

# OMAHA TRIBAL CODE (2013)

## TITLE 1. COURTS

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Source: Omaha Tribal Council Ordinance 80-05 (6-9-82).

### CHAPTER 1. PRELIMINARY PROVISIONS

#### SECTION 1-1-1. Constitutional Authority.

This Code is adopted pursuant to the authority vested in the Tribal Council under Article IV, Section 1(j) of the Constitution of the Omaha Tribe of Nebraska (amended 8-19-86), and pursuant to Article X thereof.

#### SECTION 1-1-2. Name of Code.

This Code shall be known as the Omaha Tribal Code and may be referred to as "the Tribal Code" and may be abbreviated as O.T.C.

#### SECTION 1-1-3. Prior Inconsistent Ordinances Repealed.

Any and all ordinances and resolutions of the Tribal Council which conflict in any way with the provisions of this Code are hereby repealed to the extent of their inconsistency herewith.

#### SECTION 1-1-4. Amendment of Code.

This Code may be amended, additions made hereto or deletions made herefrom in the manner provided for the adoption of Tribal Council ordinances. Amendments and additions to this Code shall become a part thereof for all purposes and shall be codified and incorporated herein in a manner consistent with the numbering or organization hereof. Each amendment to this Code as codified for inclusion in an amended code title shall be stamped or otherwise marked with its effective date as provided by the Tribal Ordinance enacting the amendment. The number of the ordinance enacting the amendment shall likewise be placed in parenthesis at the close of the amendment as it appears in the amended code title.

### CHAPTER 2. ESTABLISHMENT OF COURTS: JUDGES AND OTHER COURT PERSONNEL

#### SECTION 1-2-1. Trial and Appellate Courts Established.

(a) Pursuant to Article X, Section 1, Omaha Constitution (as amended 8-19-86), there is hereby established the Omaha Tribal Appellate Court. The Appellate Court may handle all appeals from the Tribal Court as provided, elsewhere in this Code. The Appellate Court shall consist of three justices.

(b) The Tribal Council shall annually designate two persons to serve as Appellate Judges on a part-time case-by-case basis. These two appellate judges shall sit with a trial judge of the Omaha Tribal Court (or Omaha CFR Court for so long as it shall exist), to form a three-member appellate panel to rule upon appeals from decisions at the Tribal Court level of the Omaha Court system; provided that no trial judge who has participated at the trial level in the case under appeal shall be eligible for appointment to sit on the appeals panel having responsibility for appellate review of such case.

The Chief Judge of the Omaha Tribal Courts shall have authority and responsibility for designating a trial court judge to sit on each appellate panel, and may, consistent with the above, designate himself to serve on such panel on appeal of any case which he has not participated in the trial below.

(c) Pursuant to Article X, Omaha Constitution and Bylaws (amended 8-19-86), there is hereby established the Omaha Tribal Court, the trial level court for the Omaha Tribe of Nebraska.

(d) There is hereby established as part of the Tribal Court a Juvenile Court Division, which may be referred to as the Tribal Juvenile Court. The Juvenile Court Division shall handle all matters as set forth in Title 12 of the Code.

#### SECTION 1-2-2. Judges.

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(a) Qualification of Judges: The Tribal Council may establish such qualifications for Tribal Judges as it may from time to time deem appropriate, provided that a change in qualifications for any particular Tribal Judge position shall not be applied to any Tribal Judge then in office until the close of his or her term.

(b) The term of office of the Chief Judge of the Omaha Tribal Court shall be four (4) years as required by Article X, Section 2, Omaha Constitution and Bylaws (amended 8-19-86). Persons serving as Chief Judge or Associate or Appellate Judge shall be eligible for reappointment upon conclusion of their terms. The terms of office of Associate Judges shall be determined by the Tribal Council on recommendation of the Chief Judge. Associate judges may be appointed to serve on a full-time or part-time basis.

(c) Appointment of Appellate Judges shall be governed by Section 1-2-1(a) of this Code.

(d) The Chief Judge and any associate Judges shall be appointed by the Tribal Council pursuant to Article X, Section 1 of the Omaha Constitution and Bylaws (amended 8-19-86).

(e) The compensation of Tribal Judges, including the Chief Judge and Appellate Judges, shall be set by the Tribal Council at the time of their appointment. No Judge's salary shall be reduced by the Tribal Council during his term in office except as provided in Article X, Section 3, Omaha Constitution and Bylaws (amended 8-19-86).

### SECTION 1-2-3. Removal of Judges.

No judge of the Omaha Tribal Courts, whether at the trial or appellate level, shall be removed from office during his term except as provided at Article VI, Omaha Constitution and Bylaws (amended 8-19-86).

### SECTION 1-2-4. Powers and Duties of judges.

(a) Judges shall administer justice and discharge all duties imposed upon them by law and shall hear and decide matters of a judicial nature upon duly filed complaints alleging legal disputes or controversies falling within the Court's jurisdiction, and enter judgments and orders disposing of such matters. In the absence of the Court Clerk, a Judge may perform the clerk's duties in addition to his own and may receive cash bail or bonds whenever a clerk or other authorized person is not available.

(b) The Chief Judge shall be responsible for the administration of all courts, and shall supervise all probation and parole officers. In addition, the Chief Judge shall be responsible for the assignment of cases and the management of the Court's calendar and business. The Chief Judge shall designate an Associate Judge to act as Chief Judge in his absence.

(c) All judges of the courts of the Tribe shall conform their conduct to the Code of Judicial Conduct as set out at Chapter 10 of this Title.

(d) Subject to his obligation to accord all parties due process of law, every Tribal Judge has power to:

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

(2) compel obedience to his lawful orders by legal process;

(3) compel the attendance of persons to testify in a proceeding before him as provided by law and upon duly filed subpoena by any party to such proceeding;

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

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

### SECTION 1-2-5. Disqualification of Judges.

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

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(b) Any party of a legal proceeding may request a change of assignment of judges to hear the proceeding by filing a written Affidavit of Prejudice giving sufficient, reasonable grounds why the judge assigned should not hear the case. Such judge shall rule on the sufficiency of the affidavit, and, if sufficient, either disqualify himself or turn the affidavit over to the Chief Judge or some other judge for a decision as to whether a different judge should be assigned.

### SECTION 1-2-6. Oath of Office of Judge.

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

I, \_\_\_\_\_, do solemnly swear (affirm) that I will support and defend the laws and the Constitution of the United States; that I will support, defend, and uphold the Constitution, Bylaws and Treaties of the Tribe, and that I will faithfully and impartially discharge the duties of my office to the best of my ability.

(b) Said oath may be administered by a member of the Tribal Council or a judge of the court.

### SECTION 1-2-7. Clerk of Courts.

(a) There shall be a full-time Clerk of the Courts appointed by the Chief Judge to serve at his pleasure pursuant to Article X, §2, Omaha Constitution and Bylaws (amended 8-19-86).

(b) Additional clerks for the Omaha courts may be appointed from time to time by the Tribal Council in consultation with the Chief Judge and upon a showing of need therefor. Deputy clerks of the Court upon appointment shall likewise serve at the pleasure of the Chief Judge.

(c) Clerks, once appointed, shall remain in office at the end of the term of the Chief Judge who appointed them, or upon his removal, until such time as they shall have been notified in writing by a Chief Judge then in office, of their termination. Nothing in this Code shall prohibit the Chief Judge from offering an employment contract for a period not to exceed the remainder of the appointing Judge's term with and for any clerk of the court who has first served to the Chief Judge's satisfaction for a period of not less than six (6) months provided, that no such contract shall be effective unless ratified by the Tribal Council.

### SECTION 1-2-8. Duties of Clerks; Preparation of Transcript of Record on Appeal.

It shall be the duty of the Clerks of the Tribal Courts to supervise and keep all records, files, dockets or other records required to be kept by this Code, by rule of the court, Tribal resolution or as otherwise established, and further to keep a written record of all proceedings of the court, to administer oaths, to collect and account for all fines, bail or bond money, fees or other charges which cause money to come to the Court, to deposit and account for all such moneys in the manner prescribed by the Tribal Council, and to disburse such money as authorized by law, provided, that the Court may require private litigants to pay the cost of transcription of court proceedings in preparing the record for the appeal in which the matter in controversy exceeds \$500.00 and the party seeking appellate review is determined by the Court not to be indigent. The Clerks shall further assist the Court in any action required to facilitate the performance of its duties, to aid the police or private citizens in their dealings with the Court, and may render advice and assistance to individual members of the Tribe or their counsel in the drafting of documents incidental to proceedings in the courts.

### SECTION 1-2-9. Oath of Clerks.

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

(b) I, \_\_\_\_\_, having been appointed Clerk of the Tribal (Juvenile) Court, do solemnly swear (affirm) that I will truly, faithfully, honestly, and impartially discharge all of the duties of my office to the best of my ability and understanding.

(c) Such oath shall be administered by a Judge of the Tribal Court.

### SECTION 1-2-10. Court Administrator.

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The Tribal Council may, at such time as it appears reasonably necessary for the efficient functioning of the court, appoint a Court Administrator whose job it will be to aid the Chief Judge in administering the courts, the scheduling of cases and processing of papers for scheduled cases, and do such other things as the Chief Judge directs to assure the orderly and efficient operation of all Tribal Courts.

### SECTION 1-2-11. Probation and Parole Officers.

(a) The Tribal Council shall appoint one or more persons to be Probation and Parole Officers and shall determine the qualifications, terms of employment and compensation of such officers.

(b) Probation and Parole Officers, subject to the supervision of the Chief Judge, shall have the responsibility of assuring the faithful performance of the probation or parole agreements by persons subject thereto, counseling such persons and their families, preparing presentence or other reports as requested by a Tribal Judge, and doing such other things as may be directed by a Tribal Judge or otherwise required by law.

(c) A Probation and Parole Officer shall have the authority of a police officer to make arrests for violation of probation or parole agreements.

### SECTION 1-2-12. Bonding of Court Personnel.

All Judges and clerks shall be bonded, at Tribal expense, in amounts determined by the Tribal Council, to secure the honest performance of their duties.

## CHAPTER 3. CONTEMPTS

### SECTION 1-3-1. Acts or Failure to Act That Constitute Contempt of Court.

The following acts or failures to act may serve as the basis for finding an individual or other entity in contempt of court:

(a) Disorderly, contemptuous, or insulting behavior toward a Judge while holding Court that tends to interrupt the course of the proceedings or undermines the dignity of the Court.

(b) A breach of the peace or loud boisterous conduct that tends to interrupt the course of a judicial proceeding.

(c) Deceit or abuse of process or proceedings of the Court by a party or counselor to a judicial proceeding.

(d) Disobedience to a lawful judgment, order or process of the Court.

(e) Assuming to be an officer, spokesman or other official of the Court and acting as such without authority.

(f) Rescuing or taking any person or property from the Court or an officer acting under court order, contrary to the order of the Court.

(g) Unlawfully detaining or otherwise interfering with a witness or party to an action while such person is going to or from a Court proceeding or attending Court.

(h) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness.

(i) Any other interference with the process, proceeding, or dignity of the Court or a Judge of the Court while in the performance of his official duties occurring while any Court hearing is in actual session.

### SECTION 1-3-2. Civil Contempt.

(a) A civil contempt is prosecuted to preserve, protect, enforce or restore the duly adjudicated rights of a party to a civil action against one under legal obligation to do or refrain from doing something as a result of a judicial decree or order.

(b) Relief in a civil contempt proceeding may be coercive or compensatory in nature as to the

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complaining party and may include a fine payable to the Court or to the complaining party or imprisonment of the party in contempt to secure compliance, or both.

### SECTION 1-3-3. Criminal Contempt.

(a) Conduct that is directed at, or is detrimental to, the dignity and authority of the Court, is a criminal contempt.

(b) Criminal contempt is an offense that may be punishable, at the discretion of the Court, based on the nature of the conduct in question, with a penalty or punishment no greater than that authorized by Article XI, Section 7 of the Constitution of the Omaha Tribe of Nebraska.

### SECTION 1-3-4. Contempt Procedure.

(a) A direct contempt is one committed in the presence of the Court or so near thereto as to be disruptive of the Court proceedings, and such may be adjudged and punished summarily.

(b) All other contempts shall be determined at a hearing at which the person accused of contempt is given notice and an opportunity to be heard.

## CHAPTER 4. JURISDICTION.

### SECTION 1-4-1. Jurisdiction - Tribal Policy.

It is hereby declared as a matter of Tribal policy, that the public interest and the interests of the Omaha Tribe of Nebraska demand that the Tribe provide itself, its members, and other persons living within the territorial jurisdiction of the Tribe as set forth in Section 1-4-2 of this Code, with an effective means of redress in civil proceedings against members and non-Tribal members who, through either their residence, presence, business dealings, other actions or failures to act, or other significant minimum contacts with this Reservation and/or its residents, incur civil obligations to the Tribe or to persons or entities entitled to the Tribe's protection, or through criminal prosecution of Indians committing offenses against the Tribe within its territorial jurisdiction. The jurisdictional provision of this Code, to insure maximum protection for the Tribe, its members and other residents of the Reservation, shall be applied equally to all persons, Indians, and non-Indians alike, to the extent not prohibited by Federal law.

### SECTION 1-4-2. Territorial Jurisdiction.

(a) The Jurisdiction of the Courts of the Omaha Tribe of Nebraska shall extend to the territory within the exterior boundaries of the Omaha Indian Reservation (including the Blackbird Bend and other tribal land located east of the Missouri River) as set forth in the Omaha Treaty of March 16, 1854, as amended by the Treaty of March 6, 1863, and to such other lands without these boundaries as may have been or may hereafter be added to the Reservation or held in Trust for the Tribe under any law of the United States or otherwise.

(b) Notwithstanding Section 1-4-2(a), the Omaha Tribal courts shall have jurisdiction over any Indian Child Welfare Act proceeding or other juvenile matter falling within the jurisdiction conferred on the Tribal Courts by Article X, § 6 of the Omaha Constitution and Bylaws (amended 8-19-86) and/or contemplated by the Indian Child Welfare Act of 1978, 25 U.S.C. § 1401 *et seq.*, whether arising on or off of the Omaha Indian Reservation.

### SECTION 1-4-3. Personal Jurisdiction. [Note: Sub-Section 1-4-3 (d) was added by Resolution No. 15-83 on August 11, 2015]

(a) As used in these jurisdictional provisions, the word "person" shall include any individual, firm, company, association or corporation.

(b) Subject to any limitations expressly stated elsewhere in this Code, the Courts of the Tribe shall have civil jurisdiction over the following persons:

(1) Any person residing, located or present within the Reservation for any civil cause of action.

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(2) Any person who transacts, conducts, or performs any business or activity within the Reservation, either in person or by an agent or representative, for any civil cause of action, ex contract or in quasi-contract or by promissory estoppel or alleging fraud.

(3) Any person who owns, uses or possesses any property within the Reservation, for any civil cause of action prohibited by this Code or other ordinance of the Tribe arising from such ownership, use or possession.

(4) Any person who commits a tortious act or engages in tortious conduct within the Reservation, either in person or by agent or representative, for any civil cause of action arising from such act or conduct.

(5) Any Indian who commits a criminal offense prohibited by this Code or other ordinance of the Tribe, by his own conduct or the conduct of another for which he is legally accountable, if:

(A) The conduct occurs either wholly or partly within the Reservation; or

(B) The conduct that occurs outside the Reservation constitutes an attempt, solicitation, or conspiracy to commit an offense within the Reservation; or

(C) The conduct that occurs within the Reservation constitutes an attempt, solicitation or conspiracy to commit in another jurisdiction an offense prohibited by this Code or ordinance of the Tribe and such other jurisdiction.

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

(d) The Tribal Court shall not have jurisdiction over the Tribe or any of its agencies, departments or enterprises, including the officers, agents and employees of the Tribe in their capacity as such, without the unequivocal and express consent of the Tribe or an unequivocal and express provision in the laws of the Tribe.

### **SECTION 1-4-4. Jurisdiction Over Property.**

Subject to any contrary provisions, exceptions or limitations contained in either federal laws and regulations, the Tribal Constitution, or as expressly stated elsewhere in this Code, the Omaha Tribal Courts shall have jurisdiction over any real or personal property located on the Reservation to determine the ownership, thereof or rights therein or to determine the application of such property to the satisfaction of a claim for which the owner of the property may be liable.

### **SECTION 1-4-5. General Subject Matter Jurisdiction - Limitations.** *[Note: Sub-Parts (B), (C) and (D) of Sub-Section 1-4-5 (a) (2)) were added by Resolution No. 15-83 on August 11, 2015]*

(a) The Omaha Tribal Courts shall have such subject matter jurisdiction as is expressly conferred by Article X, Omaha Constitution and Bylaws (amended 8-19-86) and shall have the following additional and expanded jurisdiction pursuant to Article X, Section 6, thereof, to wit:

(1) any and all Indian Child Welfare Act proceedings as defined at 25 U.S.C. § 1901 *et. seq.* or successor statute, without regard to the child's residence or domicile or the location of any incidents giving rise to the proceedings;

(2) civil disputes and civil causes of action of any kind whatsoever with the following exceptions and limitations:

(A) The Omaha Tribal Courts shall not have subject matter jurisdiction over probate proceedings except as provided in Title 20 of this Code.

(B) The Omaha Tribal Courts shall not have jurisdiction over any cause of action brought against the Tribe or any of its agencies, departments or enterprises, including the officers, agents and employees of the Tribe in their capacity as such, unless such jurisdiction is unequivocally and expressly granted by the laws of the Tribe, and the grant of jurisdiction provided in this Title shall not be construed to include a waiver of the Tribe's sovereign



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immunity from suit.

(C) The Omaha Tribal Courts shall not have jurisdiction over any cause of action brought against the Tribe or any of its agencies, departments or enterprises, including the officers, agents and employees of the Tribe in their capacity as such, unless such jurisdiction is unequivocally and expressly granted by the laws of the Tribe, and the grant of jurisdiction provided in this Title shall not be construed to include a waiver of the Tribe's sovereign immunity from suit.

(D) Notwithstanding any other provision of the laws of the Tribe, the Omaha Tribal Courts shall have jurisdiction over all civil causes of actions and over all controversies commenced by the Tribe and nothing in this Section or elsewhere in this Title shall be construed as limiting the jurisdiction of the Trial Court to hear and determine matters commenced by the Tribe, *provided* that nothing herein shall be construed as granting jurisdiction to the Trial Court to hear or determine any cross-claim or counterclaim against the Tribe or to award any monetary relief, including costs and attorney's fees, against the Tribe in an action commenced by the Tribe.

(b) Notwithstanding the above, the Omaha Tribal Court shall not assume jurisdiction over any civil or criminal matter that does not involve either the Tribe, its officers, agents, employees, property or enterprises, or a member of the Tribe, or a member of a federally recognized tribe, if some other forum exists for the handling of the matter and if the matter is not one in which the rights of the Tribe or its member's may be directly or indirectly affected.

### SECTION 1-4-6. Concurrent Jurisdiction.

The jurisdiction involved by this Code over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same of the courts of the United States, any state, or any political subdivision thereof; provided however, this Code does not recognize, grant or cede jurisdiction to any political or governmental entity in which jurisdiction does not otherwise exist in law.

### SECTION 1-4-7. Exclusive Original Jurisdiction.

(a) The Courts of the Omaha Tribe of Nebraska shall have exclusive original jurisdiction in all matters in which the Tribe or its officers or employees are parties in their official capacities.

(b) Nothing contained in the preceding paragraph or elsewhere in this Code shall be construed as a waiver of the sovereign immunity of the Tribe or its officers or enterprises.

## CHAPTER 5. COUNSELORS AND PROFESSIONAL ATTORNEYS AND LAY COUNSEL

### SECTION 1-5-1. Lay Counsel.

(a) Any person appearing as a party in any judicial proceeding before a Court of the Omaha Tribe of Nebraska shall have the right to be represented by a lay counselor (not a professional attorney) and to have such person assist in the preparation and presentation of his case.

(b) The Tribe shall have no obligation to provide or pay for such lay counselors and such obligation shall rest entirely with the person desiring such a counselor.

(c) Any person appearing as a lay counselor shall be subject to the same ethical obligations of honesty and confidentiality towards his client and the court as would a professional attorney, and the attorney-client testimonial privilege shall apply in appropriate circumstances.

(d) Lay counselors shall be deemed officers of the Court for purposes of their representation of a party and shall be subject to the disciplinary authority of the Court in all matters relating to their

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representative capacity.

### SECTION 1-5-2. Right to be Represented by a Professional Attorney.

Any person appearing as a party in any civil or criminal action shall have the right to be represented by a professional attorney of his own choice and at his own expense; provided, however, that the Tribe has no obligation to provide or pay for such an attorney; provided further, that any such attorney appearing before the Courts of the Tribe shall have first obtained admission to practice before such courts, in accordance with the procedures set forth herein.

### SECTION 1-5-3. Eligibility for Admission.

Any attorney who is an active member in good standing of any State Bar or the Bar of the District of Columbia shall be entitled to automatic admission to practice before the Courts of the Omaha Tribe.

### SECTION 1-5-4. Procedure for Admission.

(a) The Clerk shall prepare and maintain on file blank copies of Applications for Admission to practice before the Omaha Tribal Courts. The application shall provide simple written instructions and shall set out in full the oath set out at Section 1-5-7 of this Code, along with instruction to sign the application and the oath in the presence of a Notary Public.

(b) Any professional attorney desiring to be admitted to practice before the Omaha Tribal Court shall complete and submit an Application for Admission certifying under oath:

(1) that he meets the requirement of Section 1-5-3 of this Code, and appending thereto a current Bar admission card or letter from a State Bar Association or the District of Columbia Association evidencing his admission to and good standing therein; and

(2) that he has taken the required oath as set out in the application.

(c) An Admission Fee of \$35.00 shall be tendered with the application, subject to return if the application is denied. The fee shall be waived for attorneys employed by the Tribe. This is an annual fee to be paid each year by the Attorney.

(d) Upon receipt of an Application for Admission to practice before the Courts of the Omaha Tribe, the Chief Judge shall review the application and may, but need not, investigate the truth of the matters contained therein. If the applicant meets the qualifications set forth herein, the Chief Judge shall cause a certificate to be issued evidencing the admission of the attorney to practice before the courts of the Omaha Tribe of Nebraska.

(e) Any person denied admission shall have a right to appeal in writing directly to the Tribal Council, which may conduct such inquiry or proceedings on the matter as it deems appropriate.

### SECTION 1-5-5. Disbarment and Discipline.

(a) Whenever any attorney admitted to practice before the Omaha Tribal Courts has been disbarred or suspended from the practice of law in any State to which reference for admission to practice was made as a condition to obtaining admission to practice before the Tribal Courts, the Chief Judge shall immediately send notice to his last known address that he shall be suspended from practice before the Courts of the Tribe for an indefinite period unless he shall appear or otherwise answer within thirty (30) days showing good cause why such order should not be entered.

(b) The Chief Judge of the Omaha Tribal Court shall, after due investigation and consideration and giving due regard to the requirements of due process of law, draft rules and procedures governing judicial discipline of or sanctions for attorneys and lay counsel which, upon approval of the Tribal Council, shall govern how and when such sanctions may be applied by the court in the event of outrageous conduct before the court, in instances of repeated contempt of court or of grossly unethical conduct by such representatives or attorneys in cases before the Omaha Courts.

(c) Any person appearing as lay counsel for another may be suspended by any Judge from further

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appearances as such for misconduct or improper behavior upon the same conditions of notice and hearing provided professional attorneys.

### SECTION 1-5-6. Standards of Conduct and Obligations for Attorneys and Lay Counsel.

(a) Every attorney admitted to practice before the courts of the Tribe, and every lay counsel employed or appointed to represent another before such courts, when acting in such capacity or in matters in any relation thereto, shall conform his conduct in every respect to the requirements and suggested behavior of the Code of Professional Responsibility as adopted by the American Bar Association.

(b) Both professional attorneys and lay counselors who hold themselves out as being available to act as such have a responsibility to accept as clients and represent without compensation or without full compensation such persons as a Judge of a Tribal Court feels have particularly urgent needs for such representation but are personally unable to afford to pay for such legal help, provided that no person shall be obliged by this provision or otherwise to provide more than fifteen (15) hours of free legal services during any twelve (12) month period.

### SECTION 1-5-7. Oath of Attorneys and Counselors.

(a) Upon applying for admission to practice as provided herein, an attorney shall take the following oath by subscribing his signature to such oath on the application:

I do solemnly swear (affirm):

That I will support the Constitution and laws of the United States and support and defend the Constitution and By-laws, and laws of the Omaha Tribe of Nebraska; that I will maintain the respect due the Courts and Judicial officers of the Omaha Tribe;

That I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, nor any defense except such as I believe to be honestly debatable under the law of the land;

That I will employ for such purposes of maintaining the cause confided to me such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law.

## CHAPTER 6. JURORS.

### SECTION 1-6-1. Eligibility for Jury Duty.

(a) Any enrolled member of the Omaha Tribe of Nebraska, between the ages of 21 and 70, who has not been convicted of a felony or a Class A offense under this Code, and who resides on the Omaha Indian Reservation, shall be eligible to be a juror. Judges, other officers or employees of the Court, attorneys and lay counselors shall not be eligible to be jurors.

(b) The Chief Judge may by rule adopt procedures whereby non-enrolled Indians and non-Indians may be summoned for jury duty in cases in which one or more non-Indian parties are involved.

### SECTION 1-6-2. Jury Lists.

Each year, the Tribal Council or the Clerk of Courts, at the direction of the Tribal Council, shall prepare a list of eligible jurors, which list shall contain not less than fifty (50) names and which shall contain the names of persons from each community and Reservation district, prorated as nearly as possible according to the relative population of the communities and districts.

### SECTION 1-6-3. Jury Trials.

(a) The Clerk shall subpoena not less than twenty (20) persons from the list of eligible jurors to appear and be available to serve as jurors whenever a jury trial is scheduled in a civil or criminal matter.

(b) The selection from the list of eligible jurors shall be by lot or some other means of random,

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impartial selection.

(c) Selection of jurors to hear the case shall be accomplished as provided in the Rules of Civil Procedure and Rules of Criminal Procedure at Titles 2 and 3 of this Code.

### SECTION 1-6-4. Power to Excuse Jurors.

Only the Judge assigned to hear a case shall have the power to excuse a person subpoenaed to appear as a juror and may do so on account of sickness, disability extreme hardship or other good cause shown upon the request for such excusal by the person subpoenaed.

### SECTION 1-6-5. Compensation of Jurors.

Each juror who is called and reports for jury duty or who serves on a jury shall be entitled to receive such fees for daily service and/or mileage, if any, as the Tribal Council shall establish by resolution, or as established by a rule of the Court, consistent with available funds.

## CHAPTER 7. SUBPOENAS AND SERVICE OF OTHER PAPERS

### SECTION 1-7-1. Issuance of Subpoenas.

(a) The Clerk shall issue subpoenas to compel the attendance of witnesses, jurors or such other persons as a judge may direct for a trial, hearing or other proceeding before a Court of the Omaha Tribe of Nebraska.

(b) In a criminal case, the complaining witness and all witnesses for the Omaha Tribe of Nebraska may be subpoenaed by the prosecution or defense to appear at the date and time set for trial or a reasonable time before such time, and the defendant shall have the right to have witnesses subpoenaed to appear in his behalf by notifying the Clerk of the Court of the names and addresses of such witnesses not less than ten (10) days prior to the scheduled trial date.

### SECTION 1-7-2. Services of Subpoenas, Return of Service.

(a) Subpoenas in criminal cases shall be served by a tribal policeman, or other person designated by the Chief Judge, Chief of Police or Tribal Council.

(b) Subpoenas in non-criminal cases may also be served by any tribal member over 18 years of age, not a party to the action, who is a resident of the Reservation.

(c) Except by order of the Court based upon good cause shown, no subpoena shall be served between the hours of 9:00 p.m. and 7:00 a.m. or on Sundays or legal holidays.

(d) The person serving a subpoena shall endorse upon the copy served his name, title, and the place, date, and time of service and if possible, shall secure a written acknowledgement of receipt of service from the person served.

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

## CHAPTER 8. GENERAL PROVISIONS

### SECTION 1-8-1. Signature Defined.

The term "signature" or any term relating thereto as used in this Code or subsequent resolutions or ordinances of the Tribal Council shall mean:

(a) the written signatures of said person; or

(b) the mark or thumbprint of any individual witnessed by two disinterested persons subscribing their names therewith, or made before one authorized to administer oaths.

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### SECTION 1-8-2. Records of Court Open to Public Inspection Exceptions.

The files and records of the Courts of the Tribe shall be open for public inspection, except that the files and records of adoptions, incompetency proceedings, and Tribal Juvenile Court proceedings shall not be open to public inspection and may be inspected only with prior specific judicial authorization.

### SECTION 1-8-3. Adoption by Reference Not a Waiver of Sovereign Power of the Tribe.

The adoption of any law, code or other document by reference into this Code shall not constitute a waiver or cession of any sovereign power of the Tribe to the jurisdiction whose law or code is adopted or in any way diminish such sovereign power, but shall result in the law or code thus adopted becoming the law of the Tribe.

### SECTION 1-8-4. Sovereign Immunity.

Except as required by federal law or by Article X, § 5 of the Omaha Constitution and Bylaws (amended 12-30-82), or as specifically waived by a resolution or ordinance of the Tribal Council specifically referring to such, the Tribe shall be immune from suit in any civil actions, and its officers and employees shall be immune from suit for any liability arising from the performance of their official duties.

### SECTION 1-8-5. Actions By or Against Tribe or Its Officers or Employees.

In any action otherwise authorized by or against the Tribe or its officers or employees arising from the performance of their official duties, the following modifications to the rules and procedures set forth in this Code shall apply:

(a) The periods of time specified for civil cases or appeals of either a civil or criminal nature in which an answer, reply or other pleadings or response of any kind shall be required shall be double the period specified.

(1) Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be liable for the payment of the costs or expenses of the opposing party.

(b) Neither the Tribe nor its officers or employees when involved in a civil action arising from the performance of their official duties shall be required to post security by bond or otherwise for any purpose.

### SECTION 1-8-6. Limitations in Civil Actions.

Unless otherwise specifically provided in this Code, the following limitations on the bringing of civil actions will apply:

(a) Any action against the Tribe or its officers or employees arising from the performance of their official duties must be commenced within one (1) year of the date the cause of action accrued.

(b) Actions derivative of leases of Omaha Tribal trust land or other tribal or Indian-owned land on or off the Omaha Indian Reservation must be commenced within six (6) years of the date the cause of action accrued.

(c) Actions alleging intentional torts shall be commenced within one (1) year of the date the cause of action accrued.

(d) Any other action must be commenced within two (2) years of the date the cause of action accrued, provided, however, that any cause of action based on fraud or mistake shall not be deemed to have accrued until the aggrieved party has discovered the facts constituting the fraud or mistake.

(e) Criminal offenses committed after enactment of this Code shall be filed within the following time periods or they shall be forever barred:

Class A offenses - 5 years

Class B offenses - 2 years

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Class C offenses - 1 year

The period of limitations for a criminal offense shall commence upon commission of the crime but shall not run during any period in which the defendant is not physically located on the Reservation.

(f) Any civil cause of action accruing or crime committed prior to enactment of this Code Title, shall be governed by the limitations on actions or on criminal prosecutions existing at the time the cause of action accrued or the crime was committed as provided by 25 CFR, part 11.1, et seq. and any state, federal, or Tribal law that may be there incorporated by reference.

### SECTION 1-8-7. Principles of Construction.

The following principles of construction will apply to this Code unless a different construction is obviously intended:

- (a) Masculine words shall include the feminine, and singular words shall include the plural, and vice versa.
- (b) Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.
- (c) Whenever a term is defined for a specific part of this Code, that definition shall apply to all parts of the Code unless a contrary meaning is clearly intended.
- (d) This Code shall be construed as a whole to give effect to all its parts in a logical and consistent manner.
- (e) If any provision of this Code or the application of any provision to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby and to this end the provisions of the Code are declared to be severable.
- (f) Any typographical errors or omissions shall be ignored whenever the intended meaning of the provision containing the error or omission is otherwise reasonably certain to the Court.
- (g) Any other issues of construction shall be handled in accordance with generally accepted principles of construction giving due regard for the underlying principles and purposes of this Code.

### SECTION 1-8-8. Definitions.

The following definitions will apply for the purposes of this Code:

- (a) "Indian" or "Indian Person" shall include any person of Indian descent who is an Indian for purposes of federal criminal jurisdiction under Title 18, U.S.C. § 1151, *et seq.*
- (b) "Member" shall include a person who is enrolled in or lawfully entitled to enrollment in the Omaha Tribe of Nebraska pursuant to the Omaha Tribe Constitution and Bylaws.
- (c) "Reservation" for all titles of this Code shall include all lands within the exterior boundaries of the Omaha Indian Reservation as set out in Section 1-4-2 of this Title.
- (d) "Tribe" shall mean the Omaha Tribe of Nebraska unless another specific Indian tribe is clearly intended.
- (e) "Tribal council" shall mean the Omaha Tribal Council.
- (f) "Superintendent" shall mean the Superintendent of the Winnebago Agency, BIA, or any successor officer thereof.
- (g) "Age of Majority" shall mean 18 years of age unless otherwise provided in this Code or Omaha Tribe Constitution and Bylaws.

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## CHAPTER 9. MISCELLANEOUS

### SECTION 1-9-1. Substantive Law and Procedure.

[REPEALED]

### SECTION 1-9-2. Filing Fees Waived.

No Department of the Tribe shall be required to pay any filing fee or court cost to the Court for filing of civil or criminal complaints under this Code or for service of process, witness fees or jury fees; however, the ordinary amount of such costs which would have been incurred by the Tribe or any department thereof but for this Section, shall be assessed as costs against any violator against whom judgment is entered or a conviction is obtained under this Code.

## CHAPTER 10. OMAHA CODE OF JUDICIAL CONDUCT

### CANONS

1. A judge should uphold the integrity and independence of the judiciary.
2. A judge should avoid impropriety and the appearance of impropriety in all his activities.
3. A judge should perform the duties of his office impartially and diligently.
4. A judge may engage in activities to improve the law, the legal system and the administration of justice.
5. A judge should regulate his extrajudicial activities to minimize the risk of conflict with his judicial duties.
6. A judge should regularly file reports of compensation received for quasi-judicial and extrajudicial activities.
7. A judge should refrain from political activity inappropriate to his judicial office.

### SECTION 1-10-1. CANON 1. A judge should uphold the integrity and independence of the judiciary.

An independent and honorable judiciary is indispensable to justice in our society. A judge should participate in establishing, maintaining and enforcing, and should himself observe, high standards of conduct so that the integrity and independence of the judiciary may be preserved. The provisions of this Code should be construed and applied to further that objective.

**Commentary.** - Part of an appellate judge's duty to maintain high standards of conduct includes refraining from irrelevant, immaterial, undignified, intemperate or flippant criticism of:

- (a) established policy and rules of appellate courts with regard to the use of memorandum opinions and opinion publication;
- (b) attorneys, unless the conduct of the attorney is an issue in the case;
- (c) district courts, court of appeals and the supreme court.

In maintaining high standards an appellate judge shall refrain from:

- (d) ex parte single judge contact with lawyers or litigants about the case when the case is before an appellate court;
- (e) writing so-called "letter" or "correspondence" opinions containing irrelevant, immaterial, undignified, intemperate or flippant material;
- (f) suggesting or encouraging litigants to apply to the supreme court for writs.

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Am. Jur.2d, A.L.R. and C.J.S. references. - 48 C.J.S. Judges Sec. 4.

**SECTION 1-10-2. CANON 2. A judge should avoid impropriety and the appearance of impropriety in all his activities.**

(a) A judge should respect and comply with the law and should conduct himself at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

**Commentary.** - Commentary to Canon 1 also applies to this paragraph.

(b) A judge should not allow his family, social or other relationships to influence his judicial conduct or judgment. He should not lend the prestige of his office to advance the private interests of others; nor should he convey or permit others to convey the impression that they are in a special position to influence him. He should not testify voluntarily as a character witness.

**Commentary.** - Public confidence in the judiciary is eroded by irresponsible or improper conduct by judges. A judge must avoid all impropriety and appearance of impropriety. He must expect to be the subject of constant public scrutiny. He must therefore accept restrictions on his conduct that might be viewed as burdensome by the ordinary citizen and should do so freely and willingly.

(c) The testimony of a judge as a character witness injects the prestige of his office into the proceeding in which he testifies and may be misunderstood to be an official testimonial.

**SECTION 1-10-3. CANON 3. A judge should perform the duties of his office impartially and diligently.**

The judicial duties of a judge take precedence over all his other activities. His judicial duties include all the duties of his office prescribed by law. In the performance of these duties, the following standards apply:

(a) **Adjudicative responsibilities.**

(1) A judge should be faithful to the law and maintain professional competence in it. He should be unwayed by partisan interest, public clamor or fear of criticism.

(2) A judge should maintain order and decorum in proceedings before him.

(3) A judge should be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom he deals in his official capacity, and should require similar conduct of lawyers, and of his staff, court officials and others subject to his direction and control.

**Commentary.** - The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Courts can be efficient and businesslike while being patient and deliberate. Commentary to Canon 1 also applies to this paragraph.

(4) A judge should accord to every person who is legally interested in a proceeding, or his lawyer, full right to be heard according to law, and, except as authorized by law, neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding. A judge, however, may obtain the advice of a disinterested expert on the law applicable to a proceeding before him if he gives notice to the parties of the person consulted and the substance of the advice, and affords the parties reasonable opportunity to respond.

**Commentary.** - The proscription against communications concerning a proceeding includes communications from lawyers, law teachers and other persons who are not participants in the proceeding, except to the limited extent permitted. It does not preclude a judge from consulting with other judges, or with court personnel whose function is to aid the judge in carrying out his adjudicative responsibilities. "Court personnel" does not include the lawyers in a proceeding before a judge. The conduct of lawyers is governed by Rule 7-107 of the Code of Professional Responsibility. A judge should not consult privately with a prosecutor in connection with any criminal matter before him.

(5) A judge should dispose promptly of the business of the court.

**Commentary.** - Prompt disposition of the court's business requires a judge to devote adequate time to his



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duties, to be punctual in attending court and expeditious in determining matters under submission, and to insist that court officials, litigants and their lawyers cooperate with him to that end.

(5.1) All cases decided by an opinion of an appellate court shall be by a collegial opinion. Before an opinion is placed in final form, the participating justices or judges shall attempt to reconcile any differences between them. Each justice or judge on each panel is charged with the duty of carefully reading and analyzing the pertinent submitted material on each case in which the justice or judge participates.

(6) A judge should abstain from public comment about a pending or impending proceeding in any court, and should require similar abstention on the part of court personnel subject to his direction and control. This subsection does not prohibit judges from making public statements in the course of their official duties or from explaining for public information the procedures of the court.

**(b) Administrative Responsibilities.**

(1) A judge should diligently discharge his administrative responsibilities, maintain professional competence in judicial administration and facilitate the performance of the administrative responsibilities of other judges and court officials.

(2) A judge should require his staff and court officials subject to his direction and control to observe the standards of fidelity and diligence that apply to him.

(3) A judge should take or initiate appropriate disciplinary measures against a judge or lawyer for unprofessional conduct of which the judge may become aware.

**Commentary.** - Disciplinary measures may include reporting a lawyer's misconduct to an appropriate disciplinary body.

(4) A judge should not make unnecessary appointments. He should exercise his power of appointment only on the basis of merit, avoiding nepotism and favoritism. He should not approve compensation of appointees beyond the fair value of services rendered.

**Commentary.** - Appointees of the judge include officials such as referees, commissioners, special masters, receivers, guardians and personnel such as clerks, secretaries and bailiffs. Consent by the parties to an appointment or an award of compensation does not relieve the judge of the obligation prescribed by this subsection.

**(c) Disqualification.**

(1) A judge should disqualify himself in a proceeding in which his impartiality might reasonably be questioned, including but not limited to instances where:

(A) he has a personal bias or prejudice concerning a party or personal knowledge of disputed evidentiary facts concerning the proceeding;

(B) he served as lawyer in the matter in controversy, or a lawyer with whom he previously practiced law served during such association as a lawyer concerning the matter, or the judge or such lawyer has been a material witness concerning it;

**Commentary.** - A lawyer in a governmental agency does not necessarily have an association with other lawyers employed by that agency within the meaning of this subsection; a judge formerly employed by a governmental agency, however, should disqualify himself in a proceeding if his impartiality might reasonably be questioned because of such association.

(C) he knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(D) he presided in any inferior court.

(2) A judge shall disqualify himself in any proceeding in which:

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- (A) he or his spouse, or a person within the third degree of relationship to either of them;
- (B) is a party to the proceeding, or an officer director or trustee of a party;
- (C) is acting as a lawyer in the proceeding;

**Commentary.** - The fact that a lawyer in a proceeding is affiliated with a law firm with which a lawyer-relative of the judge is affiliated does not of itself disqualify the judge under appropriate circumstances, the fact that "his impartiality might reasonably be questioned" under Canon 3C(1), or that the lawyer-relative is known by the judge to have an interest in the law firm that could be "substantially affected by the outcome of the proceeding" under Canon 3C(1) (d) (iii) [3C(2) (iii)] may require his disqualification.

(D) is known by the judge to have an interest that could be substantially affected by the outcome of the proceeding;

(E) is to the judge's knowledge likely to be a material witness in the proceeding.

(3) A judge should inform himself about his personal and fiduciary financial interests [, and make a reasonable effort to inform himself about the personal financial interests] of his spouse and minor children residing in his household.

(4) For the purposes of this canon,

(A) the degree of relationship is calculated according to the civil law system;

**Commentary.** - According to the civil law system, the degree of relationship test would, for example, disqualify the judge if his or his spouse's parent, grandparent, uncle or aunt, nephew or niece, brother or sister, child or grandchild were a party or lawyer in the proceeding.

(B) "fiduciary" includes such relationships as executor, administrator, trustee and guardian;

(C) "financial interest" means ownership of a legal or equitable interest, however small, or a relationship as director, advisor or other active participant in the affairs of a party, except that:

(i) ownership in a mutual or common investment fund that holds securities is not a "financial interest" in such securities unless the judge participates in the management of the fund;

(ii) an office in an educational, religious, charitable, fraternal or civil organization is not a "financial interest" in securities held by the organization;

(iii) the proprietary interest of a policy holder in a mutual insurance company, of a depositor in a mutual savings association, or a similar proprietary interest, is a "financial interest" in the organization only if the outcome of the proceeding could substantially affect the value of the interest;

(iv) ownership of government securities is a "financial interest" in the issuer only if the outcome of the proceeding could substantially affect the value of the securities.

### (d) Remittal of disqualification.

A judge disqualified by the terms of Canon 3(c)(1)(C) may, instead of withdrawing from the proceeding, disclose on the record the basis of his disqualification. If, based on such disclosure, the parties and lawyers, independently of the judge's participation, all agree in writing that the judge's relationship is immaterial or that his financial interest is insubstantial, the judge is no longer disqualified, and may participate in the proceeding. The agreement, signed by all parties and lawyers, shall be incorporated in the record of the proceeding.

**Commentary.** - This procedure is designed to minimize the chance that a party or lawyer will feel coerced into an agreement. When a party is not immediately available, the judge without violating this section may proceed on the written assurance of the lawyer that his party's consent will be subsequently filed.

When judge believes he will be unable to remain impartial he should remove himself from the case in

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order to avoid any hint of impropriety.

Am. Jur. 2d, A.L.R. and C.J.S. references - 46 Am. Jr. 2d Judges Sec. 199.

Disqualifying relationship by affinity in case of judge or juror as affected by dissolution of marriage, 117 A.L.R. 800.

Reviewability of action of judge in disqualifying himself, 162 A.L.R. 654.

Relationship of Judge to one who is party in an official or representative capacity as disqualification, 10 A.L.R.2d 1307.

Relationship to attorney in case as disqualifying judge, 50 A. L. R. 2d 143.

Remarks or acts of trial judge criticizing, rebuking or punishing defense counsel in criminal case, as requiring reversal, 62 A.L.R.2d 166.

Prior representation or activity as attorney or counsel as disqualifying judge, 72 A.L.R.2d. 443.

Prejudicial effect of trial judge's remark during civil jury trial disparaging the litigants, the witnesses or the subject matter of the litigation, 83 A.L.R.2d 1128.

Prejudicial effect of remarks of trial judge criticizing counsel in civil case, 94 A.L.R.2d 826.

Disqualification of judge for bias against counsel for litigant, 23 A.L.R.3d 1416.

Disqualification of judge by relative's ownership of stock in corporation which is party to action or proceeding, 25 A.L.R.3d 1331.

Prejudicial effect of trial judge's remarks, during criminal trial, disparaging accused, 34 A.L.1R.3d 1313.

Disqualification of judge or one acting in judicial capacity to preside in a case in which he has a pecuniary interest in the fine, penalty or forfeiture imposed upon the defendant, 72 A. L. R.3d 375.

Membership in fraternal or. social club or order affected by a case as ground for disqualification of judge, 75 A.L.R.3d 1021. 48 C.J.S. Judges Secs. 42, 4.6, 93.

### **SECTION 1-10-4. CANON 4. A judge may engage in activities to improve the law, the legal system and the administration of justice.**

A judge, subject to the proper performance of his judicial duties, may engage in the following quasi-judicial activities, if in doing so he does not cast doubt on his capacity to decide impartially any issue that may come before him:

(a) he may speak, write, lecture, teach and participate in other activities concerning the law, the legal system and the administration of justice;

(b) he may appear at a public hearing before an executive or legislative body or official on matters concerning the law, the legal system and the administration of justice, and he may otherwise consult with an executive or legislative body or official, but only on matters concerning the administration of justice;

(c) he may serve as a member, officer or director of an organization or governmental agency devoted to the improvement of the law, the legal system, or the administration of justice. He may assist such an organization in raising funds and may participate in their management and investment, but should not personally participate in public fund-raising activities. He may make recommendations to public and private fund-granting agencies on projects and programs concerning the law, the legal system and the administration of justice.

**Commentary.** - As a judicial officer and person specially learned in the law, a judge is in a unique position to contribute to the improvement of the law, the legal system and the administration of justice, including revision of substantive and procedural law and improvement of criminal and juvenile justice. To the extent that his time permits, he is encouraged to do so, either independently or through a bar association, judicial conference or other organization dedicated to the improvement of the law.

Extrajudicial activities are governed by Canon 5.

Am. Jur.2d, A.L.R. and C.J.S. references. 48 C.J.S. Judges Sec. 50.

### **SECTION 1-10-5. CANON 5. A judge should regulate his extrajudicial activities to minimize the risk of conflict with his judicial duties.**

(a) **Vocational activities.** A judge may write, lecture, teach and speak on nonlegal subjects, and engage in the arts, sports and other social and recreational activities, if such avocational activities do not detract from the dignity of his office or interfere with the performance of his judicial duties.

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**Commentary.** - Complete separation of a judge from extrajudicial activities is neither possible nor wise; he should not become isolated from the society in which he lives.

(b) **Civic and charitable activities.** A judge may participate in civic and charitable activities that do not reflect adversely upon his impartiality or interfere with the performance of his judicial duties. A judge may serve as an officer, director, trustee or nonlegal advisor of an educational, religious, charitable, fraternal or civic organization not conducted for the economic or political advantage of its members, subject to the following limitations:

(1) a judge should not serve if it is likely that the organization will be engaged in proceedings that would ordinarily come before him or will be regularly engaged in adversary proceedings in any court;

**Commentary.** - The changing nature of some organizations and of their relationship to the law makes it necessary for a judge regularly to reexamine the activities of each organization with which he is affiliated to determine if it is proper for him to continue his relationship with it. For example, in many jurisdictions charitable hospitals are now more frequently in court than in the past. Similarly, the boards of some legal aid organizations now make policy decisions that may have political significance or imply commitment to causes that may come before the courts for adjudication.

(2) a judge should not give investment advice to such an organization, but he may serve on its board of directors or trustees even though it has the responsibility for approving investment decisions.

**Commentary.** - A judge's participation in an organization devoted to quasi-judicial activities is governed by Canon 4.

(c) **Financial activities.**

(1) A judge should refrain from financial and business dealings that tend to reflect adversely on his impartiality, interfere with the proper performance of his judicial duties, exploit his judicial position or involve him in frequent transactions with lawyers or persons likely to come before the court on which he serves.

(2) Subject to the requirements of Subsection (1), a judge may hold and manage investments, including real estate, and engage in other remunerative activity.

(3) A judge should manage his investments and other financial interests to minimize the number of cases in which he is disqualified. As soon as he can do so without serious financial detriment, he should divest himself of investments and other financial interests that might require frequent disqualification.

(4) Neither a judge nor a member of his family residing in his household should accept a gift, bequest, favor or loan from anyone except as follows:

(A) a judge may accept a gift incident to a public testimonial to him; books supplied by publishers on a complimentary basis for official use; or an invitation to the judge and his spouse to attend a bar-related function or activity devoted to the improvement of the law, the legal system or the administration of justice;

(B) a judge or a member of his family residing in his household may accept ordinary social hospitality; a gift, bequest, favor or loan from a relative; a wedding or engagement gift; a loan from a lending institution in its regular course of business on the same terms generally available to persons who are not judges; or a scholarship or fellowship awarded on the same terms applied to other applicants;

(C) a judge or a member of his family residing in his household may accept any other gift, bequest, favor or loan only if the donor is not a party or other person whose interests have come or are likely to come before him, and, if its value exceeds \$100, the judge reports it in the same manner as he reports compensation in Canon 6.

**Commentary.** - This subsection does not apply to contributions to a judge's campaign for judicial office, a matter governed by Canon 7.

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(5) For the purposes of this section "member of his family residing in his household" means any relative of a judge by blood or marriage, or a person treated by a judge as a member of his family, who resides in his household.

(6) A judge is not required by this Code to disclose his income, debts, or investments, except as provided in this Canon and Canons 3 and 6.

**Commentary.** - Canon 3 requires a judge to disqualify himself in any proceeding in which he has a financial interest, however small; Canon 5 requires a judge to refrain from engaging in business and from financial activities that might interfere with the impartial performance of his judicial duties; Canon 6 requires him to report all compensation he receives for activities outside his judicial office. A judge has the rights of an ordinary citizen, including the right to privacy of his financial affairs, except to the extent that limitations thereon are required to safeguard the proper performance of his duties. Owning and receiving income from lawful investments of any kind do not as such affect the performance of a judge's duties, and he is not required to report such ownership or the receipt from such investment of interest, dividends, rentals or other income therefrom, nor is he required to report the acquisition, purchase price, trade or sale price thereof, or the receipt of the sale price therefrom.

(7) Information acquired by a judge in his judicial capacity should not be used or disclosed by him in financial dealings or for any other purpose not related to his judicial duties.

### (d) **Fiduciary activities.**

A judge should not serve as the executor, administrator, trustee, guardian or other fiduciary, except for the estate, trust or person of a member of his family, and then only if such service will not interfere with the proper performance of his judicial duties. "Member of his family" includes a spouse, child, grandchild, parent, grandparent or other relative or person with whom the judge maintains a close familial relationship. As a family fiduciary a judge is subject to the following restrictions:

(1) He should not serve if it is likely that as a fiduciary he will be engaged in proceedings that would ordinarily come before him, or if the estate, trust or ward becomes involved in adversary proceedings in the court on which he serves or one under its appellate jurisdiction.

**Commentary.** - The effective date of compliance provision of this code qualifies this subsection with regard to a judge who is an executor, administrator, trustee or other fiduciary at the time this code becomes effective.

(2) While acting as a fiduciary a judge is subject to the same restrictions on financial activities that apply to him in his personal capacity.

**Commentary.** - A judge's obligation under this Canon and his obligation as a fiduciary may come into conflict. For example, a judge should resign as trustee if it would result in detriment to the trust to divest it of holdings whose retention would place the judge in violation of Canon 5(c)(3).

(e) **Arbitration.** A judge should not act as an arbitrator or mediator except with consent of the parties.

(f) **Practice of law.** A judge should not practice law before the Omaha Tribal Courts.

(g) **Extrajudicial appointments.** A judge should not accept appointment to a governmental committee, commission or other position that is concerned with issues of fact or policy on matters other than the improvement of the law, the legal system or the administration of justice. A judge, however, may represent the Tribe on ceremonial occasions or in connection with historical, educational and cultural activities.

**Commentary.** - Valuable services have been rendered in the past to the tribes, states and the nation by judges appointed by the executive to undertake important extrajudicial assignments. The appropriateness of conferring these assignments on judges must be reassessed, however, in light of the demands on judicial manpower created by today's crowded dockets and the need to protect the courts from involvement in

## OMAHA TRIBAL CODE (2013)

extrajudicial matters that may prove to be 'controversial. Judges should not be expected or permitted to accept governmental appointments that could interfere with the effectiveness and independence of the judiciary.

Am. Jur.2d, A.L.R. and C.J.S. references, 46 Am. Jur.2d Judges Secs. 52 to 57.

Other public offices or employments within prohibitions as regards judicial officers of constitutional or statutory provisions against holding more than one office, 89 A.L.R. 1113.

What amounts to practice of law within contemplation of constitutional or statutory provision that makes such

practice a condition of eligibility to a judicial office or forbids it by one holding judicial position, 106 A.L.R. 508.

Practice of law, propriety and permissibility of judge engaging in, 89 A.L.R.2d 886.  
48 C.J.S. Judges Sec. 9.

### **SECTION 1-10-6. CANON 6. A judge should regularly file reports of compensation received for quasi-judicial and extrajudicial activities.**

A judge may receive compensation and reimbursement of expenses for the quasi-judicial and extrajudicial activities permitted by this code, if the source of such payments does not give the appearance of influencing the judge in his judicial duties or otherwise give the appearance of impropriety, subject to the following restrictions:

(a) **Compensation.** Compensation is defined as being the consideration received for services rendered to a person, firm corporation or association other than the Omaha Tribe of Nebraska. It does not include income from interest, dividends, rents, royalties, working interests, proceeds of or profits from the sale or exchange of capital assets (as that term is defined by the Internal Revenue Code and regulations) or collection of fees earned or reimbursement of expenses incurred prior to judicial service. Compensation should not exceed a reasonable amount for an activity performed nor should it exceed what a person who is not a judge would receive for the same activity.

(b) **Expense reimbursement.** Expense reimbursement should be limited to the actual cost of travel, food and lodging reasonably incurred by the judge and, where appropriate to the occasion, by his spouse. Any payment in excess of such an amount is compensation.

(c) **Public reports.** A judge should report the date, place and nature of any activity for which he received compensation as defined in this Canon and the name of the payor and the amount of compensation so received. Compensation or income of a spouse attributed to the judge by operation of a law is not extrajudicial compensation to the judge. His report should be made at least annually and should be filed as a public document in the office of the clerk of the tribal court. Such reports shall be filed on or before April 15 of each year covering the preceding calendar year, or the portion of the preceding calendar year during which this rule is in effect.

**Compiler's notes.** - For the Internal Revenue Code, referred to in Subdivision A, see 26 U.S.C. Sec 1 et seq.

### **SECTION 1-10-7. CANON 7. A judge should refrain from political activity inappropriate to his judicial office.**

The Omaha constitution provides that judges shall be appointed, but may be removed by public referendum. In connection with a referenda for his removal, a judge may hereinafter participate in the political process -to the same extent as is provided by law for other tribal members, but only in strict conformity with the provisions of the Code of Judicial Conduct regarding upholding the integrity and independence of the judiciary, avoiding impropriety, performing impartially and diligently and avoiding conflicts of interest.

Am. Jur.2d, A.L.R. and C.J.S. references. - 46 Am. Jur.2d Judges Sec. 61.  
48 C.J.S. Judges Sec. 26.

### **SECTION 1-10-8. MISCELLANEOUS PROVISIONS.**

## OMAHA TRIBAL CODE (2013)

- (a) This Code of Judicial Conduct applies to all Omaha Tribal judges (trial judges, juvenile judges and appellate judges.)
- (b) The effective date of this Code of Judicial Conduct is August 1, 1983.



# OMAHA TRIBE OF NEBRASKA

P. O. Box 368  
Macy, Nebraska 68039

## EXECUTIVE OFFICERS

Vernon Miller, Chairman  
Adriana Saunsoci, Vice-Chairwoman  
Jessica Webster-Valentino, Treasurer  
Jeffrey S. Miller, Secretary



TRIBAL ADMINISTRATION

(402) 837-5391  
FAX (402) 837-5308

## MEMBERS

Rodney Morris  
Gwen Porter  
Clifford Wolfe, Jr.

## ORDINANCE

### OMAHA TRIBAL COUNCIL

#### No. 15-183

***Amending Omaha Tribal Code Title 1 [COURTS], § 1-4-3  
[Personal Jurisdiction]; and, §1-4-5 [General Subject Matter  
Jurisdiction-Limitations];***

WHEREAS: The Omaha Tribe of Nebraska is a federally recognized Indian Tribe organized pursuant to the Indian Reorganization Act of June 18, 1934 ( 25 U.S. C. 476 as amended); and,

WHEREAS, pursuant to Article IV, section 1 (j) of the Constitution of the Omaha Tribe of Nebraska, the tribal council has the power to safeguard, promote, and enforce the peace, economy, safety, law and order and general welfare of the tribe and the Omaha Indian Reservation; to regulate all manner of trade and commerce; to regulate all manner of criminal and non-criminal conduct, subject to any limitation of federal law; and,

WHEREAS: Title 1, Chapter 4 of the Omaha Tribal Code provides for Omaha Tribal Law relative to Jurisdiction; and,

WHEREAS, the Omaha Tribal Council finds that since Title 1 was originally enacted in 1982, the Courts Code relating to Sovereign Immunity should be updated to better protect the Tribe's Sovereignty; and,

WHEREAS: Section 1-4-3 (b) of Title 1 of the Omaha Tribal Code entitled "Personal Jurisdiction" provides: Subject to any limitations expressly stated elsewhere in this Code, the Courts of the Tribe shall have civil jurisdiction over the following persons...; and,



WHEREAS, Section 1-4-3 of the Omaha Tribal Code shall be amended to read as follows (addition in bold):

**"(d) The Tribal Court shall not have jurisdiction over the Tribe or any of its agencies, departments or enterprises, including the officers, agents and employees of the Tribe in their capacity as such, without the unequivocal and express consent of the Tribe or an unequivocal and express provision in the laws of the Tribe"; and,**

WHEREAS, Section 1-4-5 (a) of Title 1 of the Omaha Tribal Code entitled "General Subject Matter Jurisdiction-Limitations " provides:

*"(a) The Omaha Tribal Courts shall have such subject matter jurisdiction as is expressly conferred by Article X, Omaha Constitution and Bylaws (amended 8-19-86) and shall have the following additional and expanded jurisdiction pursuant to Article X, Section 6, thereof, to wit:*

*(1) any and all Indian Child Welfare Act proceedings as defined at 25 U.S.C. § 1901 et. seq. or successor statute, without regard to the child's residence or domicile or the location of any incidents giving rise to the proceedings;*

*(2) civil disputes and civil causes of action of any kind whatsoever with the following exceptions and limitations:*

*(A) The Omaha Tribal Courts shall not have subject matter jurisdiction over probate proceedings except as provided in Title 20 of this Code.*

WHEREAS, Section 1-4-5 (General Subject Matter Jurisdiction-Limitations) of the Omaha Tribal Code shall be amended with the following lettered additions after Section 1-4-5 (a) (2) as follows (additions in bold):

**"(B) The Omaha Tribal Courts shall not have jurisdiction over any cause of action brought against the Tribe or any of its agencies, departments or enterprises, including the officers, agents and employees of the Tribe in their capacity as such, unless such jurisdiction is unequivocally and expressly granted by the laws of the Tribe, and the grant of jurisdiction provided in this Title shall not be construed to include a waiver of the Tribe's sovereign immunity from suit.**

**(C) The Omaha Tribal Courts shall not have jurisdiction over any cause of action brought against the Tribe or any of its agencies, departments or enterprises, including the officers, agents and employees of the Tribe in their capacity as such, unless such jurisdiction is unequivocally and expressly granted by the laws of the Tribe, and the grant of jurisdiction provided in this Title shall not be construed to include a waiver of the Tribe's sovereign immunity from suit.**

**(D) Notwithstanding any other provision of the laws of the Tribe, the Omaha Tribal Courts shall have jurisdiction over all civil causes of actions and over all controversies commenced by the Tribe and nothing in this Section or elsewhere in this Title shall be construed as limiting the jurisdiction of the**

Trial Court to hear and determine matters commenced by the Tribe, *provided* that nothing herein shall be construed as granting jurisdiction to the Trial Court to hear or determine any cross-claim or counterclaim against the Tribe or to award any monetary relief, including costs and attorney's fees, against the Tribe in an action commenced by the Tribe.”; and,

NOW, THEREFORE BE IT RESOLVED:

That Section 1-4-3 of the Omaha Tribal Code shall be amended to read as follows (addition in bold):

**“(d) The Tribal Court shall not have jurisdiction over the Tribe or any of its agencies, departments or enterprises, including the officers, agents and employees of the Tribe in their capacity as such, without the unequivocal and express consent of the Tribe or an unequivocal and express provision in the laws of the Tribe”;** and,

NOW, THEREFORE BE IT FURTHER RESOLVED:

That Section 1-4-5 (General Subject Matter Jurisdiction-Limitations) of the Omaha Tribal Code shall be amended with the following lettered additions after Section 1-4-5 (a) (2) as follows (additions in bold):

**“(B) The Omaha Tribal Courts shall not have jurisdiction over any cause of action brought against the Tribe or any of its agencies, departments or enterprises, including the officers, agents and employees of the Tribe in their capacity as such, unless such jurisdiction is unequivocally and expressly granted by the laws of the Tribe, and the grant of jurisdiction provided in this Title shall not be construed to include a waiver of the Tribe’s sovereign immunity from suit.**

**(C) The Omaha Tribal Courts shall not have jurisdiction over any cause of action brought against the Tribe or any of its agencies, departments or enterprises, including the officers, agents and employees of the Tribe in their capacity as such, unless such jurisdiction is unequivocally and expressly granted by the laws of the Tribe, and the grant of jurisdiction provided in this Title shall not be construed to include a waiver of the Tribe’s sovereign immunity from suit.**

**(D) Notwithstanding any other provision of the laws of the Tribe, the Omaha Tribal Courts shall have jurisdiction over all civil causes of actions and over all controversies commenced by the Tribe and nothing in this Section or elsewhere in this Title shall be construed as limiting the jurisdiction of the Trial Court to hear and determine matters commenced by the Tribe, *provided* that nothing herein shall be construed as granting jurisdiction to the Trial Court to hear or determine any cross-claim or counterclaim against the Tribe or to award any monetary relief, including costs and attorney’s fees, against the Tribe in an action commenced by the Tribe”;** and,

BE IT FINALLY RESOLVED:

That said amendments to Title 1 are hereby effective with the date of this Resolution and shall be added to the Omaha Tribal Code.

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**CERTIFICATION**

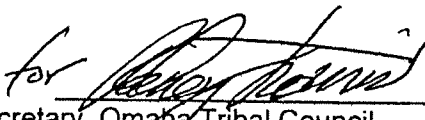
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This will certify that the foregoing ordinance was considered at a meeting of the Tribal Council of the Omaha Tribe of Nebraska, duly called and held on August 11, 2015, and was adopted by a vote of 5 FOR, 0 AGAINST and 1 NOT VOTING OR ABSENT with the Chairperson not voting. A quorum of 6 was present.

INTRODUCED BY: Maurice Johnson  
MOTION: Adriana Salas  
SECOND: Rodney Morris

Dated: August 12, 2015

Signed:   
Chairperson, Omaha Tribal Council

for   
Secretary, Omaha Tribal Council

Reviewed:

\_\_\_\_\_  
BIA Superintendent, Winnebago Agency