according to law.

### § 102. MINIMUM QUALIFICATIONS OF JUDGE OF THE DISTRICT COURT

A Judge shall:

- (a) be either
  - (1) an enrolled member of the Tribe, or
  - (2) the parent, child, or spouse of an enrolled member of the Tribe, or
  - (3) actually domiciled within the territorial jurisdiction of the Tribe, or
  - (4) an attorney, or
  - (5) a lay advocate who has regularly practiced before the Court as a member of the Bar of the Court for a period of five years, or
  - (6) an Indian graduate of an American Bar Association approved Law School;
- and
- (b) have demonstrated moral integrity and fairness in his business, public and private life, and
- (c) have never been convicted of a felony or an offense punishable by banishment, whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of two years next preceding his appointment. The two year period shall begin to run from the date the person was unconditionally released from supervision of any sort as a result of a conviction.
- (d) have regularly abstained from the excessive use of alcohol and use of illegal drugs or psychotoxic chemical solvents.
- (e) be not less than twenty-five (25) years of age.
- (f) not be a member of the Tribal Council, or the holder of any other elective Tribal Office of this Tribe, provided, that a candidate who is a member of the Tribal Council, or the holder of some other elective Tribal Office, may be confirmed as a Judge

subject to his resignation. Upon resignation from his office, he may be sworn in as and assume the duties of judicial office.

(g) if less than fifty (50) years of age, have completed at least thirty (30) semester credit hours at an accredited college or university, or at least two years of previous experience as a Judicial Officer for some recognized Court.

#### § 103. MANNER OF SELECTION OF JUSTICES AND JUDGES

Justices and Judges of the Tribe shall be nominated by the Tribal Council and confirmed by the General Council upon a vacancy occurring in a judicial office in the following manner:

(a) Within thirty days after a vacancy occurs the Chairman shall cause a notice of the vacancy stating the minimum qualifications, salary, and any other pertinent information to be published once in the Tribal newspaper and once each week for two (2) consecutive weeks in a newspaper of general circulation in the tribal jurisdiction. Copies of the notice shall be posted at the Tribal Office, the nearest Agency of the Bureau of Indian Affairs, the Tribal Housing Authority office, and such other places as the Chairman shall direct. The notice shall direct that inquiries, nominations and applications be directed to the Tribal Secretary who shall keep a permanent record of responses to such notices.

(b) No sooner than twenty (20), nor more than thirty (30) days after the date on which last required notice was published or posted, the Secretary shall deliver the names and files of all persons nominated or applying for the Judicial Office to the Chairman, who shall select no more than three qualified candidates for each vacant Judicial Office and place consideration of the candidate(s) he nominates on the agenda of the next regular or special meeting of the tribal Council.

(c) The Tribal Council shall review the qualifications of the nominees, and may interview nominees at their meetings at their discretion. The Tribal Council shall select one nominee for approval or disapproval at the next scheduled General Council. In making a selection, the tribal Council shall give preference to those candidates who:

- (1) have formal education and experience in the legal field.
- (2) shown that they are familiar with the Constitution, Code and Common laws of the Tribe.
- (3) have demonstrated decision making ability.

(d) If the nominee for the Judicial Office is confirmed by the General Council, the nominee shall be sworn into office by the Chief Justice, or the next ranking available Justice of the Supreme Court.

(e) If the nominee(s) is not confirmed, the Chairman shall either republish the notice and establish a new list of eligible candidates for the Tribal Councils consideration, or they may reconsider the candidates on the list gathered from the previous notice. The nomination - confirmation process shall continue until a nominee be confirmed.

(f) Upon the expiration of a judicial term of officer, the Judicial officer is entitled upon request, filed with the Secretary not less than sixty days prior to the expiration of his term, to be considered for confirmation to a new term at the next meeting of the General Council at which a quorum is present. If the Council, a quorum being present, considers and fails to reconfirm the outgoing officer, the Tribal Council shall begin the selection process. The outgoing judicial officer's term shall expire upon confirmation of the new Justice or Judge.

#### § 104. TERM OF OFFICE

All Judges of the District Court shall serve six (6) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or by death or resignation.

#### § 105. OATH OF OFFICER

Before assuming office each Judge, Special Judge, and Magistrate shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all causes coming before him with integrity and fairness, without regard to the person before him to be administered by the Chief Justice or the next ranking available Justice of the Supreme Court as soon after confirmation as may be practical.

#### § 106. DUTIES AND POWERS OF JUDGES

All Judges of the District Court, and Special Judges in cases within their authority, shall have the duty and power to conduct all court proceedings, and issue all orders and papers incident thereto, in order to administer justice in all matters within the jurisdiction of the Court. In doing so the Court shall:

(a) Be responsible for creating and maintaining rules of the Court, not in conflict with the Tribal Code or the Rules of the Supreme Court regulating conduct in the District Court, for the orderly and efficient administration of justice. Such rules must be filed in the office of the Tribal Secretary and the District Court Clerk before becoming effective.

(b) Hold Court regularly at a designated time and place.

(c) Have the power to administer oaths, conduct hearings, and otherwise undertake all duties and exercise all authority of a judicial officer under the law.

(d) Hear and decide all cases properly brought before the Court.

(e) Enter all appropriate orders and judgments.

(f) Issue all appropriate warrants and subpoenas.

(g) Keep all Court and other records as may be required.

- (h) Perform the duties of the Clerk in his absence.
- (i) The Judges shall annually elect from among themselves a Chief Judge.
- (j) Unless a coroner is appointed in accordance with provisions of the Tribal Code, any Judge designated by the Chief Judge shall have the authority to perform duties of a coroner.

#### § 107. TRIAL PANEL

Reserved

#### § 108. SPECIAL APPOINTMENTS

Whenever, due to vacancies in office, disqualification of Judges, or other cause, a trial panel cannot be convened from the available Judges, or an additional Judicial Officer is need to efficiently dispense with the business of the District Court, due to vacancies in office, disqualification of Judges, or other cause, the Supreme Court may request the Tribal Council to appoint one or more duly qualified magistrates or Justices to sit:

- (a) on the trial panel, or
- (b) make one or more special appointments from among the members of the Bar of the court to act as a Special Judge to hear specific named cases, or
- (c) cases filed prior to the date a trial panel of regular Judges can be convened.
- (d) No special procedure need be followed in making such appointments and such Special Judges need not meet the qualification of § 102 (a) or (g) of this Title. Whenever a Justice of the Supreme Court sits on the trial panel, that Justice may not participate in any appeal of the case to the Supreme Court. Special Judges may be compensated from the Court fund in such reasonable amounts as the Tribal Council shall order.

#### § 109. COMPENSATION OF JUDGES

(a) The compensation of all Judges of the District court shall be set by appropriate legislation of the Tribal Council. No Judge shall have his compensation reduced during his term of office, except that if funds be unavailable for appropriation, the compensation of all judicial officers may be reduced proportionally to the availability of funds.

(b) Nothing in this section shall prohibit the Tribal Legislature from contracting or agreeing with the Bureau of Indian Affairs or any other government, agency, or organization that such government, agency, or organization shall provide all or part of the compensation of a Judge or Magistrate of the District Court, and shall in return have control over the compensation of such Judges or Magistrate. In such situations the Tribal Council shall recommend to the funding party the compensation of District Judges and Magistrates.

(c) Subsection (a) of this Section shall not apply to Magistrates. The compensation of all Magistrates shall be set by order of the Tribal Council from available appropriated funds, or from funds made available pursuant to an agreement entered into according to Subsection (b) of this Section.

#### § 110. REMOVAL OF JUDGES

Judges of the Kaw Nation may be removed from office only by a majority of the other active Justices and Judges sitting together upon a showing of habitual neglect of the duties of office, oppression in office for personal gain or advantage, or conviction in any court of a felony or other crime involving moral turpitude. In no case may a judicial officer be removed from office because of his decision or vote in any case before the Court.

#### § 111. DISQUALIFICATIONS, CONFLICT OF INTEREST

(a) No Judge shall hear any case when he has a direct financial, personal or other interest in the outcome of such case or is related by blood or marriage to one or both of the parties as: husband; wife; son; daughter; father; mother; brother; sister; grandfather; grandmother; or any legal dependent. A Judge should attempt to prevent even the appearance of partiality or impropriety.

(b) Either party of interest in such case or the Judge may raise the question of conflict of interest. Upon decision by the Judge concerned or the Supreme Court that disqualification is appropriate, another Judge shall be assigned to hear the matter before the Court.

(c) Any Judge otherwise disqualified because he is related to one or more of the parties in one of the relationships enumerated in subsection (a) of this Section, may hear a case if all parties are informed of the blood or marriage relationship on the record in open Court and of their right to have a different Judge hear the case, and consent to further action by that Judge in the case in open Court upon the record, or in a writing filed in the record, in spite of the conflict of interest.

#### § 112. DECISIONS

(a) Each decision of the District Court at trial shall be recorded on a form approved by the Supreme Court for such purpose, or embodied in written findings of fact and conclusions of law containing all the information required by the approved form. The form shall provide for recording the date of the decision, the case number, the names of all parties, the substance of the complaint, the relevant facts found by the Court to be true, the Court's decisions, and the conclusions of law supporting the Court's decisions.

(b) In a case tried to a Judicial Panel, the Presiding Judge shall sign such form or decision indicating that the decision is the true decision of a majority of the trial panel on the case whether or not the Presiding Judge agreed with that decision.

(c) The decision form or the written findings of fact and conclusions of law shall be placed in the case file as an official document of the case.

#### § 113. RECORDS

The District Court shall be a Court of Record. To preserve such records:

(a) In all Court Proceedings, the Court Reporter, which may be the Clerk in the absence of an official Court Reporter, shall record the proceedings of the Court by electronic or stenographic means. The recording shall be identified by case number and kept for five (5) years for use in appeals or collateral proceedings in which the events of the hearing are in issue. At the close of each hearing, or as otherwise specified, the Reporter shall cause a transcript to be made of the recording upon the request of any party or the Court as a permanent part of the case record. Court Reporters may be licensed by the Supreme Court, and shall be allowed such fees from the Parties for their services as shall be set by Rule of the Supreme Court.

(b) To preserve the integrity of the electronic record, the Reporter shall store the recording in a safe place and release it only to the relevant Court or pursuant to an Order of a Tribal Judge or Justice.

(c) The Clerk shall keep in a file bearing the case name and number every written document filed in the case.

(d) All Court records shall be public records except as otherwise provided by law.

(e) After five (5) years, court records except judgments, appearance, and other dockets may be reproduced on computer tape or disk, microfilm, or microfiche or similar space saving record keeping methods, provided, that at least one (1) hard copy, including microfilm or microfiche, of electronically stored data shall be kept at all times.

(f) The Supreme Court shall provide for the publication in books or similar reporters of all of its decisions and opinions in cases before it, and the opinions and decisions of the District Court which would be useful to the Bar of the Court and the public.

#### § 114. FILES

(a) Except as otherwise provided by law, such as in juvenile cases, Court files on a particular case are generally open to the public. Any person may inspect the records of a case and obtain copies of documents contained therein during normal business hours.

(b) Any person desiring to inspect the records of a case or obtain copies thereof may inspect such files only during the ordinary working hours of the Clerk, or a Judge and in their presence to insure the integrity of court records. Under no circumstances shall anyone, except a Judge or a licensed advocate, attorney or the Clerk taking a file to a Judge in his chambers or a courtroom, take a file from the Clerk's office.

(c) A copy of any document contained in such a file may be obtained from the clerk by any person for a reasonable copy fee, to be set by rule of the Supreme Court. The Clerk

is hereby authorized to certify under the seal of his office that such copies are accurate reproductions of those documents on file in his office. The Supreme Court by rule may provide for such certification.

§ 115. MOTION DAY

Unless conditions make it impractical, the District Court shall establish regular times and places, at intervals sufficiently frequent for the prompt dispatch of business, at which motions requiring notice and hearing may be heard and disposed of; but the Judge at any time or place, and on such notice, if any, as he considers reasonable, may make orders for the advancement, conduct, and hearing of actions, or, the Court may make provision by rule or order for the submission and determination of motions without oral hearing upon brief written statements of reasons in support and opposition.

§ 116 MAGISTRATES

(a) Magistrates may be appointed as necessary for the convenient functioning of the Court. These Magistrates shall have the authority to issue arrest and search warrants, search warrants for the protection of children, emergency custody orders in children's cases, temporary commitments of persons accused of offenses, to conduct arraignments in criminal or juvenile delinquency cases, and to act on such ex parte, summary, or other matters as may be determined by Rules of the Supreme Court. Magistrates shall meet the minimum qualifications for Judges of the District Court except that § 102 (a) and (g) shall not apply. Magistrates shall serve for two year periods.

(b) Magistrates shall serve at the pleasure of the Tribal Council and may be removed with or without cause at anytime. In no case may a judicial officer be removed from office because of his decision or vote in any case before the Court.

§§ 117-119. RESERVED

§ 120. PRACTICE BEFORE THE TRIBAL COURT

(a) No person shall be denied the right to have a member of the Bar of the court represent him and present his case before the Courts.

(b) The Supreme Court, after conferring with the District Court, shall make rules which shall govern who may practice before the District Court and the Supreme Court. Such rules shall be filed in the office of the Tribal Secretary and the office of the Clerk of the Supreme and District Court.

## Chapter Two

### Supreme Court

#### § 201. GENERAL PROVISIONS

The Supreme Court may hear appeals resulting from all final orders or judgments rendered by the District court, appeals of other orders of the District Court subject to interlocutory appeal by law, and such original actions as may be provided by tribal law. The Supreme Court shall render its decision in writing to the parties of interest, file a copy thereof in the Supreme Court Clerk's office and the Tribal Secretary's office. The Supreme Court Clerk shall at the time of filing of the decision submit a copy to the official reporter of the decisions of the Court. The decision of the Supreme Court shall be final and binding upon the parties.

#### § 202. COMPOSITION OF THE SUPREME COURT

The Supreme Court shall consist of three (3) Justices. The Justices shall designate one of their ranks to serve as Chief Justice for a two year period.

#### § 203. MINIMUM QUALIFICATIONS OF JUSTICES

To be eligible for selection or confirmation as a Justice of the Supreme Court, a person shall:

- (a) be either
  - (1) an enrolled member of the Tribe, or
  - (2) the parent, child, or spouse, of an enrolled member of the Tribe, or
  - (3) actually domiciled within the territorial jurisdiction of the Tribe, or
  - (4) an attorney licensed to practice law for a period of five years or more, or
  - (5) a lay advocate who has regularly practiced before the Court as a member of the Bar of the Court for a period of seven years; and
- (b) have demonstrated moral integrity and fairness in his business, public and private life, and
- (c) have never been convicted of a felony or an offense punishable by banishment or involving moral turpitude whether or not actually imprisoned or banished, and have not been convicted of any offense, except traffic offenses, for a period of five years next preceding his appointment. The five year period shall begin to run from the date the person was



unconditionally released from supervision of any sort as result of a conviction.

(d) have regularly abstained from the excessive use of alcohol and use of illegal drugs or psychotoxic chemical solvents.

(e) be not less than thirty (30) years of age.

(f) not be a member of the Tribal Council, or the holder of any other elective Tribal Office of this Tribe, provided, that a candidate who is a member of the Tribal Council, or the holder of some other elective Tribal Office, may be confirmed as a Justice subject to this resignation. Upon resignation from his office, he may be sworn in as and assume the duties of judicial office.

(g) if less than fifty (50) years of age, have completed at least sixty (60) semester credit hours at an accredited college or university, or at least four years of previous experience as a Judicial Officer for some recognized Court.

#### § 204. SELECTION OF JUSTICES

Justices shall be selected in accordance with the provisions of § 103 of this Title.

#### § 205. TERM OF OFFICE

All Justices of the Supreme Court shall serve six (6) year terms of office beginning from the date of their confirmation and until their successors take office, unless removed for cause, or by death or resignation.

#### § 206. OATH OF OFFICE

Before the assuming office each Justice shall take an oath to support and protect the Constitution of the Tribe and to administer justice in all causes coming before him with integrity and fairness, without regard to the person before him to be administered by the Chief Justice, the Chairman, or the ranking available Justice of the Court.

#### § 207. DUTIES AND POWER OF JUSTICES

All Justices of the Supreme Court, unless disqualified for conflict of interest of other cause, shall participate in the deliberation of that body and shall have the duty and power to conduct all Court proceedings, and issue all orders and papers incident thereto, in order to administer justice in all matters within the jurisdiction of the Supreme Court. In doing so the Supreme Court shall:

(a) Be responsible for creating and maintaining rules of the Court, not contrary to the Tribal Constitution or Code, regulating conduct in the Supreme and District Court to

provide for the orderly and efficient administration of justice and the administration of the Courts. Such rules shall determine, where not otherwise provided by law, what actions may be taken by a single Justice of the Court, and shall be filed with the Clerk of the Court and the Tribal Secretary.

- (b) Hear appeals from the District Court at a designated time and place.
- (c) Enter all appropriate orders and judgments.
- (d) Keep all appropriate records as may be required.
- (e) Perform any and all other duties as may be required for the operation of the Supreme Court and the District Court.
- (f) Supervise the actions of the District Court and all Clerks, Reports, Bailiffs, and other officers of the Courts.
- (g) Perform any of the duties and powers of a District Judge in appropriate cases.

§ 208. RESERVED

§ 209. COMPENSATION OF JUSTICES

(a) The compensation of all Justices of the Supreme Court shall be set by legislation of the Tribal Council. No Justice shall have his compensation reduced during his term of office, except that if funds be unavailable for appropriation, the compensation of all judicial officers may be reduced proportionally to the availability of funds.

(b) Nothing in this section shall prohibit the Tribal Legislature from contracting or agreeing with the Bureau of Indian Affairs or any other government, agency, or organization that such government, agency, or organization shall provide all or part of the compensation of a Justice of the Supreme Court, and shall in return have control over the compensation of such Justice. In such situations the Tribal Council shall recommend to the funding party the compensation of Supreme Court Justices.

§ 210. REMOVAL OF JUSTICES

Justices of the Kaw Nation may be removed from office only by a majority of the other active Justices and Judges sitting together upon a showing of habitual neglect of the duties of office, oppression in office for personal gain or advantage, or conviction in any court of a felony or other crime involving moral turpitude. In no case may a judicial officer be removed from office because of his decision or vote in any case before the Court.

§ 211. DISQUALIFICATIONS. CONFLICT OF INTEREST

(a) No Justice shall hear any case when he has a direct financial, personal, or other interest in the outcome of such case or is related by blood or marriage to one or both of the parties as: husband, wife, son, daughter, father, mother, brother, sister, grandfather, grandmother, or any other legal dependent. A Justice should attempt to prevent even the appearance of partiality or impropriety.

(b) Either party in interest in such case or the Justice may raise the question of conflict of interest. Upon decision by the Justice concerned or the Supreme Court that disqualification is appropriate, a Judge, Magistrate, or Special Justice may be appointed to sit on the Supreme Court to hear the matter before the Court.

(c) Any Justice related to one or more of the parties in one of the relationships enumerated in Subsection (a) of this Section, may hear a case if all parties are informed of the blood or marriage relationship on the record in open Court and of their right to have the interested Justice disqualified from the case, and consent in writing filed in the case, or upon the record in open Court to the conflict of interest. Normally, the Justice knowing of the conflict of interest should simply file an order recusing himself from the action and stating his relationship with the parties. Thereafter, if the parties consent to that Justice hearing the action, they should file their written consent for such Justice to continue in the cause. If all parties file such consent, the Justice may then enter his order withdrawing the his refusal on grounds of the consent filed. A consent to the withdrawal of a Justice's refusal may not be revoked.

#### § 212. DECISIONS

(a) All decisions and opinions of the Supreme Court shall be rendered in writing to the parties in interest, the District Court in appeal cases, filed in the Supreme Court Clerk's Office and the Tribal Secretary's office, transmitted to the official reporter of the decisions of the court, and recorded on a form approved by the Supreme Court for such purpose. The form shall provide for recording the date of the decision or opinion, the case number, the names of the parties before the Court, the issues presented on appeal or the substance of the complaint in an action within the court's original jurisdiction, the relevant facts upon which the decision on appeal was made or as found by the Court to be true in an original action, the court's decision, and the legal principals and reasoning supporting the Court's decision. A written Court opinion containing the above information may be filed by the majority or dissent in lieu of the form.

(b) Each Justice shall record in writing his decision, or the fact of his not participating when he is disqualified, on each case decided by the Supreme Court as part of the permanent record.

(c) The decision form or Court opinion shall be placed in the file of the case on appeal as an official document of the case.

#### § 213. RULES OF THE COURT

(a) The Supreme Court shall establish rules concerning the administration of the Courts and conduct in the Supreme and District Court not inconsistent with Tribal law or the

Tribal Constitution. Such rules shall govern the conduct, demeanor, and decorum of those in the Court as well as the form and filing of appeals, briefs, pleadings, and other matters which will make the Court function more efficiently.

(b) The Rules shall be filed in the Court Clerk's office, the office of the Tribal Secretary, and delivered to the official reporter of decisions of the Court.

(c) The Court may require the observance of its Rules as a prerequisite before taking any action in a matter.

#### § 214. SPECIAL APPOINTMENTS

Whenever, due to vacancies in office, disqualification of Justices, or other cause, three (3) Justices cannot be convened to hear and decide the merits of a case before the Court, the Court, including any disqualified Justices, shall request the Tribal Council to make one or more special appointments to hear specific named cases, or cases filed prior to the date three (3) Justices can be convened on such cases. No special procedure need be followed in making such appointments and special Justices need not meet the qualifications of § 102 (a) and (g) of this Title, except that special appointees shall be fair, honest, and preserve the integrity of the Court. Special appointments by the Tribal Council shall be made by formal action with notice to the parties in a case where appropriate.

#### § 215. SUPREME COURT'S ACTION ON APPEALS

In any appeal properly before it, the Supreme Court shall have full authority to affirm, reverse, modify, or vacate any action of the District Court or other entity from whom the appeal is taken as authorized by law, and may enter such order as is just or remand the case for the entry of a specified judgment, for a new trial, or for such further action in accordance with the Supreme Court's opinion or instructions as shall be just.

#### § 216. TERMS OF THE COURT

The regular term of the Court shall commence on the third Monday in October of each year, and upon that date the Supreme Court shall convene in its Courtroom for the purpose of disposing of the actions and other business before the Court. The term shall continue until such time as the Court determines that its business is properly disposed of and the term shall then be declared completed. Special terms may be convened at any time upon the call of the Chief Justice for the purpose of dispensing with pressing matters which may not be justly delayed until the regular term of the Court.

#### § 217. COURT FUND

There is hereby authorized to be maintained by the Clerk under the supervision of the

Court, a fund to be known as the "Court Fund" into which shall be deposited all fines, fees, penalties, costs, and other monies authorized or required by law to be paid to the Courts which are not to be distributed to any party to a case and for which no requirement is imposed by law for the deposit of such funds into a particular account. These funds shall be maintained by the court and used exclusively for the purchase of supplies, materials, and personal property for the use of the court, the maintenance of the Court law library, and such other applications as shall be specifically authorized by law. The Court Fund shall not be used for the payment of salaries of regular Judges or Justices of the District or Supreme Court.

# Chapter Three

## Court Clerk

### § 301. ESTABLISHMENT

There is hereby established a Court Clerk's Office to be administered by one (1) Court Clerk and such Deputy Court Clerks as may be necessary. The Court Clerk shall be appointed by the Supreme Court, and Deputy Court Clerks shall be appointed by the Court Clerk subject to the approval of the Supreme Court.

### § 302. CLERK TO SERVE SUPREME AND DISTRICT COURTS

Until such time as the Supreme Court determines that separate Clerks are necessary to efficiently administer the business of the Courts and funding is available, the Court Clerk shall serve as the Clerk of the Supreme Court and the Clerk of the District Court. When serving the Supreme Court, the Clerk's title shall be "Clerk of the Supreme Court". When serving the District Court, the Clerk's title shall be "Clerk of the District Court".

### § 303. CLERK AS DEPARTMENT DIRECTOR

The Court Clerk is a supervisory administrative position of the Judicial Branch of the Government of the Tribe with the same rank as Department Director. The Court Clerk shall serve as the Court Administrator and shall be charged with the preparation of Court budgets, the acquisition of necessary supplies, the maintenance and upkeep of the Court's law library, the custody upkeep and maintenance of the records, papers, effects, and property of the Court and such other matters as shall be assigned to the Clerk of the Court by law or Court rule.

### § 304. POWERS AND DUTIES

The Court Clerk shall have the following powers and duties:

(a) To undertake all duties and functions otherwise authorized by law, or necessary and proper to the exercise of a duty of function authorized by law.

(b) Subject to the approval of the Supreme Court, to supervise and direct the hiring, firing, and work of all deputy court clerks and other employees in his office.

(c) to collect all fines, fees, and costs authorized or required by law to be paid to the Court, to receipt therefore, and to deliver them to the Tribal Treasurer for deposit in the Court fund.

(d) to accept, when order by the Court, monies for the payment of civil judgments and to pay same by check to the party entitled to them. For the purpose of taking such action, the Clerk is authorized to maintain a bank checking account subject to the oversight of the Supreme Court and to deposit and withdraw funds therefore. This account shall be audited at least once each year by the Tribal Accounting Department or an independent Certified Public Accountant, and the Clerk shall give a fidelity or performance bond to guarantee the funds deposited therein in such amount as the Supreme Court shall direct.

(e) to administer oaths, issue summons and subpoenas, certify a true copy of Court records, and to accurately keep each and every record of the Supreme and District Court.

(f) to provide a record in the absence of a Court Reporter to accurately and completely record all proceedings and hearings of the Courts. If a Court Reporter is available, the Court Reporter shall have the authority to administer oaths and undertake such other Court functions as shall be provided by law or Court Rule.

(g) to provide stenographic and clerical services to the Court and the Attorney General or Prosecuting Attorney when requested.

(h) to act as librarian, and to keep and maintain the Court's law library.

(i) to undertake all duties assigned or delegated to the Clerk's office by Tribal law or Court Rule.

#### § 305. SEAL

The Court Clerk is authorized to have and use a seal which shall be circular in form and contain the words, "District Court Clerk", and the name of the Tribe around the edge thereof, and the words "Official Seal" or the official Tribal emblem in its center. When acting as the Clerk of the Supreme Court the Clerk's seal shall be circular in form and contain the words "Supreme Court Clerk" and the name of the Tribe around the edge thereof, and the words "Official Seal" or the Tribal emblem in the center. The seal shall be impressed upon all warrants, subpoenas, summons, certified copies of records, judgments, orders, decrees, and similar documents, as evidence of their authenticity.

#### § 306. CERTIFICATION OF TRUE COPIES

The Court Clerk is authorized to certify that a copy of any record in his office is a true and accurate copy of the record on file by signed stamp or writing placed on such copy, sealed with the seal of the Court Clerk's office, and in substantially the following form:

##### CERTIFICATE OF TRUE COPY

I hereby certify that the above and foregoing  
\_\_\_\_\_ is a true, accurate and exact copy of  
the original of same as it remains of record  
on file in my office.

\_\_\_\_\_  
Clerk of the District Court [or Supreme Court]

\_\_\_\_\_  
Date

Certified copies of records shall be admissible as evidence without further authentication in all judicial and administrative proceedings of this Nation.

§ 307. COURTS ALWAYS OPEN

The District and Supreme Courts shall be deemed always open for the purpose of filing any pleading or other proper paper, of issuing and returning mesne and final process, and of making and directing all interlocutory motions, orders, and rules.

§ 308. TRIALS AND HEARINGS--ORDER IN CHAMBERS

All trials upon the merits, except as specifically provided by law and in children's cases shall be conducted in open Court and so far as convenient in a regular courtroom. All other acts or proceedings may be done or conducted by a Judge in chambers, without the attendance of the clerk or other court officials and in any place either within or without the tribal jurisdiction; but no hearing, other than one ex parte, shall be conducted outside the tribal jurisdiction without the consent of all parties affected thereby, except when determined by the Court to be necessary or expedient in children's cases arising under the Indian Child Welfare Act of 1978, or when the Tribe has entered into an agreement with another government for the sharing of judicial officers and courtroom space in which case the Court may sit in any place authorized by such agreement.

§ 309. CLERK'S OFFICE AND ORDERS BY THE CLERK

The Clerk's office with the Clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays, and legal holidays, but the Court may provide by rule or order that its Clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day. All motions and applications in the Clerk's office for issuing mesne process, for issuing final process, to enforce and execute judgments, for entering defaults or judgments by default, and for other proceedings which do not require allowance or order of the Court are grantable of course by the Clerk, unless the Civil Procedure Act requires previous approval by the Court, but the Clerk's action may be suspended or altered or rescinded by the Court upon cause shown.

§ 310. NOTICE OF ORDERS OR JUDGMENTS



Immediately upon the entry of an order to judgment, the Clerk shall serve a notice of the entry by mail upon each party or their attorney who is not in default for failure to appear, and shall make a note in the docket of the mailing. Such mailing is sufficient notice for all purposes for which notice of the entry of an order is required by law, but any party may in addition serve a notice of such entry in the manner provided in the Civil Procedure Act for the service of papers. Lack of notice of the entry by the Clerk does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in the Civil Procedure Act.

§ 311. Books and Records Kept by the Clerk and Entries Therein

(a) The Clerk shall keep a book known as the "Civil Docket" of such form and style as may be prescribed by the Justices of the Supreme Court, and shall enter therein each civil action. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the folio of the docket whereupon the first entry of the action is made. All papers filed with the Clerk, all process issued and returns made thereon, all appearances, order, verdicts, and judgments shall be entered chronologically in the civil docket on the folio assigned to the action and shall be marked with its file number. These entries shall be brief but shall show the nature of each paper filed or writ issued and the substance of each order or judgment of the court and of the returns showing execution of process. The entry of an order to judgment shall show the date the entry is made. When in an action trial by jury has been properly demanded or ordered, the Clerk shall enter the word "jury" on the folio assigned to that action. When in an action trial by judicial panel has been properly demanded or ordered, the Clerk shall enter the words "judicial panel" on the folio assigned to that action.

(b) In like fashion, the Clerk shall keep suitable dockets, indices, calendars, and judgments records for the criminal, juvenile, and small claims dockets of the District Court, and the appeals and original action docket of the Supreme Court. The appeals and original action dockets of the Supreme Court may be combined if the Supreme Court shall so direct.

(c) The Clerk shall also keep such other books and records as may be required from time to time by law or the Supreme Court.

§ 312. Stenographic Report or Transcript as Evidence

(a) Whenever the testimony of a witness at a trial or hearing which was stenographically reported is admissible in evidence at a later trial, it may be proved by the transcript thereof duly certified by the person who reported the testimony.

(b) Whenever the testimony of a witness at a trial or hearing which was electronically taped is admissible in evidence at a later trial, it may be proved by the tape recording thereof maintained in the custody of the Court Clerk with the records of the trial, or by some other person duly authorized to administer oaths, who has prepared or caused to be prepared under his direction a transcript of the recording.

§ 313. Judgment Docket

The judgment docket shall be kept in the form of an index in which the name of each person against whom judgment is rendered shall appear in alphabetical order, and it shall be the duty of the Clerk immediately after the rendition of a judgment to enter on said judgment docket a statement containing the names of the parties, the amount and nature of the judgment and costs, and the date of its rendition, and the date on which said judgment is entered on said judgment docket; and if the judgment be rendered against several persons, the entry shall be repeated under the name of each person against whom the judgment is rendered in alphabetical order.

§ 314. Execution Docket

In the execution docket the Clerk shall enter all executions as they are issued. The entry shall contain the names of the parties, the date and amount of the judgment and costs, and the date of the execution. The Clerk shall also record in full the return of the Chief of the Tribal Police to each execution, and such record shall be evidence of such return, if the original be mislaid or lost.

§ 315. Clerk May Collect Judgment and Costs

Where there is no execution outstanding, the Clerk of the Court may receive the amount of the judgment and costs, and receipt therefore, with the same effect as if the same had been paid to the Chief of the Tribal Police on an execution, and the Clerk shall be liable to be amerced in the same manner and amount as the Chief of the Tribal Police for refusing to pay the same to the party entitled thereto, when requested, and shall also be liable on his official bond.

§ 316. Clerks to Issue Writs and Orders

All writs and orders for provisional remedies, and process of every kind shall be prepared by the party or his attorney who is seeking the issuance of such writ, order, or process and shall be issued by the Clerk. Except for summons and subpoena, the Clerk shall not issue any such writ, order, or process except upon order or allowance of the Court unless specific authorization for his issuing such document is found in the Tribal Code.

§ 317. Clerk to File and Preserve Papers

It is the duty of the Clerk to file together and carefully preserve in his office, all papers delivered to him for that purpose in every action or proceeding.

§ 318. Each Case to be Kept Separate

The papers in each case shall be kept in a separate file marked with the title and number of the case.

§ 319. Indorsements

He shall indorse upon every paper filed with him, the day of filing it; and upon every order for a provisional remedy, and upon every undertaking given under the same, the day of its return to his office.

§ 320. Entry on Return of Summons

He shall, upon the return of every summons, enter upon the appearance docket whether or not service has been made; and if the summons has been served, the name of the defendant or defendants summoned and the day and manner of the service upon each one. The entry shall be evidence in case of the loss of the summons.

§ 321. Material for Record

The record shall be made up from the complaint, the process, return, the pleadings subsequent thereto, reports, verdicts, orders, judgments, and all material acts and proceedings of the court, but if the items of an account, or the copies of papers attached to the pleadings, be voluminous, the Court may order the record to be made by abbreviating the same, or inserting a pertinent description thereof, or by omitting them entirely. Evidence must not be recorded in the file or appearance docket, provided that the transcript of testimony may be appended to the record when paid for by a party for the purpose of appeal.

§ 322. Memorializing Record

It is the duty of the Court to write out, sign, and record its orders, judgments, and decrees within a reasonable time after their rendition. To aid in the performance of this duty, the Court may direct counsel or the Court Clerk to prepare the written memorialization for its signature and, after it is signed, to file it in the case record, or, the Court may direct the Clerk to prepare the written memorialization dictated by the Court and sign and file the same on the Court's behalf.

§ 323. Clerk to Keep Court Records, Books and Papers--Statistical and Other Information

The Clerk shall keep the records and books and paper appertaining to the Court and record its proceedings, and exercise the powers and perform the duties imposed upon him by Tribal statute, order of the Court, or Court rule. The Court clerk is directed to furnish annually, or at such times as shall be requested, without cost to the Supreme Court and to the

Tribal Council, such statistical and other information as the Supreme Court or the Tribal Council may require, including, but without being limited to, the number and classification of cases:

- (a) Filed with the Court.
- (b) Disposed of by the court, and the manner of such disposition.
- (c) The number of cases pending before the Court.

§ 324. Applicable to District and Supreme Court

The provisions of this Chapter shall apply to the Clerk of the Tribal District Court and the Tribal Supreme Court.

§ 325. Bonds

The Court Clerk and each deputy Clerk shall be bonded by a position fidelity bond to guarantee the proper performance of their duties and their fidelity in the handling of the money and other property coming into their hands in the performance of their duties. The amount of such bond shall be set by the Tribal Council and the cost thereof shall be paid from Tribal funds.

## Chapter Four

### Chief of the Tribal Police - Process

#### § 401. Style of Process

The style of process shall be "The KAW NATION to:" and all process shall be under the seal of the Court Clerk and shall be signed by the Court Clerk, and dated the day it is issued.

#### § 402. Appointment of Substitute for Tribal Police Chief

The Court or a Judge thereof, or any Clerk in the absence of the Judge and upon his oral or written order, for good cause, may appoint a person to serve a particular process or order, who shall have the same power to execute it which the Chief of the Tribal Police has. The person may be appointed on the application of the party obtaining the process or order, and the return must be verified by affidavit. He shall be entitled to the same fees allowed to the Chief of the Tribal Police for similar services.

#### § 403. Tribal Police Chief to Endorse Time of Receipt on Process

The Chief of the Tribal Police shall endorse upon every summons, order of arrest, or for the delivery of property or of attachment or injunction, the day and hour it was received by him.

#### § 404. Tribal Police Chief to Execute and Return Process

The Chief of the Tribal Police shall execute every summons, order or other process, and return the same as required by law, and if he fails to do so, unless he make it appear to the satisfaction of the Court that he was prevented by inevitable accident from so doing, he shall be amerced by the Court in a sum not exceeding Five Hundred Dollars (\$500.00) upon motion and ten (10) days notice, and shall be liable to the action of any person aggrieved by such failure. Provided that any party, his agent or attorney may make and file with the Clerk of the Court an affidavit, stating that he believes that the Chief of the Tribal Police will not, by reason of either partiality, prejudice, consanguinity or interest, faithfully perform his duties in any suit commenced in Court. In that case the Clerk shall direct the original, or other process, in such suit to the Chairman of the Tribe or his designate other than the Chief of the Tribal Police who shall execute the same in like manner as the Chief of the Tribal Police might or ought to have done, and who shall be subject to the same penalties as the Chief of the Tribal Police if he fails to do so, unless he make it appear that he was prevented by inevitable accident from so doing. The Chairman or his designate other than the Chief of the Tribal Police shall perform all of the other duties of the Chief of the Tribal Police when the Tribal Police Chief shall be a party to the case, or is disqualified.

§ 405. When Bailiff or Tribal Police Chief May Adjourn Court

If the Judge fails to attend at the time and place appointed for holding his Court, the Chief of the Tribal Police, other person appointed by the Court as bailiff, or the Court Clerk, shall have power to adjourn the Court, from day to day, until the regular or assigned Judge attend or a Special Judge, or Judge pro tempore, be selected.

§ 406. Other Duties of Tribal Police Chief--Disposition of Fees

The Chief of the Tribal Police shall exercise the powers and duties conferred and imposed upon him by the Tribal Code, Court rule, and the Common law. The Police Chief's fees allowed by the Court for the service of process and mileage shall be paid into the general miscellaneous account of the Tribal Police Department and may be transferred to another line item upon order of the Chief of the Tribal Police or used for any allowable expense or cost of the Tribal Police Department other than the payment of salaries.

## Chapter Five

### Bonds and Sureties

#### § 501. Justification of Surety

A ministerial officer whose duty is to take security in any undertaking provided for by the Tribal Code shall require the person offered as surety, if not a qualified surety or bonding company, to make an affidavit of his qualifications, which affidavit may be made before such officer, and shall be endorsed upon or attached to the undertaking. If the undertaking is given by a qualified surety or bonding company, the credentials of the person making the undertaking shall be shown and attached thereto. The ministerial officer shall have the power to administer oaths for the purpose of making any affidavits required by this Chapter.

#### § 502. Qualifications of Surety

The surety in every undertaking provided for by the Tribal Code, unless a surety or bonding company authorized to give their bond or undertaking by Tribal law, irrevocably submits himself to the jurisdiction of the Tribal Court for the purpose of enforcement of said bond or undertaking, and must be worth double the sum to be secured, over and above all exemptions, debts, and liabilities. Where there are two or more sureties in the same undertaking they must in the aggregate have the qualifications prescribed in this Section.

#### § 503. Real Estate Mortgage as Bond

In every instance where bond, indemnity or guaranty is required, a first mortgage upon real estate within a State in which any portion of the Tribal jurisdiction lies shall be accepted, provided, that the amount of such bond, guaranty, or indemnity shall not exceed fifty percent of the reasonable valuation of such improved real estate, provided further, that where the amount of such bond, guaranty or indemnity shall exceed fifty percent of the reasonable valuation of such improved real estate, then such first mortgage shall be accepted to the extent of such fifty per cent valuation.

#### § 504. Valuation of Real Estate

The officer, whose duty it is to accept and approve such bond, guaranty or indemnity shall require the affidavits as to the value of such real estate from two landowners or licensed real estate appraisers or brokers versed in land values in the community where such real estate is located. Said officer shall have the authority to administer the oaths and take said affidavits.

#### § 505. False Valuation--Penalty

Any person willfully making a false affidavit as to the value of any real estate offered as bond under this chapter shall be guilty of perjury and punished accordingly. Any officer administering or accepting such affidavit knowing it to be false shall be guilty of conspiracy to commit perjury and punished accordingly. Any such wrongdoer shall be liable in a civil action to the party injured by such false affidavit to the extent of the injury proximately caused thereby.

§ 506. Action by Tribe or Tribal Department--No Bond Required

Whenever an action is filed in the Court by the Tribe, or by direction of any department of the Tribe, its agencies, commissions, or political branches, no bond, including cost, replevin, attachment, garnishment, re-delivery, injunction bonds, appeal bonds, or other obligations of security shall be required from such tribal party either to prosecute said suit, answer, or appeal the same.

§ 507. Appearance Bond--Enforcement

(a) If a bench warrant or command to enforce a Court order by body attachment is issued in a case for divorce, legal separation, annulment, child support, or alimony, or in any civil proceeding in which a judgment debtor is summoned to answer as to assets, and the person arrested, pursuant to the authority of such process, makes a bond for his appearance at the time of trial or other proceeding in the case, the bond made shall be disbursed by the Court Clerk upon order of the Court to the party in the suit who has procured the bench warrant or command for body attachment rather than to the Tribe as the Court shall direct for the payment of any sums due. The penalty on the bond or any part thereof, shall, when recovered, first be applied to discharge the obligations adjudicated in the case in which the bond was posted, and any excess shall be deposited in the Court fund. The party who is the obligee on such bond shall have the right to enforce its penalty to the same extent and in the same manner as the Tribe may enforce the penalty on a forfeited bail bond.

(b) Upon forfeiture of a bond payable to the Tribe as ordered by the Court, including bail bonds, the Tribe may enforce the penalty on the bond upon motion filed in the case by any method authorized for the execution of civil judgments. All amounts received upon such forfeited bonds as penalty shall be deposited in the court fund. The Court may, for good cause shown, vacate an order of bond forfeiture.



## Chapter Six

### Justice Department

#### Section 601 Department of Justice Created.

There shall be a Department of Justice within the Executive Branch of the government of the Kaw Nation to be known as the Justice Department of the Kaw Nation

[History Resolution 17-82]

#### Section 602 Attorney General

The Attorney General will be the head of the Justice Department. The Attorney General will be elected according to the procedures outlined in the Kaw Nation Constitution. The Attorney General shall have such duties as are described in the constitution, and the Attorney General Code as enacted by the Tribal Council.

[History Resolution 17-82]

# Chapter Seven

## Miscellaneous

### § 701. Deputy May Perform Official Duties

Any duty enjoined by the Tribal Code upon a ministerial officer, and any act permitted to be done by him, may be performed by his lawful deputy unless otherwise specifically stated.

### § 702. Affirmation

Whenever an oath is required by the Tribal Code, the affirmation of a person, conscientiously scrupulous of taking an oath shall have the same effect.

### § 703. Publications in "Patent Insides"

(a) Every daily or weekly newspaper published continuously for a period of two years in any county in which a portion of the tribal jurisdiction lies, or within or adjacent to the tribal jurisdiction, and the Tribal Newspaper shall be recognized and authorized to publish all publications and notices required or permitted to be published by the Tribal Code.

(b) All publications and notices required by law to be published in a newspaper, if published in newspapers having one side of the paper printed away from the office of publication, known as patent outsides or insides, shall have the same force and effect as though the same were published in newspapers printed wholly and published as required by Subsection (a) of this Section if at least one side of such paper is printed within the legal area.

### § 704. Action on Official Bond

When an officer, executor, or administrator within the jurisdiction of the Tribe by misconduct or neglect of duty, forfeits his bond or renders his sureties liable, any person injured thereby, or who is, by law; entitled to the benefit of the security, may bring an action thereon in his own name, against the officer, executor, or administrator and his sureties, or may proceed in a proper case as provided in the Civil Procedure Act, to recover the amount to which he may be entitled by reason of delinquency.

### § 705. May be Several Action on Same Security

A judgment in favor of a party for one delinquency does not preclude the same or another party from an action on the same security for another delinquency.

§ 706. Immaterial Errors to be Disregarded

The Court, in every stage of action, must disregard any error or defect in the pleadings, or proceedings which does not affect the substantial rights of the adverse party, and no judgment shall be reversed or affected by reason of such immaterial or harmless error or defect.

§ 707. Payments Into Court for Minors and Incompetents

Where any amount of money not exceeding Five Hundred Dollars (\$500.00) shall be deposited and paid into Court by virtue of any judgment, order, settlement, distribution, or decree for the use and benefit of, and to the credit of, any minor or incompetent person having no legal guardian of his estate appointed by the Court, and no person shall within ninety (90) days thereafter become the legal and qualified guardian of the estate of such minor or incompetent person, if it appears to the Court that such money is needed for the support of such minor or incompetent or that it is otherwise for the best interest of such minor or incompetent person, the Court may, in its discretion, order payment of such funds to be made to any proper and suitable person as trust for such minor or incompetent person, with bond, as the Court may direct, to be expended for the support, use, and benefit of such minor or incompetent person. Such order may be made by the Court in the original cause in which the funds are credited upon the application of any interested person; and the Court may direct the Clerk of the Court to make payment of the same to be made in installments or in one lump sum as may seem for the best interests of such minor or incompetent person. If a qualified guardian has been appointed by the Court with bond, the Court shall order the money paid to the guardian for the use of the minor or incompetent person subject to such restrictions and accountings as the Court may direct.

§ 708. Conserving Moneys Obtained for Minors or Incompetent Persons

Moneys recovered in any Court proceeding by a next friend or guardian ad litem for or on behalf of a person who is less than eighteen (18) years of age or incompetent in excess of Five Hundred Dollars (\$500.00) over sums sufficient for paying costs and expenses including medical bills and attorney's fees shall, by order of the Court, be deposited in a banking or savings and loan institution, approved by the Court. Until the person becomes eighteen (18) years of age, or competent to again handle his affairs, withdrawals of moneys from such account or accounts shall be solely pursuant to order of the Court made in the case in which recovery was had. When an application for the order is made by a person who is not represented by an attorney, the Judge of the Court shall prepare the order. This Section shall not apply in cases where a legal guardian has been appointed by the Court for the estate of the minor or incompetent person with adequate bond to secure any money released. In such cases, such money, or any portion thereof as the Court may direct, may be paid over to the guardian to be used exclusively for the support and education of such minor or incompetent person, subject to such restrictions and accounting as the Court shall direct.

§ 709. Sharing of Judicial Officers

Notwithstanding any other provision of this Title, the Tribal Council retains authority to negotiate an agreement with the Bureau of Indian Affairs or other Indian Tribes for the shared use of magistrates, trial judges, and appellate court justices. In addition to any other necessary or convenient provisions, such agreements may determine the method of selection and retention of shared judicial officers, their compensation, and required duties. When acting on behalf of the Tribe, such magistrates, judges or justices shall have all the powers and authority vested in a Magistrate, Judge, or Justice of the Tribe. Such judicial officers may be in addition to, in lieu of, or the same as, those Magistrates, Judges, and Justices authorized by this Title.

#### § 710. Sharing of Other Judicial Personnel

Notwithstanding any other provision of this Title, the Tribal Council retains authority to negotiate an agreement with the Bureau of Indian Affairs or other Indian Tribes for the shared use of Court Clerks, District Attorneys, Bailiffs, Court Reporters, and other judicial related or support personnel. In addition to any other necessary or convenient provision, such agreements may determine the method of selection and retention of shared personnel, their compensation, and required duties. When acting on behalf of the District and Supreme Court, such personnel shall have all the powers and authority of the equivalent position in the Tribal Code. Such personnel may be the same as, in addition to, or in lieu of, tribal personnel in these positions.

#### § 711. Sharing of Material Resources

Notwithstanding any other provision of Tribal Law, the Tribal Council retains authority to negotiate an agreement with the Bureau of Indian Affairs, other Indian Tribes, or any other unit of government for the shared use of facilities, including courtroom, offices, and jail space, equipment, and supplies necessary for the operation of the Court and law enforcement agencies of the Tribe.

#### § 712. Sharing of Financial Resources

Provision may be made in the above mentioned agreements for the allocation of fines, fees, and court costs to support the functions of the judicial system, provided, that the salaries of the magistrates, judges, justices, and District Attorney shall not be subject to, or contingent upon the assessment or collection of any such fines, fees, court costs, or penalties. Such agreements may also provide for certain monetary contributions by the participating Tribes or agencies to the funding of the Court and provide a formula therefore, and may designate any particular grant money for the use of the Court, or may designate the Court as a prime contractor, grantee, or similar designation to authorize the Court to apply directly to any funding source for any grant or contract funds available for the operation of the Court.

#### § 713. Indian Employed in the Indian Service

All persons employed in the Indian Service shall be subject to the jurisdiction of the

Court to the extent permitted by law in any civil or criminal action.

§ 714. Copies of Laws

(a) The Supreme Court law library shall be provided with copies of all Federal, Tribal, and State laws and the regulations of the Bureau of Indian Affairs which may be applicable to the conduct of any persons within the tribal jurisdiction.

(b) Whenever the Court is in doubt as to the meaning of any law, treaty, or regulation, it may request the Attorney General to furnish an opinion on the point in question.

§ 715. Co-operation by Federal Employees

(a) No field employee of the Indian Service shall obstruct, interfere with, or control the functions of the Courts of the Tribe, or influence, or attempt to influence, interfere with, obstruct, or control such functions in any manner except in response to a request for advice or information from the Court.

(b) Employees of the Bureau of Indian Affairs and the Indian Health Service, particularly those who are engaged in police, social service, health, and educational work, shall assist the Court upon its request in the preparation and presentation of the facts in the case, and in the proper treatment of offenders and juveniles.

§ 716. Effect of Prior Decisions of the Court

The prior decisions of the Courts acting for the Tribe shall be binding upon the parties thereto. The rules of law stated in such decisions, not inconsistent with Tribal statutes enacted after such decisions, shall be precedent in the Courts subject to modification or being overruled by subsequent opinion of the Court as in other cases.

§ 717. Judicial Review of Legislative and Executive Actions

The District and Supreme Court shall have the authority to review any act by the Tribal Council, or any tribal officer, agent, or employee to determine whether that action, and the procedure or manner of taking that action, is Constitutional under the Tribal Constitution, authorized by tribal law, and not prohibited by the Indian Civil Rights Act. If the Court finds such action, or the manner of its exercise, to be unlawful, it may enjoin the action, refuse to recognize an unlawful action or refuse to apply the law or statute in question. If the Court finds that the contemplated action is authorized by the Constitution and Tribal Statutes enacted thereto, or the common law, and that the manner in which the authorized action is to be exercised is not prohibited by the Tribal Constitution, Tribal statutes enacted pursuant thereto, or federal law, the Court shall dismiss the case. The Court shall not otherwise review the exercise of any authority committed to the discretion of a tribal officer, agency, agent, or employee by Tribal law unless some specific provision of law authorizes judicial review of the

Court to the extent permitted by law in any civil or criminal action.

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merits of the discretionary decision or action.

§ 718. Action When No Procedure Provided

Whenever no specific procedure is provided in the Tribal Code, the Court may proceed in any lawful fashion.

## CHAPTER 8

### ATTORNEYS AND THE BAR:

Rule 1: Adoption of other rules which do not conflict. The Tribal Court of the Kaw Nation hereby adopts the rules for professional responsibility and attorney conduct which have been adopted by the states of Oklahoma and Kansas, to the extent that such rules do not conflict with any rules, laws, or regulations adopted by the Kaw Nation.

[History Resolution 17-82]

Rule 2: Definitions. For purposes of these rules, the following terms shall have the following meaning:

- (a) "Associate" means an employee or fellow employee who is employed as a lawyer.
- (b) "Law firm" means:
  - 1. Two or more lawyers whose activities constitute the practice of law and who share its profits, expenses and liabilities; or
  - 2. A corporation which employs more than one lawyer; or
  - 3. A division, department, office or group within a business entity, which includes more than one lawyer who performs legal services for the business entity; or
  - 4. A publicly-funded entity which employs more than one lawyer to perform legal services.
- (c) "Lawyer" means a person who is admitted, in good standing of, and eligible to practice before the United States Supreme Court, or the highest court of the District of Columbia or any state, or territory, or is licensed to practice law in, or is admitted in good standing and eligible to practice before the bar any Federal District Court.
- (d) "Shareholder" means a shareholder in a professional corporation a partner in a professional limited partnership, or a member of a professional LLC organized under any tribal, state or federal law.
- (e) "Tribal court" means the Tribal Court or District Court of the Tribe.
- (f) "Tribe" means the Kaw Nation
- (g) "Licensed Legal Intern" shall have the same meaning given to it under the Oklahoma Supreme Court Rules for Licensed Legal Internship or other equivalent internship program.

[History Resolution 17-82]

Rule 3: Communication with a represented party. While representing a client(s), a lawyer shall not communicate directly or indirectly about the subject of the representation with a party the



lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer. For purposes of this rule, a "party" includes:

- (a) an officer, director, or managing agent of a corporation or association, and a partner or managing agent of a partnership; or
- (b) an association lawyer or an employee of an association, corporation, or partnership, if the subject of the communication is any act or omission of such person in connection with the matter which may be binding upon or imputed to the organization for purposes of civil or criminal liability or whose statement may constitute an admission on the part of the organization.

This rule shall not prohibit:

- (a) communications with a public officer, board, committee or body;
- (b) communications initiated by a party seeking advice or representation from an independent lawyer of the party's choice; or
- (c) communications otherwise authorized by law.

Rule 4: Failing to act competently.

(a) A lawyer shall not intentionally, recklessly, or repeatedly fail to perform legal services with competence.

(b) For purposes of this rule, "competence" in any legal service shall mean to apply the

- (1) diligence,
- (2) learning and skill, and
- (3) mental, emotional and physical ability reasonably necessary for the performance of such service.

(c) If a lawyer does not have sufficient learning and skill when the legal service is undertaken, the lawyer may nevertheless perform such services competently by:

- (1) association with or, where appropriate, professionally consulting another lawyer reasonably believed to be competent, or
- (2) by acquiring sufficient learning and skill before such performance is required.

[History Resolution 17-82]

Rule 5: Sexual relations with client.

(a) For purposes of this rule, "sexual relations" means sexual intercourse or the touching of an intimate part of another person for the purpose of sexual arousal, gratification, or abuse.

(b) Lawyers shall not:

(1) Require or demand sexual relations with the client incident to or as a condition of any professional representation; or

(2) Employ coercion, intimidation, or undue influence in entering into sexual relations with a client; or

(3) Continue representation of a client with whom the lawyer has sexual relations if such sexual relations cause the lawyer to perform legal services incompetently in violation of these rules.

(c) Paragraph (b) above shall not apply to sexual relations between lawyers and their spouses or to ongoing consensual sexual relationships which predate the initiation of the lawyer-client relationship.

(d) Where a lawyer in a firm has sexual relations with a client but does not participate in the representation of that client, the lawyers in the firm shall not be subject to discipline under this rule solely because of the occurrence of such sexual relationship.

[History Resolution 17-82]

Rule 6: Avoiding interests adverse to a client.

A lawyer shall not enter into a business transaction with a client; or knowingly acquire an ownership, possessory, security, or other pecuniary interest adverse to a client, unless each of the following requirements have been satisfied:

(a) The transaction or acquisition and its terms are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner which would reasonably have been understood by the client; and

(b) The client is advised in writing that the client may seek the advice of an independent lawyer of the client's choice and is given a reasonable opportunity to seek that advice; and

(c) The client thereafter consents in writing to the terms of the transaction or the terms of the acquisition.

[History Resolution 17-82]

Rule 7: Avoiding the Representation of Adverse Interests.

For purposes of this rule:

(a) "Disclosure" means informing the client or former client of the relevant circumstances and of the actual and reasonably foreseeable adverse consequences to the client or former client;

(b) "Informed written consent" means the client's or former client's written agreement to the representation following written disclosure;

(c) "Written" means any writing as defined by the Rules of Evidence of the Tribal Court.

(d) Any lawyer shall not accept or continue representation of a client without providing written disclosure to the client where:

(1) The lawyer has a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; or

(2) The lawyer knows or reasonably should know that:

(i) The lawyer previously had a legal, business, financial, professional, or personal relationship with a party or witness in the same matter; and

(ii) The previous relationship would substantially affect the lawyer's representation; or

(iii) The lawyer has or had a legal, business, financial, professional, or personal relationship with another person or entity the lawyer knows or reasonably should know would be affected substantially by resolution of the matter; or

(iv) The lawyer has or had a legal, business, financial, or professional interest in the subject matter of the representation.

(e) A lawyer shall not without the informed written consent of each client:

(1) Accept representation of more than one client in a manner in which the interests of the clients potentially conflict; or

(2) Accept or continue representation of more than one client in a manner in which the interests of the clients actually conflict; or

(3) Represent a client in the matter and at the same time in a separate matter accept as a client a person or entity whose interest in the first matter is adverse to the client in the first matter.

(f) A lawyer who represents two or more clients shall not enter into an aggregate settlement of the claims of or against the clients without the informed written consent of each client.

(g) A lawyer shall not without the informed written consent of the client or former client, accept employment adverse to the client or former client where, by reason of the representation of the

client or former client, the lawyer has obtained confidential information material to the employment.

(h) A lawyer shall not accept compensation for representing a client from one other than the client unless:

(1) There is no interference with the lawyer's independence or professional judgment or with the client-lawyer relationship; and

(2) The lawyer obtains the client's informed written consent, provided that no disclosure or consent is required if:

(i) Such nondisclosure is otherwise authorized by law; or

(ii) The lawyer is rendering legal services on behalf of any public agency which provides legal services to other public agencies or the public.

[History Resolution 17-82]

#### Rule 8: Limiting Liability to Client.

A lawyer shall not:

(a) Contract with the client prospectively limiting the lawyer's liability to the client for the lawyer's professional malpractice; or

(b) Settle a claim or potential claim for the lawyer's liability to the client for the lawyer's professional malpractice, unless the client is informed in writing that the client may seek the advice of an independent lawyer of the client's choice regarding the settlement and is given a reasonable opportunity to seek that advice.

[History Resolution 17-82]

#### Rule 9: Fees for legal services.

(a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or unconscionable fee.

(b) The conscionability of a fee shall be determined on the basis of all the facts and circumstances, existing at the time the agreement is entered into except where the parties contemplate that the fee will be affected by later events. Among the factors to be considered, where appropriate, in determining the conscionability of a fee are the following:

(1) The amount of the fee in proportion to the value of the services performed;

(2) The relative sophistication of the lawyer and the client;

- (3) The novelty and difficulty of the questions involved and the skill requisite to perform the legal services properly;
- (4) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (5) The amount involved and the results obtained;
- (6) The time limitations imposed by the client or by the circumstances;
- (7) The nature and length of the professional relationship with the client;
- (8) The experience, reputation and ability of the lawyer or lawyers performing the services;
- (9) Whether the fee is fixed or contingent;
- (10) The time and labor required, and
- (11) The informed consent of the client to the fee.

[History Resolution 17-82]

Rule 10: Preserving identify of funds and property of a client.

(a) All funds received by a lawyer or law firm shall be held for the benefit of clients, including advances for costs and expenses, and shall be deposited in one or more identifiable bank accounts labeled "Trust Account," "Clients Funds Account," or words of similar import, maintained in the states of Oklahoma, Kansas, or, with the written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction. No funds belonging to the lawyer or the law firm shall be deposited therein or otherwise commingled therewith except as follows:

- (1) Funds reasonably sufficient to pay bank charges;
- (2) In the case of funds belonging in part to a client and in part presently or potentially to the lawyers of the law firm, the portion belonging to the lawyer or law firm must be withdrawn at the earliest reasonable time after the lawyer's interest in that portion becomes fixed. However, when the right of a lawyer or law firm to receive a portion of trust funds is disputed by the client, the disputed portion shall not be withdrawn until the dispute is finally resolved.

(b) The lawyer shall:

- (1) Promptly notify a client of the receipt of the client's funds, securities, or other properties.

(2) Identify and label securities and properties of a client promptly upon receipt and place them in a safe deposit box or other place of safekeeping as soon as practicable.

(3) Maintain complete records of all funds, securities, and other properties of a client coming into the possession of the lawyer or law firm and render appropriate accounts to the client regarding them; preserve such records for a period of not less than five years after final appropriate distribution of such funds or properties; and comply with any order for any audit of such records issued by the Chief or Presiding Judge of the Supreme Court of the Kaw Nation.

(4) Promptly pay and deliver, as requested by the client, any funds, securities or other properties in the possession of the lawyer which the client is entitled to receive.

[History Resolution 17-82]

Rule 11: Lawyer as witness. A lawyer shall not act as an advocate before a jury or judge which will hear testimony from the lawyer unless:

(a) The testimony relates to an uncontested matter; or

(b) The testimony relates to the nature and value of legal services rendered in the case; or

(c) The lawyer has the informed, written consent of the client. If a lawyer represents the Tribe or a governmental entity, the consent shall be obtained from the head of the office or a designee of the head of the office by which the lawyer is employed and shall be consistent with the principles of recusal.

[History Resolution 17-82]

Rule 12: Contact with officials.

(a) A lawyer shall not directly or indirectly give or lend anything of value to a judge, official, or employee of a tribunal unless the personal or family relationship between the lawyer and the judge, official or employee is such that gifts are customarily given and exchanged. Nothing contained in this rule shall prohibit the lawyer from providing a gift to a tribal judge as a result of the tribal judge presiding over or participating in a tribal ceremony where such gift is customarily given in accordance with tribal custom and tradition.

(b) A lawyer shall not directly or indirectly communicate with or argue to a judge or judicial officer upon the merits of a contested matter pending before such judge or judicial officer except:

(1) In open court; or

(2) With the consent of all other counsel in such matter; or

(3) In the presence of all other counsel in such matter; or

(4) In writing with a copy thereof furnished to such other counsel; or

(5) Where ex parte communications are expressly authorized by law or by a rule of the Tribal Court.

(c) As used in this rule, "judge," "judicial officer" shall include law clerks, court clerks, tribal attorneys, or other court personnel who participate in the decision-making process.

[History Resolution 17-82]

Rule 13: Complaint Procedure. Any person believing that a lawyer has violated any rule contained herein may file a complaint with the Chief or Presiding Judge of the Tribal District Court by providing a copy of such complaint to the Court Clerk. Upon receipt of the complaint, the Chief or Presiding Judge shall conduct a hearing and issue a recommendation which will be provided to the Chief Justice of the Supreme Court of the Kaw Nation. The recommendation shall state whether attorney discipline is proper, and provide a recommendation on the degree discipline to be imposed, as well as stating a factual and legal basis for this decision. The Chief Judge of the Supreme Court will then review the District Court's recommendation de novo, and issue an order stating regarding disciplinary action in compliance with Rule 13. All interested parties will be allowed to submit briefs for the Chief Judge of the Supreme Court to consider pursuant to the Kaw Nation's rules for appellate procedure.

[History Resolution 17-82]

Rule 14: Disciplinary action. For any violation of these rules, the Chief Judge of the Kaw Nation Supreme Court shall have the authority to impose monetary sanctions upon the lawyer and/or temporarily or permanently disbar the lawyer from practicing before the Tribal Court.

[History Resolution 17-82]

Rule 15: Eligibility for admission to practice. An attorney who has been admitted to practice before the United States Supreme Court, or the highest Court of a State territory or the District of Columbia, or any United States Court of Appeal, or any United States District Court and who has read the Rules of Evidence, Pleading, Practice and Procedure, and Constitution of the Tribe, and who is of good moral and professional character, is eligible for admission to the bar of the Tribal Court of the Tribe.

[History Resolution 17-82]

Rule 16: Admission of Licensed Legal Interns. If a student currently enrolled at a law school accredited by the American Bar Association, has become a legally licensed intern as defined under the Oklahoma Rules of Licensed Legal Internship or the equivalent rules adopted by a state, territory, or the District of Columbia, he or she may be admitted to practice under the supervision of a lawyer in good standing. Firms employing Licensed Legal Interns, however,

shall not bill their services at a rate greater than \$75.00. Also, at a hearing at which both the Intern and supervising lawyer are present, the firm may only bill for either the lawyer or the intern's time, but not both.

[History Resolution 17-82]

Rule 17: Procedure for admission. An applicant for admission shall file with the Clerk of the Tribal Court, on a form approved by the Court and furnished by the Clerk, an application for admission containing the applicant's personal statement showing eligibility for admission. Upon receipt of the application, the Clerk will provide it to the Chief Judge of the District Court or the Supreme Court, who will issue an order regarding admission. After the Chief Judge issues an order allowing admission, the applicant may take the attorney's oath and will be listed as a member of the bar.

[History Resolution 17-82]

Rule 18: Suspension or Disbarment. When it is shown to the Court that any member of the bar has been guilty of conduct unbecoming to a member of the bar of the Court, the member will be subject to suspension or disbarment by the Court. The lawyer shall be afforded an opportunity to show good cause, within the time provided in Rule 13 above, why the lawyer should not be suspended or disbarred. Upon the lawyer's response to the order to show cause, after hearing, if requested, or upon expiration of the time prescribed for a response if no response is made, the Court shall enter an appropriate order.

[History Resolution 17-82]

Rule 19: Disciplinary Power of the Court Over Attorneys. The Court may, after reasonable notice and an opportunity to show cause to the contrary, and after hearing, if requested, take any appropriate disciplinary action against any attorney who practices before it for conduct unbecoming a member of the bar or for failure to comply with these rules or any rule of the Court.

[History Resolution 17-82]

Rule 20: Citation. This Chapter may be cited as the Kaw Nation Rules of Professional Responsibility.

[History Resolution 17-82]