

Chapter 1 GOVERNMENT

ARTICLE I. ACHUKMA NATION COURT SYSTEM

Sec. 1-1. Preamble.

This Article restructures the Achukma Nation Tribal Court, administratively, into a Achukma Nation Court System. The Achukma Nation Tribal Court shall continue to be a mechanism for the orderly and reasonable resolution of disputes by reference to applicable customs, traditions or other applicable laws with the intent to preserve the peace and order of the community, to maintain law and order by the administration of justice within the lands under the jurisdiction of the Achukma Nation and to strengthen Tribal self-government.

DIVISION 1. GENERAL PROVISIONS

SUBDIVISION A. CONSTITUTIONAL AUTHORITY

Sec. 1-2. Authority Generally.

This Article is adopted pursuant to the authority vested in the Achukma Nation Tribal Council ("Tribal Council") under Article IX, Section 2 of the Constitution of the Achukma Nation of Indians of Connecticut.

SUBDIVISION B. DEFINITIONS

Sec. 1-3. Words and Terms Defined.

- (a) "Achukma Nation Reservation" means all lands within the exterior boundary of the reservation of the Achukma Nation Tribe, all trust lands of the Achukma Nation Tribe, and all lands over which the Achukma Nation has regulatory authority. Art. III § 2 Territory Described Par. 1. Excerpts from Tribal Trust Charter
ARTICLE V: TERRITORY & PROPERTY
- (b) "Achukma Nation Tribal Court" means the branch of the Achukma Nation Court System, which the Tribal Council has established in accordance with Article II, § 2 of the Achukma Nation Constitution, and includes the Trial Court, Court of Appeals, and Elders Review.
- (c) "Service of Process" is the procedure employed to give legal notice to a person/entity of the court's exercise of jurisdiction over that person/entity to enable that person/entity to respond to the proceeding before the Achukma Nation Court System. Service of Process on the Achukma Nation shall be effectuated by either in-hand service by Achukma Nation Tribal police or by in-hand delivery by a Clerk of the Achukma Nation Court System to the Office of the Chairman of the Achukma Nation and the Office of the Attorney General of the Achukma Nation Tribe. The Achukma Nation Court System Rules of Procedure shall include the manner of service upon entities other than the Achukma Nation Tribe. Off Tribal Land shall be by United State Post Office mail.

SUBDIVISION C. ADMINISTRATION

Sec. 1-4. Branches.

The Achukma Nation Court System shall be made up of two (2) distinct branches, each branch with a different jurisdiction as described hereafter. The branch, called the Achukma Nation Tribal Court, shall be a court

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of general jurisdiction which may be exercised only after the enactment of enabling legislation or other official authorization by the Tribal Council pursuant to the Achukma Nation Constitution, Article II, § 2. The Achukma Nation Tribal Court shall have such divisions as may be established by the Tribal Council.

Sec. 1-5. Enforcement of Judgments; Recognition of Foreign Judgments.

- (a) Except as may be limited by Achukma Nation Tribal law, the Achukma Nation Court System shall have the power to fashion any equitable or legal remedy reasonably required to enforce judgments and decrees, including but not limited to attachments, garnishments and executions.
- (b) The judgment, decree or order of a court of the United States or of any State, and the judgment, decree or order of another federally recognized tribe, may be enforced by the Achukma Nation Court System, except as may be limited by Achukma Nation Tribal law, and provided that such judgment, decree or order does not contravene the policy of the Achukma Nation Tribe, and does not interfere with the right and ability of the Achukma Nation to govern itself and to exercise its sovereign authority. Nothing provided for in this section shall be deemed to be a waiver of sovereign immunity of the Achukma Nation or any of its entities or instrumentalities.

Sec. 1-6. Sovereign Immunity.

Nothing provided in this Article shall be deemed to be a waiver of the sovereign immunity of the Achukma Nation or any of its entities or instrumentalities, unless such immunity has been expressly waived in the context of a particular case before the Achukma Nation Court System, or expressly waived by Achukma Nation Tribal law.

An express waiver of sovereign immunity, in a contract, must use the following format: "The Achukma Nation(or the name of its entity or instrumentality) expressly waives its sovereign immunity for (name of specific event, time frame, maximum dollar amount and other limitations)." Without this specific language, no waiver of sovereign immunity shall exist. If such waiver exists, the statute of limitations for a breach of contract action shall be six years from the date the cause of action accrues.

Only the Tribal Council, in its official capacity, or the Management Board, in its official capacity, as applicable, may grant an express waiver of sovereign immunity of the Achukma Nation or its entities or instrumentalities, or of the Achukma Nation, as applicable.

SUBDIVISION D. CODE OF PROFESSIONAL CONDUCT AND CODE OF JUDICIAL CONDUCT

Sec. 1-7. Professional Conduct.

The Connecticut Rules of Professional Conduct as published in the Connecticut Practice Book, as may be amended from time to time, are hereby adopted as and declared to be the Rules of Professional Conduct for spokespersons (attorney and non-attorney) appearing in the Achukma Nation Court System and Judges of the Achukma Nation Court System. In applying such Rules, the term "lawyer" shall be replaced with "spokesperson" to the maximum extent possible.

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Sec. 1-8. Amendment of Rules of Professional Conduct.

- (a) The Chief Judge of the Achukma Nation Court System may waive certain Rules of Professional Conduct for the purpose of application to non-attorney spokespersons, but shall enforce them to the maximum extent possible.
- (b) It shall be a conflict of interest for an employee of the Achukma Nation or any of its entities or instrumentalities to be a spokesperson, representing another person, against the Achukma Nation or any of its entities or instrumentalities or to be a spokesperson, representing another person, in a matter involving or that may reasonably be expected to involve the spokesperson's duties and responsibilities as an employee.

Sec. 1-9. Judicial Conduct.

The Connecticut Code of Judicial Conduct as published in the Connecticut Practice Book, as may be amended from time to time, is hereby adopted as and declared to be the Code of Judicial Conduct for the Achukma Nation Court System to the extent applicable, except that Canon 5 (F), prohibiting judges from practicing law, shall not apply to judges.

Sec. 1-10. Amendment of Rules of Judicial Conduct.

The Chief Judge of the Achukma Nation Court System, with the approval of the Tribal Council, may amend the Code of Judicial Conduct.

SUBDIVISION E. COURT PERSONNEL

Sec. 1-11. Hiring Authority.

The Chief Judge of the Achukma Nation Court System shall have the authority to hire the Achukma Nation Court System personnel. Court Personnel may include the Clerk of the Achukma Nation Tribal Court, the Clerk of the arbitration Disputes Court and other positions as deemed necessary for the proper functioning of the Achukma Nation Court System within budgetary constraints. The Chief Judge shall have the authority to make the final selection, if any, of the clerks, legal assistants, and other support staff from the list of qualified applicants which has been properly researched and prepared by the Human Resources Department in accordance with the hiring policies of the Achukma Nation Tribe.

Sec. 1-12. Policies and Procedures.

All employment in positions other than judicial appointments shall be in accordance with personnel and hiring policies and procedures of the Achukma Nation Tribe.

DIVISION 2. ACHUKMA NATION TRIBAL COURT

SUBDIVISION A. JURISDICTION

Sec. 1-13. Tribal policy.

It is hereby declared as a matter of Tribal policy and legislative determination that public interest demands the Achukma Nation to provide its members, Tribal Government and other persons present on the Achukma Nation Reservation and subject to the jurisdiction of the Achukma Nation with an effective means of redress. This relief is necessary in both civil cases against tribal members and non-tribal members who through their residence, presence, business dealings, other actions or failures to act, or other significant minimum contacts with the Achukma Nation incur civil obligations or commit crimes against the Achukma Nation or to persons or entities entitled to the Achukma Nation Tribe's protection.

Sec. 1-14. Territorial Jurisdiction.

The jurisdiction of the Achukma Nation Tribal Court shall extend to include all lands of the Achukma Nation Reservation.

Sec. 1-15. Personal Jurisdiction.

- (a) As used in these jurisdictional provisions, the word "person" shall include any individual, firm, company, association, corporation, or other legal entity.
- (b) Subject to any provisions, exceptions or limitations contained in an applicable federal law, the Achukma Nation Constitution, or as expressly stated elsewhere in this Article, the Achukma Nation Tribal Court shall have civil jurisdiction over the following persons:
 - (1) Any person residing, located or present within the Achukma Nation Reservation.
 - (2) Any person who transacts, conducts, or performs any business or other activity within the Achukma Nation Reservation, either in person or by an agent or representative, for any civil cause of action for any act expressly prohibited by this Article or other Achukma Nation Tribal law arising from such business activity.
 - (3) Any person who owns, rents, leases, uses or possesses any property within the Achukma Nation Reservation, for any civil cause of action prohibited by this Article or other Achukma Nation Tribal law arising from such ownership, use or possession.
 - (4) Any person who commits a civil offense prohibited by this Article or other Achukma Nation Tribal law, by his/her own conduct or the conduct of another for which he/she is legally accountable, if:
 - (i) The conduct occurs either wholly or partly on the Achukma Nation Reservation; or
 - (ii) The conduct which occurs outside the Achukma Nation Reservation constitutes an attempt, solicitation, or conspiracy to commit an offense within the Achukma Nation Reservation, and an act in furtherance of the attempt or conspiracy occurs within the Achukma Nation Reservation; or
 - (iii) The conduct which occurs within the Achukma Nation Reservation constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense prohibited by this Article or other Achukma Nation Tribal law and such other jurisdiction.
 - (5) Any person who is served with process on the Achukma Nation Reservation.
 - (6) Any person who consents to such jurisdiction.
 - (7) Any person who violates the civil rights of any person, as defined in the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1303, on the Achukma Nation Reservation to the extent permitted by the Achukma Nation Constitution.

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- (8) Any person who initiates or files with the Trial Court any civil cause of action, whether in person or through an attorney, for any counter-claim, cross-claim, or any other affirmative pleading for relief which may be asserted within that same action.
 - (9) Any person entering upon the Achukma Nation Reservation for the purpose of participating in lawful activity, which entry and participation is deemed to be consent to the exercise of jurisdiction by the Achukma Nation over such persons in any civil action to enforce obligations arising from any transaction which arises within the Achukma Nation Reservation.
- (c) None of the foregoing bases of jurisdiction is exclusive or exhaustive, and jurisdiction over a person may be established upon any one or more bases as applicable.

Sec. 1-16. Jurisdiction over Property.

Subject to any contrary provisions, exceptions, or limitations contained in either applicable federal laws, or the Achukma Nation Constitution, or as expressly stated elsewhere in this Article, the Achukma Nation Tribal Court shall have jurisdiction over any real or personal property located on the Achukma Nation 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.

Sec. 1-17. General Subject Matter Jurisdiction.

Subject to any contrary provisions, exceptions, or limitations contained in either an applicable federal law, the Achukma Nation Constitution, or as specified in Section 1-18 of this Article, the Achukma Nation Tribal Court shall have jurisdiction over all civil causes of action for which the Tribal Council enacts enabling legislation or grants the Court jurisdiction by contract with the express waiver of sovereign immunity contained in this Article, and over all offenses prohibited by Achukma Nation Tribal law. The Achukma Nation Tribal Court shall not immediately assume jurisdiction over those criminal offenses listed within the Major Crimes Act, 18 U.S.C. § 1153, such offenses being within the purview of the federal authorities. However, should the federal authorities find there is not sufficient cause to have the matter prosecuted under the Major Crimes Act, U.S.C. § 1153, then Achukma Nation Tribal authorities may proceed and file a cause of action with the Achukma Nation Tribal Court.

Sec. 1-18. Concurrent Jurisdiction.

The jurisdiction invoked by this Article over any person, cause of action, or subject shall be concurrent with any valid jurisdiction over the same by the courts of the United States or of any State; provided, however, this Article does not recognize, grant, or cede jurisdiction to any other political or governmental entity in which jurisdiction does not otherwise exist in law. For these matters, concurrent jurisdiction is defined as the authority of the Achukma Nation Tribal Court to hear a case brought before it, so long as the Court has both personal and subject matter jurisdiction.

Sec. 1-19. Reserved.

SUBDIVISION B. STRUCTURE

Sec. 1-21. Structure.

The organizational structure of the Achukma Nation Tribal Court shall consist of the Trial Court (consisting of the Minor Civil Actions Division and the Major Civil Actions Division), the Court of Appeals, and the Council of Elders Review. The Trial Court is the initial court for formal complaints of an arbitration nature filed or prosecuted in Achukma Nation Tribal Court. The Court of Appeals shall review matters on appeal from the Trial Court. The Council of Elders may be petitioned to review decisions of the Court of Appeals.

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SUBDIVISION C. MINOR CIVIL ACTIONS

Sec. 1-22. Minor Civil Actions.

The purpose of this division of the Achukma Nation Tribal Court is to provide prompt and efficient hearings. The proceedings shall be simple and informal. Minor Civil Actions shall be limited to traffic cases, which are civil infractions under the Achukma Nation Code, Part II, Chapter 6, Article III, Sec. 6-41, et seq., Achukma Nation Tribe's Motor Vehicle Code; summary process eviction actions under the Achukma Nation Code, Part II, Chapter 5, Article XV, Sec. 5-341, et seq., Rights and Responsibilities of Landlord and Tenant; and Civil actions seeking money damages only, not in excess of five-thousand dollars, including attorneys fees and costs. Actions of libel or slander and enforcement of foreign judgments are not permitted under this division.

Sec. 1-23. Magistrates.

Magistrates shall be selected by the Chief Judge, on a rotating basis, to hear all Minor Civil Actions from a list established and maintained by the Achukma Nation Tribe's Department of Human Resources. The Achukma Nation Tribe's Department of Human Resources shall establish and maintain a list of Connecticut licensed attorneys, in good standing with at least five years' experience who are willing to serve. Further, persons on such list must not have been convicted of a felony, be of sound mind, trustworthy and of good moral character, and be capable of carrying out the duties of the office fairly and impartially, and be willing to commit upon public oath of affirmation to uphold the Constitution of the Achukma Nation of Indians of Connecticut. Such list shall be reviewed by the Department of Human Resources on an annual basis. Magistrates shall follow and be subject to the ethical standards that have been established and set forth in the Code of Judicial Conduct.

Sec. 1-24. Spokesperson Representation.

Any spokesperson, including non-attorney spokespersons, may represent parties in Minor Civil Actions.

SUBDIVISION D. MAJOR CIVIL ACTIONS

Sec. 1-25. Major Civil Actions.

All matters over which the Achukma Nation Tribal Court has jurisdiction that are not enumerated in Subdivision C, "Minor Civil Actions," shall be heard in Major Civil Actions Division of the Achukma Nation Tribal Court.

Sec. 1-26. Judges.

Judges appointed pursuant to this Article shall hear all Major Civil Actions of the Achukma Nation Tribal Court in the manner set forth in this Article and the Rules of Procedure lawfully adopted.

Sec. 1-27. Spokesperson Representation.

Only attorney-spokespersons can represent parties in Major Civil Actions.

SUBDIVISION E. JUDGES

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Sec. 1-28. Duties.

The Achukma Nation Tribal Council shall make determinations regarding judicial appointments. The Achukma Nation Tribal Court shall consist of no less than one Trial Court Judge, no less than three (3) Appellate Court Judges, and the Council of Elders. The Appellate Court Judges may be selected on a rotating basis by the Chief Judge of the Achukma Nation Court System from judges serving as appellate judges for the arbitration Disputes Court, if the Tribal Council does not separately appoint Appellate Court Judges. Additional judges for the Trial and the Appellate Court may be appointed as deemed necessary by the Tribal Council.

The Council of Elders shall develop procedures for reviewing appeals brought before it and for discipline of its members, when acting within its judicial authority pursuant to Article X, Sec. 1 and 2 of the Achukma Nation Constitution.

Sec. 1-29. Terms of Office—Chief Judge, Trial Court and Appellate Court Judges.

The term of office for the Chief Judge, Trial Court Judge and Appellate Court Judges shall be five (5) years from the date of appointment, with no limit on the number of terms that can be served.

Sec. 1-30. Appointment and Compensation.

The Achukma Nation Tribal Council shall appoint judges to the Trial Court and Court of Appeals, from a list of qualified candidates as prepared by the Achukma Nation Tribe's Human Resource Department and shall set the compensation for such judges.

Sec. 1-31. Minimum Qualifications.

- (a) Each judge of the Trial Court and the Court of Appeals shall possess a Juris Doctorate degree and have experience either as a Connecticut Attorney Trial Referee appointed by the Chief Justice of the Connecticut Supreme Court, a Judge of the Achukma Nation Court System, the Connecticut Superior Court, or is an eligible retired federal judge or magistrate and who must remain licensed and qualified to practice law in the State of Connecticut; must not have been convicted of a felony; is of sound mind, trustworthy and of good moral character, and is capable of carrying out the duties of the office fairly and impartially, and is willing to commit upon public oath of affirmation to uphold the Constitution of the Achukma Nation of Indians of Connecticut. Preference may be given to a person who has knowledge and/or experience in tribal court systems and traditional justice system of Native American tribes.

Sec. 1-32. Powers and Duties of Judges.

- (a) The Tribal Council shall appoint one Chief Judge of the Achukma Nation Tribal Court, who may also be the Chief Judge of the arbitration Disputes Court, to perform all administrative duties for the Achukma Nation Tribal Court. If the Chief Judge of the arbitration Disputes Court is appointed also as the Chief Judge of the Achukma Nation Tribal Court, the Chief Judge shall perform all administrative duties for the entire Achukma Nation Court System.
- (b) Judges of the Achukma Nation Tribal Court shall have the following powers and duties:
- (1) Judges of the Achukma Nation Tribal Court shall administer justice and discharge all duties imposed upon them by law and shall hear and decide all matters of a judicial nature and enter judgments and orders disposing of such matters.

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- (2) The Chief Judge of the Achukma Nation Tribal Court shall be responsible for the overall supervision of the Achukma Nation Tribal Court, including duties pursuant to Sec. 1-52, Assignment of Cases in Trial Court.
- (3) Judges of the Achukma Nation Tribal Court shall follow and be subject to the ethical standards that have been established in this Article.
- (4) Each Judge has the power to: (i) preserve and enforce order in his/her immediate presence, and in all proceedings when engaged in the performance of his/her official duty; (ii) compel obedience to his/her lawful orders; (iii) compel the attendance of persons to testify in those proceedings when required and as provided by law; (iv) administer oaths to persons in proceedings before him/her and in any other case where such shall be necessary in the exercise of his/her powers and duties; (v) punish for contempt to assure the effectual exercise of these powers.

Sec. 1-33. Disqualification or Recusal of Judicial Authority; Review by Chief Judge.

- (a) Any motion seeking the disqualification or recusal of a judicial authority shall be in writing, shall set forth the facts relied upon to show grounds for disqualifications or recusal, and shall contain a certificate of the party or spokesperson filing the same that the motion is made in good faith. The judicial authority may require the filing of an affidavit or other proof of the facts relied upon to show grounds for disqualification or recusal prior to any hearing on such motion.
- (b) The decision of a judicial authority on a motion seeking the disqualification or recusal of such judicial authority shall be subject to review by the Chief Judge upon the filing by any party of a motion for review.

Sec. 1-34. Discipline and Removal of Judges.

- (a) Trial Court Judges and Appellate Court Judges shall be subject to removal for Good Cause. "Good Cause" is defined as follows:
 - (1) There has been a willful violation by the judge of any provision in the Code of Judicial Conduct, and such violation is of such a serious nature as to warrant disciplinary action;
 - (2) The judge has been convicted of a felony or of a misdemeanor involving moral turpitude;
 - (3) The judge has been disbarred or suspended as an attorney-at-law; or
 - (4) The judge has become incompetent or incapable of fulfilling his/her duties, and it is more probable than not that such lack of competency or capability will continue for a period of time likely to impair the function of the Court or the administration of justice.
- (b) The Achukma Nation Tribe's Attorney General or any Judge of the Achukma Nation Court System may file a complaint under this section for removal. Complaints filed against a Judge for removal shall be made in writing and signed by the complainant. Complaints shall be filed with the Clerk of Court, who shall assign a docket number, acknowledge receipt of the complaint and immediately notify the Judicial Review Board.
- (c) The Judicial Review Board shall hear complaints concerning the conduct of Judges and to impose disciplinary actions against them, including removal from office, if warranted, after an opportunity to be heard.
- (d) The members of the Judicial Review Board shall consist of the following:
 - (1) The Chief Judge. In any case where the Chief Judge is the subject of the Judicial Review Board's review, another judge from the Achukma Nation Court System shall be randomly selected by the Attorney

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General of the Achukma Nation to serve as a member of the Board. The Judge serving on the Board shall be the chairperson and shall have the right to vote on all decisions of the Board;

- (2) The Attorney General of the Achukma Nation Tribe, or his/her designee, who shall be an attorney from the Achukma Nation Tribe's Office of Legal Counsel; and
 - (3) An attorney admitted to practice in the Achukma Nation Court System who shall be designated by the Judge serving as a member of the Judicial Review Board.
- (e) All removal proceedings shall use the preponderance of the evidence standard. The procedures for removal hearings shall follow the procedures established for Discipline and Removal of Judges contained in the Achukma Nation Court System's Rules of Practice, which shall be in accordance with this Article.

Sec. 1-35. Oath of Office.

- (a) Prior to taking office or acting in such office, every Judge and Magistrate shall take the following oath or affirmation:

I, _____, do solemnly swear (affirm) that I will support, defend, and uphold the Constitution of the Achukma Nation; I will enforce the Ordinance regarding the Achukma Nation Court System and all other laws, resolutions, rules and regulations duly passed by the Achukma Nation Tribal Council, applicable provisions of the U.S. Constitution, as well as applicable U.S. Congressional enactments, and I will faithfully and impartially discharge the duties of my office to the best of my ability.

- (b) The Chairperson of the Council of Elders, his/her designee, or a Judge of the Court may administer this oath.

SUBDIVISION F. COUNSEL

Sec. 1-36. Representatives Appearing in Achukma Nation Tribal Court.

Any person appearing in Achukma Nation Tribal Court shall have the right to a spokesperson, at his/her own expense, to assist in presenting the case, provided that such spokesperson shall first have been admitted to the Achukma Nation Tribal Court Bar. It shall be noted that the rules for appearance in the Achukma Nation Tribal Court are different from those in the arbitration Disputes Court.

Sec. 1-37. Tribal Court Bar Admission.

- (a) To be admitted to the Achukma Nation Tribal Court Bar, a person must:
- Be of good moral character;
 - Successfully complete the Achukma Nation Tribal Court Bar Examination;
 - Sign and take the Spokesperson's Oath;
 - Pay the Achukma Nation Tribal Court Bar admission fee;
 - Be at least 18 years of age;
 - Be approved by the Court; and
 - Have no felony convictions. -OR-

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- (b) An attorney employed by the Achukma Nation Tribe's Office of Legal Counsel, either as part of the Achukma Nation Tribe's Office of Legal Counsel or pursuant to an attorney contract approved by the Tribal Council or its designee and who is admitted to practice law in at least one other jurisdiction shall be admitted to the Achukma Nation Tribal Court Bar upon the following:
- (1) Filing a certificate of good standing from the foreign jurisdiction;
 - (2) Paying the Achukma Nation Tribal Court Bar admission fee; and
 - (3) Signing and taking the Spokesperson's Oath. Provided, however, that such admission shall expire upon expiration of such employment or said contract.
- (c) A spokesperson who is not an attorney in good standing from a foreign jurisdiction shall not have authority to represent another person in any Achukma Nation Tribal Court, except in the Minor Civil Actions Division. Nothing herein shall prohibit a spokesperson or other individual from appearing pro se in any Achukma Nation Tribal Court.

Sec. 1-38. Spokesperson's Oath.

- (a) The oath which all persons desiring to appear as spokesperson in the Achukma Nation Tribal Court shall take is as follows:

"I, _____, do solemnly swear (affirm):

- (1) I have read the Ordinance regarding the Achukma Nation Court System and am familiar with its contents;
- (2) I will respect and obey the Constitution of the Achukma Nation of Indians of Connecticut in all respects;
- (3) I will abide by the rules established by the Achukma Nation Tribal Court, the Tribal Council and the Council of Elders;
- (4) I will at all times maintain the respect due the Achukma Nation Tribal Court and its officers;
- (5) I will not counsel, speak, or initiate any suit or proceeding which shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the Achukma Nation unless it be in defense of a person charged with a public offense;
- (6) I will employ such means only as are consistent with truth and honor and will never seek to mislead a judge or jury by any false statement; and
- (7) I will abstain from all offensive conduct in the Achukma Nation Tribal Court."

Sec. 1-39. Tribal court bar roster.

The Clerk of the Achukma Nation Tribal Court will maintain a roster of all spokespersons admitted to practice before the Court. The Court Clerk will also keep on file the signed oaths of all such persons.

Sec. 1-40. Disciplinary Procedures/Disbarment.

Any licensed attorney admitted to practice in the Achukma Nation Court System or a judge of the Achukma Nation Court System may report a probable violation of the Rules of Professional Conduct to the Chief Judge. The Chief Judge shall establish procedures in the Rules of Practice of the Achukma Nation Court System for the investigation, hearings and discipline (including disbarment) resulting from such complaints.

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Sec. 1-41. Attorneys of Other Jurisdictions.

- (a) An attorney who is in good standing at the bar of any state or the District of Columbia, may at the discretion of the Achukma Nation Tribal Court, upon written application presented by a member of the Achukma Nation Tribal Court Bar, be permitted to practice pro hac vice in a particular action; provided, however:
- (1) the member of the Achukma Nation Tribal Court Bar must at all times be actively associated in said action with the attorney for whom the application is filed; and
 - (2) the member of the Achukma Nation Tribal Court Bar must be present at all proceedings and must sign all pleadings, briefs and other papers filed with the court and assume full responsibility for them and for the conduct of the cause by the attorney to whom such privilege is accorded.

Sec. 1-42. Contempt of Court.

Any spokesperson failing to maintain the respect due the Achukma Nation Tribal Court or engaging in offensive conduct in the courtroom shall be deemed in contempt of court. This spokesperson shall be subject to a fine not to exceed five thousand (\$5,000.00) dollars.

Sec. 1-43. Appeal.

Any person denied admission to the Achukma Nation Tribal Court Bar or any spokesperson found in contempt of court by the Judge may appeal in accordance with (Division 3, Subdivision E (Appellate Procedure)) of this Article. Such person or spokesperson shall have the right to a hearing within ten days of his/her denial/contempt order and shall have the right to present witnesses and present a defense. The spokesperson may apply for a Writ of Permission for review by the Council of Elders if not satisfied with the decision of the Court of Appeals, in accordance with the Council of Elders Review Procedures of this Article. The decision of the Council of Elders shall be final.

Secs. 1-44—1-50. Reserved.

DIVISION 3. RULES OF COURT

SUBDIVISION A. GENERAL CIVIL PROCEDURE

Sec. 1-51. Court Rules.

The Chief Judge shall have the authority to adopt reasonable rules of procedure both for the Trial Court and the Court of Appeals. Upon adoption, the Chief Judge shall notify the Achukma Nation Tribe's Attorney General and the Achukma Nation Tribe's Office of Legal Counsel.

Sec. 1-52. Assignment of Cases in Trial Court.

- (a) All cases not within the purview of the arbitration Disputes Court shall be heard by the Achukma Nation Tribal Court Judge or his/her Associate Judge(s). In the event of a conflict of interest, and there is only one (1) trial court judge, the Chief Judge of the Achukma Nation Court System shall assign another judge from the Achukma Nation Court System to hear the case.

Sec. 1-53. Reporting of Decisions.

All judicial decisions of the Trial Court, Court of Appeals, and the Council of Elders shall be in writing and filed with the Clerk of the Achukma Nation Tribal Court. Each division of the Achukma Nation Tribal Court shall keep a record of all proceedings. The record shall reflect the title of the case, the names of the parties, the substance of the complaint, the names of all witnesses, the date of the hearing or trial, by whom the proceedings were conducted, the findings of the Court or jury, and the judgment, along with any other facts or circumstances deemed of importance to the case. A record of all proceedings shall be kept by the appropriate division and shall be available for public inspection unless prohibited by order of the Court, provisions of this Article or by applicable laws.

Sec. 1-54. Substantive Law.

The Achukma Nation Tribal Court shall apply the substantive law of the Achukma Nation as set forth in this Article, other Achukma Nation Tribal Ordinances, the Achukma Nation Constitution, and in the absence of applicable Tribal law, the Achukma Nation Tribal Court may apply relevant provisions of federal and/or Connecticut common law, except as such law may be in conflict with Achukma Nation Tribal law.

Sec. 1-55. Precedent.

The principles of stare decisis shall apply.

Sec. 1-56. Fees.

Many actions and functions of the Achukma Nation Tribal Court require fees, such as filing fees and admission fees. Fees shall be set from time to time by the Chief Judge as part of the Rules of Practice. The Clerk shall be responsible for handing out updated fee information to those who request it. Further, the Achukma Nation Tribal Court will also keep an updated fee schedule on the Achukma Nation Website for the general information of the public.

SUBDIVISION B. MINOR CIVIL ACTION PROCEDURES

Sec. 1-57. Procedures for Handling Traffic Cases.

- (a) *Rules of Procedure.* The Chief Judge shall establish rules of procedure that will govern the handling of all traffic violations, including both moving violations and non-moving violations (other than parking violations).
- (b) *Preliminary Conferences.*
 - (1) The Department of Public Safety shall forward to the Achukma Nation Tribe's Office of Legal Counsel copies of each file in which the Defendant has contested a traffic citation issued by the Department of Public Safety and/or those files where the fine was not paid and/or the Defendant failed to respond at all. The Achukma Nation Tribe's Office of Legal Counsel shall review each such file to determine whether or not further proceedings are warranted. For those cases in which further proceedings are deemed warranted, the Achukma Nation Tribe's Office of Legal Counsel shall schedule a Preliminary Conference with the Defendant as soon as practicable. At this conference, the Defendant will be given an opportunity to meet with a member of the Office of Legal Counsel to attempt to resolve any issues raised by such citation, which resolution may include mitigation of the violation or the amount of the civil fine. If the action is resolved at the Preliminary Conference, upon compliance with the terms of such resolution by the Defendant, the Office of Legal Counsel shall notify the Department of Public Safety that the matter has been closed.
 - (2) In the event that all matters raised by such citation are not resolved at the Preliminary Conference, the Office of Legal Counsel shall so notify the Department of Public Safety, which shall promptly forward to

the Clerk of the Achukma Nation Court System a certified copy of its entire file with respect to such citation, including incident reports, photographs, statements, and video surveillance recordings. The Department of Public Safety at the same time shall forward a copy of the certification to the Office of Legal Counsel, and the Office of Legal Counsel shall be deemed to have appeared on behalf of the Department of Public Safety for all further proceedings.

- (c) *Contested Hearings.* Contested hearings will be scheduled by the Clerk of the Achukma Nation Tribal Court. In any proceeding thereafter, the certified file and record provided by the Department of Public Safety shall be admitted into evidence without further foundation or authentication, provided, however, that either party may offer evidence in support of or in opposition to the contents of any part of such file and the contents of such file shall not be binding on the Court. The trial of any issue raised by such citation shall be scheduled by the Clerk of the Achukma Nation Court System after reasonable notice to all parties. At such trial, each party shall have the opportunity to present evidence in support of its position, and to subpoena the officer who issued the citation and any other competent witnesses. The Court will decide the matter after reviewing all the evidence, and if the Court finds that the Achukma Nation Tribe's Department of Public Safety has not proved, by a preponderance of the evidence, that the Defendant committed the civil offense charged in the citation, it shall render judgment for the Defendant.
- (d) *Appeals.* If the defendant does not prevail in a contested hearing he or she may appeal the case to the Achukma Nation Tribal Court of Appeals and the matter will be reviewed under the Court of Appeals Procedures.
- (e) *Execution upon Judgments.*
 - (1) *Following Judgment for the Plaintiff.* Judgments rendered in favor of the Plaintiff in traffic cases may be enforced by execution as in other civil cases.
 - (2) *Collection of Default Judgments.* Files in which the Defendant has failed to respond to a traffic citation may be forwarded by the Department of Public Safety to the Office of Legal Counsel for registration with the Achukma Nation Court System in accordance with such rules of procedure as it may adopt. Upon such registration, execution shall issue as in other civil cases.

Sec. 1-58. Summary Process Eviction.

The procedures for summary process evictions is contained in Summary Process eviction actions under the Achukma Nation Code, Rights and Responsibilities of Landlord and Tenant. The Chief Judge shall have the authority to adopt any further reasonable rules of procedure. Upon adoption, the Chief Judge shall notify the Achukma Nation Tribe's Attorney General and the Achukma Nation Tribe's Office of Legal Counsel.

Sec. 1-59. Small Claims.

The Chief Judge shall have the authority to adopt reasonable rules of procedure. Upon adoption, the Chief Judge shall notify the Achukma Nation Tribe's Attorney General and the Achukma Nation Tribe's Office of Legal Counsel.

SUBDIVISION C. CONTEMPT

Sec. 1-60. Acts or Failure to Act.

- (a) The following acts or failure to act may serve as the basis for an individual or entity to be in contempt of Court:
 - (1) Disorderly, contemptuous or insulting behavior toward a Judge while holding Court which tends to interrupt the course of the proceedings or undermines the dignity of the Achukma Nation Tribal Court.

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- (2) A breach of the peace, loud or boisterous conduct which tends to interrupt the course of a judicial proceeding.
- (3) Misbehavior in office, or other willful neglect or violation of duty as a counselor, attorney, spokesperson, clerk, court administrator, police officer or other person appointed, elected, or hired in a judicial capacity in connection with the operation of the Court.
- (4) Deceit or abuse of process or proceedings of the Court by a party or counselor to a judicial proceeding.
- (5) Disobedience to a lawful judgment, order, or process of the Achukma Nation Tribal Court.
- (6) Appearing at a judicial hearing while under the influence of alcohol or drugs.
- (7) 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.
- (8) Disobedience of a subpoena duly served, or refusing to be sworn or answer as a witness in a trial setting. In situations where a person pleads the Fifth Amendment of the United States Constitution, which is made applicable to Tribes through the Indian Civil Rights Act, 25 U.S.C. § 1302, no one can be compelled in a criminal case to be a witness against him/herself.
- (9) Any other interference with the process, proceedings, or dignity of the Court or a Judge of the Court while in the performance of his/her official duties.

Sec. 1-61. Civil Contempt.

- (a) A civil contempt is prosecuted to preserve, protect, or 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 an act 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 complaining party and may include a fine payable to the Achukma Nation Tribal Court.
- (c) Nothing contained within this Section shall be considered a waiver of sovereign immunity of the Achukma Nation Tribe.

Sec. 1-62. Contempt Procedures.

- (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) In all situations where actions amounting to contempt are being committed in the presence of the Court, the Judge shall first give warning to the disruptive party putting him/her on notice that if such disruptive behavior continues that he will be found in contempt.
- (c) All other types of contempt shall be determined at a hearing in which the person accused of contempt is given notice and an opportunity to be heard.

SUBDIVISION D. CRIMINAL PROCEDURE

Secs. 1-63—1-80. Reserved.

SUBDIVISION E. APPELLATE PROCEDURE

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Sec. 1-81. Tribal Court Appeals.

All appeals from the Trial Court shall be heard and decided by the Court of Appeals as established by this Article.

Sec. 1-82. Right to Appeal.

- (a) Any party who is aggrieved by any final order, commitment or judgment of the Trial Court may appeal in the manner prescribed by this Article within the time period fixed by the Rules of Practice.
- (1) The Connecticut Rules of Appellate Procedure as published in the Connecticut Practice Book and as included in the General Statutes of Connecticut, as may be amended from time to time, shall be applied for the appellate procedures for the Court of Appeals to the extent applicable.
 - (2) The common law of the State of Connecticut regarding the State rules of appellate procedure may be used for guidance when it does not conflict with Achukma Nation tribal law.
 - (3) The Clerk of the Trial Court shall serve as the Clerk of the Court of Appeals. The Clerk shall prepare, certify and file with the appellate court all papers comprising the record of the case appealed within 30 days after a notice of appeal is filed and shall maintain a separate docket for the appellate court in which shall be recorded each stage of the proceedings on each case appealed.

SUBDIVISION F. COUNCIL OF ELDERS REVIEW PROCEDURE

Sec. 1-83. Authority and Jurisdiction.

This Chapter addresses the judicial review authority of the Council of Elders as set forth in Article X of the Achukma Nation Constitution. This Chapter is intended to set forth the process necessary for such judicial review. Therefore, the process described below in no way usurps any other legislative or regulatory powers granted to the Council of Elders by the Achukma Nation Constitution. The Council of Elders shall have jurisdiction to review the decisions of the Achukma Nation Tribal Court of Appeals as provided in this Article.

Sec. 1-84. Precedent.

The principles of stare decisis shall apply.

Sec. 1-85. Scope of Review.

The Council of Elders shall review the determinations of law, custom and fact made by the Court of Appeals and the Trial Court. The Council of Elders shall accept the factual determinations made by the Trial Court, except where such determinations are clearly contrary to the evidence submitted at trial. The Council of Elders shall give wide discretion to the Trial Court on questions relating to the credibility of witnesses.

Sec. 1-86. Appeals to the Council of Elders.

An appellant must apply for permission to appeal to the Council of Elders within thirty (30) days from the date the decision or judgment of the Court of Appeals is entered with the Clerk of the Achukma Nation Tribal Court. If the application is not filed within this time frame, no appeal can be taken to the Council of Elders, and the

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decision of the Court of Appeals shall be final. Appeals to the Council of Elders shall be governed by such rules of procedure as may be developed by the Council of Elders.

Sec. 1-87. Finality of Decision.

The decision of the Council of Elders shall be final, and shall not be subject to any right to reopen, rehear, reverse, or modification of decision.

Sec. 1-88. Practice Rules.

The Council of Elders may adopt practice rules for Council of Elders review not inconsistent with the letter or spirit of this Article if deemed necessary to further the efficient operation of the Court. Upon adoption, a copy of the practice rules shall be provided to the Clerk of the Achukma Nation Tribal Court and, upon request, to any party appearing before the Council of Elders.

Secs. 1-89—1-98. Reserved.

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Secs. 1-99—1-200. Reserved.

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ARTICLE II. TRIBAL ETHICS

Sec. 1-251. Title and Authority.

This Article may be cited as the "Achukma Nation Tribal Council Ethics Ordinance" and may be referred to as "this Article" herein. This Article is enacted by the Tribal Council pursuant to ARTICLE IX. - POWERS AND DUTIES OF THE COUNCIL OF ELDERS, § 3 Par. 11 of the Achukma Nation Constitution and Article IX of the Achukma Nation Constitution, including § 2 "to establish procedures for the conduct of all tribal government and business operations...", and "to establish and enforce all ordinances... providing for the maintenance of law, order and the administration of justice within The Achukma Nation Indian Reservation". The Tribal Council adopts this ordinance as applicable to its members' roles as public officials of The Achukma Nation and as applicable to other persons holding appointed office as determined by the Tribal Council pursuant hereto.

Sec. 1-252. Legislative Purpose and Intent.

- (a) *Purpose.* The purpose of this Article is to require accountability to the Achukma Nation People by members of the Tribal Council and appointed officials as determined by the Tribal Council in exercising the authority vested in them as a matter of public trust by:
- (1) Establishing and requiring adherence by public officials to standards of conduct to avoid conflicts of interest;
 - (2) Requiring the disclosure of significant economic and business interests and affiliations of public officials; and
 - (3) Prohibiting public officials from using any function of their office or duties, in a manner which could place their personal economic or special interests before the interests of the members of The Tribe.
- (b) *Intent.* The Tribal Council has determined that it is in the best interest of The Achukma Nation that clear direction be given with respect to the ethical conduct of public officials who serve The Tribe. In the interest of The Tribe, public officials shall observe standards of conduct, uphold the dignity and honor of their positions and accept self-imposed disciplines. They shall safeguard The Achukma Nation against illegal or unethical conduct, and shall use appropriate opportunities to inform and educate the public in the aims, purposes and aspirations of their office or position in order to develop a better public understanding of the purposes and responsibilities of individuals in such positions. A public official shall have the duty to file a complaint against another public official if he or she has knowledge that a violation of this Article has occurred. The provisions of this Article shall be construed in accordance with the purpose of protecting the Achukma Nation People from government decisions and actions resulting from, or affected by, undue influences or conflicts of interest.

Sec. 1-253. Definitions.

For purposes of this Article:

Advisory opinion means an advisory opinion issued by the Chief Commissioner pursuant to Section 1-261 of this Article in response to a request with respect to a course of action which the requesting party proposes to undertake.

Appointed office means any governmental office, compensated or voluntary, to which a person is appointed by the Tribal Council.

Associated business means any business in which the public official or member of his or her immediate family is a director, officer, partner, trustee, or beneficiary of a trust, holds any position of management, or receives compensation or income of more than one thousand dollars (\$1,000.00) in any year, or holds an ownership interest, individually or combined with one (1) or more members of his or her immediate family, of more than ten (10) percent of the total direct or indirect ownership, investment, security or other beneficial interest of such business.

Business means any entity, enterprise, organization, trade, occupation or profession, whether or not operated for profit, including any sole proprietorship, trust, holding company, corporation, limited liability company, partnership, joint venture, consultant or other self-employed person.

Chief Commissioner means the independent representative appointed to such role pursuant to Section 1-254 of this Article.

Commission means the Ethics Commission established pursuant to Section 1-254 of this Article.

Commissioner means a member of the Commission appointed to such role pursuant to Section 1-254 of this Article.

Compensation or income means any money or thing of value received or to be received as a claim on future services, whether in the form of a fee, salary, expense, allowance, forbearance, forgiveness, interest, dividend, royalty, rent, capital gain or any other form of recompense or any combination thereof.

Confidential information means information that is privileged or proprietary pursuant to Achukma Nation law or any other applicable law, policy, contract or custom. It includes, without limitation, proprietary information relating to Tribal businesses, personnel matters, pending or future legal issues, contracts, finances and information discussed in executive session. Confidential information does not include:

- (1) Information which was publicly available or known to the general public at the time of disclosure;
- (2) Information which is required to be disclosed pursuant to regulatory requirements of The Tribe or any Governmental Body; and
- (3) Reporting of the possible commission of a crime to law enforcement authority.

Conflict of interest means the reasonable foreseeability that any economic interest of a public official will be affected in any materially different manner from the interest of The Tribe, by any decision, enactment, agreement, award or other official action or function of any Governmental Body of The Tribe.

Days means business days.

Dependent business means any business in which the person or members of the person's immediate family, individually or combined, have more than ten (10) percent of the direct or indirect ownership, investment, security or other beneficial interest of such business.

A business day can never be on our Shabbat.

Economic interest means an interest held by a public official, any member of the public official's immediate family or a dependent business, which is:

- (1) Any ownership, income, investment, security or other beneficial interest in a business; or
- (2) Any employment or prospective employment for which negotiations have already begun.

Employee means any person working for, or rendering or exchanging any services or performing any act for or on behalf of a business in return for compensation or income received or to be received any time temporarily, permanently or indefinitely, in any capacity, whether as agent, servant, representative, consultant, advisor, independent contractor or otherwise.

Employment means the status or relationship existing or created by and between a person designated or acting as an "employee" as defined herein and the business for whom or on whose behalf any such work, acts, services or other benefit has been, is being or will be rendered or performed for compensation.

Frivolous means baseless, entirely unreasonable, or without any reasonable basis in law or fact.

Gift means any gratuity, special discount, favor, hospitality, payment, loan, subscription, economic opportunity, advance, deposit of money, services, or other benefit received without equivalent consideration and not extended or provided to members of the public at large.

Governmental Body means any branch, enterprise, authority, division, department, office, commission, board, or bureau of The Tribe or any Tribal Entity but excludes the Council of Elders.

Hearing on the merits means a hearing to be held by the Commission in accordance with Section 1-260(g) of this Article after a determination of reasonable cause by the Chief Commissioner.

Immediate family means the spouse, children, parents, siblings and members of the household of the public official.

Independent representative means a person, who is not a Tribal member, meeting the qualifications set forth in Section 1-254(e) appointed to the Commission pursuant to Section 1-254(b).

Investigator means an attorney, who is not a Tribal member, engaged as an independent contractor of The Tribe and compensated at an hourly rate as determined by the Tribal Council. The investigator shall be engaged to conduct an investigation at the direction of the Commission after a reasonable cause determination and shall present the complaint to the Commission at the hearing on the merits. The Chief Commissioner, in consultation with the Attorney General, shall prepare and maintain a list of qualified attorneys to serve as investigator.

Minimal additional expense means that the personal use is limited to situations where The Tribe is already providing equipment or services and the public official's personal use in such results only in normal wear or tear, or small amounts of electricity, ink, toner or paper. This list is meant to be descriptive and not all inclusive of the types of expenses which may be considered minimal additional expense.

Ministerial action means an action that a public official performs in a given state of facts in a prescribed manner in obedience to the mandate of legal authority, without regard to, or in the exercise of, the person's own judgment upon the propriety of the action being taken.

Achukma Nation Court means the Achukma Nation Tribal Court or the Achukma Nation arbitration Disputes Court, as appropriate.

No objection letter means a letter issued by the Commission pursuant to Section 1-261 of this Article confirming that the Commission has no objection to the intended conduct as in violation of this Article.

Personally and substantially participated means that, while serving in elective office of The Tribe or while employed by The Tribe, an individual was involved in a matter through approval, disapproval, recommendation, rendering of advice, investigation or otherwise having reason, by virtue of elective office or employment, to be involved in a specific matter.

Preponderance of the evidence means the greater weight of the evidence; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other.

Public office means the office of The Tribe or any Governmental Body to which a public official is elected or appointed.

Public official means any member of the Tribal Council and any person holding appointed office in any Governmental Body, including tribal boards, commissions, authorities, committees, and agencies and designated by the Tribal Council by resolution as the persons holding the appointed office to which this Article shall apply.

Reasonable cause means that a substantial basis in law or fact exists so that a reasonably intelligent and prudent person would reasonably believe that a violation of this Article has occurred.

Selection Committee means a committee consisting of two (2) people as designated by the Tribal Council established for the purpose of recommending the appointment or removal of Commissioners pursuant to Section 1-254 of this Article.

Tribal entity means any corporation, limited liability company, partnership, joint venture business or other entity wholly or partially owned, directly or indirectly, by The Tribe and in which The Tribe, directly or indirectly, has management control.

Tribal representative means the Tribal member representative appointed to serve on the Commission in accordance with Section 1-254(b).

Tribal representative alternate means each Tribal member representative alternate appointed as a Tribal representative alternate in accordance with Section 1-254(b) and who may be selected by the Selection Committee to serve on the Commission pursuant to Section 1-254(f) in the event that the Tribal representative is unable to serve on the Commission for a particular complaint due to a conflict of interest.

Sec. 1-254. Ethics Commission Creation; Appointments.

- (a) *Creation and composition.* There is hereby created a commission to be known as the "Achukma Nation Ethics Commission" that shall be composed of three (3) members to be appointed as hereinafter provided. The Commission will be responsible for the administration and enforcement of this Article. The Commission shall consist of one (1) Tribal representative and two (2) independent representatives, one (1) of whom shall be appointed the Chief Commissioner and the other of whom shall be a regular Commissioner.
- (b) *Appointment.*
 - (1) The Selection Committee shall review all independent representative candidates for the Commission and shall make a recommendation to the Tribal Council for each appointment of a Chief Commissioner and regular Commissioner from such candidates to the Commission. There shall be no prohibition against appointing an existing or a former independent representative to be the Chief Commissioner.
 - (2) The Selection Committee shall review all Tribal representative candidates and shall make a recommendation to the Tribal Council for appointment of a Tribal representative to the Commission and for the appointment of one (1) or more Tribal representative alternate(s).
 - (3) Each appointment shall be for a term of two (2) years. There shall be no prohibition on Commissioners being reappointed.
- (c) *Chief Commissioner.* All communications on behalf of the Commission with any outside parties shall be conducted through the Chief Commissioner, and the Chief Commissioner shall perform other duties as may be prescribed by this Article and the rules and procedures promulgated pursuant to this Article, except as otherwise provided for in this Article.
- (d) *Removal.* Each Commissioner shall uphold the integrity and independence of his or her position by avoiding impropriety in all activities and by remaining personally impartial, conducting himself or herself without consideration of partisan or factional interests, public sentiment or criticism. Each Commissioner shall perform the duties of the position diligently. The Selection Committee can make a recommendation to the Tribal Council that a Commissioner should be removed for neglect of duty, incompetence, misconduct, disability that makes him or her unable to discharge his or her powers or duties, engagement in behavior involving moral turpitude, or criminal conviction of any misdemeanor or felony. Further, the Tribal Council may call a vote for the removal of a Commissioner for the above stated reasons without the recommendation of the Selection Committee. In both instances, a Commissioner shall not be removed unless there is a majority vote of the Tribal Council for removal.

Sec. 1-255. Jurisdiction and Powers of Commission.

- (a) *Jurisdiction.* The Commission shall have jurisdiction to review, make findings and issue sanctions and penalties in accordance with this Article concerning a complaint brought against a public official pursuant to this Article.
- (b) *Statute of limitations.* No complaint shall be considered by the Commission if it is filed more than four (4) years from the date when the alleged violation occurred.
- (c) *Powers of Ethics Commission.* The Commission shall have the following powers:
 - (1) To adopt rules and procedures governing the Commission's internal organization and operations.
 - (2) To make findings of fact as necessary for the disposition of a complaint and issue sanctions, penalties and fines pursuant to this Article.
 - (3) To make notifications, extend deadlines and conduct investigations.
 - (4) To hold any person in contempt upon a finding that the person has disobeyed any lawful order, process, writ, finding or direction of the Commission.
 - (5) To administer oaths and issue subpoenas to compel attendance and testimony of witnesses or to produce any documents relevant to any matter before the Commission.
 - (6) To select an investigator from the list maintained by the Chief Commissioner to conduct an investigation and present the complaint at a hearing on the merits,
 - (7) To conduct meetings and hearings to properly administer and to make determinations pursuant to this Article, provided, however, that the Commission shall not be bound by formal rules of evidence.
 - (8) Such other powers as are specifically granted in this Article.
- (d) *Records and hearings.* The Commission shall maintain a complete record of all complaints, transcripts, evidence, investigation results and other documents. If reasonable cause is found, and a hearing on the merits is held, it shall be conducted in open session, unless the Commission determines in its sole discretion that it is in The Tribe's best interest to conduct the hearing in closed session. All records from hearings on the merits that are conducted in closed session shall be confidential. The documents that shall be made available for review at the Commission's office, upon request, to Tribal members shall be: preliminary findings of reasonable cause by the Chief Commissioner, any disposition by stipulation under Section 1-260(g) and final decisions of the Commission from all hearings on the merits; transcripts of all hearings on the merits that are conducted in open session shall also be made available for review. These documents shall not be made available to the general public, unless the Tribal Council find it in the best interest of The Tribe to release some or all of such documents. The Tribal Council may prepare a notice and summary of any reasonable cause determination, disposition by stipulation and final decision for release to the Tribal member website and tribal publications. All other documents and records shall be confidential.

Sec. 1-256. Standards of Conduct and Restricted Activities.

- (a) *Standard A. Conduct in Conformity with Applicable Rules and Laws; False Statements.* Public officials shall at all times conduct themselves so as to reflect credibly upon The Achukma Nation and comply with all Achukma Nation laws and other applicable laws with respect to their conduct in the performance of the duties. No public official shall knowingly and willfully make a false statement of a material fact concerning any person or any matter involving the public official's official duties in any public forum or in any official capacity as a public official.
- (b) *Standard B. Conflicts of Interest.*

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- (1) No public official shall use, or attempt to use, any official or apparent authority of his or her office or duties which places his or her private economic gain or that of any associated business before those of The Achukma Nation Tribe.
 - (2) Public officials shall refrain from all acts or activities which result in a conflict of interest. By virtue of their positions, knowledge, access to information, and contacts, public officials are frequently offered opportunities in which they could personally benefit. In such situations, all applicable laws must be scrupulously followed, and in the event of any potential conflict arising or being suggested, the matter should be reported immediately in writing to the Chief Commissioner and steps must be taken to eliminate the potential conflict of interest. Even where the conditions permit any kind of outside activity, and there appears to be no risk of any conflict of interest, great care should be taken to ensure that such outside interests do not interfere in any way with the proper discharge of official duties and responsibilities.
- (c) *Standard C. Use of Public Office for Private Gain.*
- (1) No public official shall:
 - (i) Use his or her public position or office to obtain financial gain or anything of substantial value for the private benefit now or in the future of himself or herself or his or her immediate family or for an associated business.
 - (ii) Use his or her office or position in a way that produces or assists in the production of a substantial benefit, direct or indirect, for the public official, one (1) or more members of his or her immediate family either separately or together, or an associated business.
 - (iii) Accept items or services of substantial value for private benefit, or for the benefit of the public official's immediate family or an associated business, from any person or business who stands to gain from the relationship to the public official and his or her public position.
 - (iv) Engage in, directly or indirectly, financial or other economic transactions as a result of, or primarily depending upon, information obtained through his or her public office or employment by The Tribe or a Governmental Body.
- (d) *Standard D. Confidential Information.* No public official shall, without prior formal authorization by majority vote of the Governmental Body having jurisdiction over the confidential information, disclose any confidential information. Furthermore, no public official shall use or disclose confidential information gained in the course or by reason of his or her official position or activities, to further his or her own economic interest, political gain or personal interest or that of anyone else.
- (e) *Standard E. Restrictions against Incompatible Interests or Employment.*
- (1) Public officials shall not:
 - (i) Have direct or indirect economic interest (personally, that is, without regard to members of his or her immediate family) or engage in such other employment or economic activity which, as determined in accordance with the provisions of this Article and other applicable laws of The Tribe, necessarily involves inherent substantial conflict with their responsibilities and duties as public officials; or
 - (ii) Acquire any economic interest (personally) at a time when he or she believes or has reason to believe, that it may directly and substantially affect or be so affected by his or her official actions or duties;
 - (2) Subject to the restrictions and conditions set forth in this Article, public officials are free to engage in lawful financial transactions to the same extent as the general public. A Governmental Body may,

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however, adopt further restrictions upon such transactions or employment as authorized in Standard P and by other applicable laws of The Tribe, in light of special circumstances or particular duties of the Governmental Body.

- (3) No public official shall accept employment or be employed by a business if such employment is prohibited by or otherwise violates any provision of this Article.
- (f) *Standard F. Abstention from Official Action.*
- (1) When a public official is required to take official action on a matter in which such public official has an economic interest, he or she should first consider eliminating that interest to the extent that interest is personal. If that is neither feasible nor required under Standard E above, such public official shall:
- (i) Prepare and sign a written statement describing the matter requiring action and the nature of the potential conflict, as soon as such public official is aware of such conflict and he or she shall deliver copies of such statement to the Chief Commissioner and to the head or Chairman of the Governmental Body in which the official action will take place for inclusion in the official record of any vote or other decision or determination; and
 - (ii) Abstain from participating in or being present during deliberations, voting, sponsoring, influencing or attempting to influence any vote, official decision or determination which would favor or advance such public official's economic interest in such matter; and
 - (iii) Abstain from voting or otherwise participating in the official decision or determination of such matter, unless otherwise directed by the authorized presiding official of the Governmental Body making such decision or determination, or otherwise legally required by law, or unless such person's vote, position, recommendation or participation is contrary to his or her economic interest.
- (2) Unless otherwise provided by applicable law, the abstention by such person from voting or otherwise participating in the official determination or decision shall not affect the presence of such person for purposes of establishing a quorum necessary for a Governmental Body to take such action or vote upon such matter.
- (3) In the event that a public official's participation is otherwise legally required for the action or decision to be made, such person and the presiding official or immediate superior requiring such participation shall fully report the occurrence to the Chief Commissioner in writing.
- (g) *Standard G. Governmental Decisions.* Public officials shall not make a governmental decision outside of official channels.
- (h) *Standard H. Tribal Government Contracts; Restrictions and Bid Requirements.*
- (1) No member of a public official's immediate family shall be a party to, or have an interest in the profits or benefits of:
- (i) Any contract of The Tribe or any Governmental Body; or
 - (ii) Any investment of funds of The Tribe or any Governmental Body. For purposes of this subsection (1) and subsection (3) only, a public official's immediate family shall not include such public official's spouse, but subsection (2) shall apply to the public official's spouse. Notwithstanding the prohibition of this subsection (1), if all the following four (4) requirements are met, there shall be no violation of Standard H:
 - (A) The contract is let by notice and competitive bid or procurement or procedures as required under all applicable laws, rules, regulations and policies of The Achukma Nation Tribe, for necessary materials or services for the Governmental Body involved; and

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- (B) The entire transaction is conducted at arm's length, with the Governmental Body's full knowledge of the interest of the public official's immediate family; and
 - (C) The public official has taken no part in the determination of the specifications, deliberations or decisions of the Governmental Body with respect to the contract; and
 - (D) The business must have already commenced business with The Tribe prior to the public official being appointed or elected to his or her current term. Notwithstanding the foregoing, this subsection (d) shall not apply to a public official's parents or siblings not residing in the household of the public official.
- (2) Neither a public official nor his or her spouse shall be a party to, or have an interest in the profits or benefits of:
- (i) Any contract of The Tribe or any Governmental Body; or
 - (ii) Any investment of funds of The Tribe or any Governmental Body.

Notwithstanding the foregoing, it would not be a violation of Standard H, if the public official or his or her spouse is receiving a fixed income or pension from any business bidding on or holding a contract with The Tribe or any Governmental Body, if the fixed income or pension commenced prior to the public official being appointed or elected to his or her current term; and

- (A) The fixed income or pension commenced prior to the public official being appointed or elected to his or her current term; and
 - (B) The contract is let by notice and competitive bid or procurement or procedures as required under all applicable laws, rules, regulations and policies of The Achukma Nation Tribe, for necessary materials or services for the Governmental Body involved; and
 - (C) The entire transaction is conducted at arm's length, with the Governmental Body's full knowledge of the public official's or his or her spouse's receipt of fixed income or pension; and
 - (D) Neither the public official nor his or her spouse has any management authority or control over the business of the entity; and
 - (E) The public official has taken no part in the determination of the specifications, deliberations or decisions of a Governmental Body with respect to the contract; and
 - (F) The business had already commenced business with The Tribe prior to the public official being appointed or elected to his or her current term.
- (3) Prior to any contract being awarded to an entity from which the public official or his or her spouse is receiving a fixed income or pension, a review of the bid process shall be conducted by the Chief Commissioner who shall issue an advisory opinion pursuant to Section 1-261 of this Article. The contract shall only be awarded when such advisory opinion states that the bid process was followed and all of the above requirements of Standard H have been met.
- (4) The requirements of Standard H shall apply only to contracts involving the investment, award or payment of funds of The Tribe or any Governmental Body.
- (5) Under this Section, it shall not be considered an interest in a contract or the investment of funds of The Tribe or any Governmental Body, when the public official and his or her spouse, collectively, have a limited interest of less than five (5) percent of the ownership, investment, security or other beneficial interest of any business which is the contractor on such contract or in which funds of The Tribe are invested.

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- (i) *Standard I. Restrictions on Assisting or Representing Other Interests before Governmental Bodies for Compensation.* No public official shall represent or otherwise assist any person or entity other than The Tribe for compensation or income before any Governmental Body where the matter before the Governmental Body is other than a ministerial action.
- (j) *Standard J. Restrictions on Assisting or Representing Other Interests after Termination of Public Office.*
 - (1) After a public official has left public office, he or she shall not act as agent, attorney or representative for any business for the purpose of influencing any employee, public official or Governmental Body of The Tribe in connection with any proceeding, contract, claim, controversy, investigation, charge or accusation, in which the public official personally and substantially participated.
 - (2) If a matter was pending within the scope of a public official's responsibilities, but the public official has not personally and substantially participated as set forth in paragraph (1) above, the prohibitions set forth in this Standard shall apply for a period of two (2) years following the leaving public office.
 - (3) Nothing in this Article shall prevent a former public official from appearing and giving testimony under oath, or from making statements required to be made under penalty of perjury, or from making appearance or communications concerning matters of a personal and individual nature which pertain to such former public official or are based upon such person's special knowledge of the particular subject involved, not otherwise privileged from disclosure by other applicable law; and provided further, that no compensation is thereby received other than that which is regularly provided for witnesses by law or regulation.
 - (4) The Tribe shall not take any action favorable to any person or business, which is assisted or represented personally in the matter by a former public official whose official act, while a public official, directly contributed to the taking of such favorable action. Favorable action, for purposes of this paragraph, means the approval of a contract or agreement, the award of a bid, the granting of a business opportunity, or the extension of any economic benefit.
 - (5) Nothing herein shall prohibit a former public official from being retained or employed by the Governmental Body for which he or she formally served.
- (k) *Standard K. Unauthorized Compensation or Benefit for Official Acts.* No public official shall accept or receive any compensation or income for performing the official duties of his or her office or employment, in addition to that which is authorized and received in his or her official capacity of performing such duties.
- (l) *Standard L. Unauthorized Use of Property or Funds of The Tribe.* No public official shall use any property of The Tribe or of any Governmental Body or any other property held for the benefit of The Tribe for personal activities, except where authorized and approved for official purposes and activities or where it does not interfere with official business and involves minimal additional expense to The Tribe. Such persons shall properly protect and conserve all such property, equipment and supplies which are so entrusted, assigned or issued to them.
- (m) *Standard M. Staff Misuse Prohibited.* No public official shall employ, with The Tribe's funds, any unauthorized person who does not perform duties commensurate with such compensation. No public official shall utilize tribal employees and staff for any purpose other than the official purposes for which they are employed or otherwise retained.
- (n) *Standard N. Restrictions against Gifts or Loans to Influence Official Acts.* Except as otherwise provided herein or by applicable rule or regulation adopted hereunder or by other applicable law, no public official shall solicit or accept for himself or another, any gift, including economic opportunity, favor, service, loan (other than from a regular lending institution on generally available terms) or any other benefit of an aggregate monetary value of \$500.00 or more in any calendar year, from any person, or business which:

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- (1) Has, or is seeking to obtain, contractual or other business or financial relationships or approval from any Governmental Body with which the public official is associated or employed; or
- (2) Conducts operations or activities which are regulated or in any manner supervised by any Governmental Body with which the public official is associated or employed; or
- (3) Has any interest which, within two (2) years of receipt of the gift, has been directly involved with, or affected by, the performance or nonperformance of any official act or duty of such public official or of the Governmental Body with which the public official is associated or employed or which the public official knows or has reason to believe is likely to be so involved or affected.

(o) *Standard O. Permitted Gifts, Awards, Loans, Reimbursements and Campaign Contributions.*

Standard N shall not be construed to prohibit:

- (1) An occasional gift of insignificant monetary value;
- (2) Gifts or prizes for participating in a public event if all participants in such event receive or are eligible to receive such gifts or prizes;
- (3) Gifts from and obviously motivated by family or social relationships;
- (4) Food and refreshments customarily made available in the ordinary course of meetings;
- (5) An award or honor customarily and publicly presented in recognition of public service; or
- (6) Traditional gifts accepted on behalf of The Tribe from other tribes or members of other tribes.

A gift shall not be construed as accepted if the public official immediately discloses the receipt of the gift to the Commission in writing, donates such gift to a charity, and provides the Commission with a copy of a receipt from the charity receiving the gift.

(p) *Standard P. Adoption of Supplemental Codes of Conduct for Public Officials of Governmental Bodies of The Tribe.* The Tribal Council or other Governmental Body with appointment authority over such public official may adopt supplemental standards of conduct for public officials where necessary to address special conditions relating to their particular functions, purposes and duties and not otherwise in conflict with this Article. Upon adoption, such supplemental rules and standards shall be implemented in the same manner as the provisions of this Article.

(q) *Standard Q. Retaliatory Action Prohibited.* A public official shall not retaliate or discriminate against an employee or Tribal member who has filed a complaint relating to this Article or has testified, or is about to testify, in a proceeding related to this Article.

Sec. 1-257. Economic Disclosure Statement; Filing Requirements.

- (a) *Persons required to file annual disclosure statements.* On or before March 15 of each year, the following persons shall file a "Achukma Nation Economic Disclosure Statement," in accordance with the provisions of this Section:
- (1) Each duly elected member of the Tribal Council, whose term of office included any part of the previous calendar year.
 - (2) Each other public official who has fiscal responsibilities, including the ability to commit financial resources, approve contracts, and/or bind The Tribe to financial obligations, whose term of appointment included any part of the previous calendar year. The Tribal Council shall by resolution list the positions meeting these standards. Such resolution shall be reviewed by the Tribal Council annually and a new resolution shall be approved if any changes are necessary.

- (b) *Availability and distribution of economic disclosure forms.* It shall be the responsibility of each public official who is obligated to file a disclosure statement under subsection (a) to complete and file such disclosure statement on a timely basis.

No later than January 10 of each year, the Chief Commissioner shall mail, deliver or otherwise distribute notice to each public official required to complete a disclosure statement pursuant to this Article. Each public official shall be given a receipt from the Chief Commissioner certifying receipt of such public official's disclosure statement.

- (c) *Periods to be included in economic disclosure statement.* All public officials described in Subsections (a)(1) and (a)(2) shall include all information required to be disclosed in the disclosure statement for the entire twelve-month period of the previous calendar year.
- (d) *Confidentiality of disclosure statements.* Disclosure statements filed by public officials shall be kept on record with the Chief Commissioner. Such statements shall be maintained by The Tribe in the same manner as records that are protected by the Federal Privacy Act and shall not be deemed, maintained or used for any purpose or in any manner as a public record, nor shall the contents of any disclosure statements be made available for inspection or copying by any person in any manner except as required for determination of relevant information pertaining to examinations, investigations or hearings conducted in accordance with this Article or by any applicable law recognized by The Tribe. Violation of any provisions of this Section shall be punishable in the same manner and to the same extent as provided by any provision of law applicable to unauthorized disclosure of confidential information of any privileged official information or records of The Tribe.
- (e) *Nondisclosure of privileged information.* Nothing herein shall be construed as requiring disclosure of any information which is privileged from disclosure pursuant to The Tribe's laws or any applicable law recognized by The Tribe. Furthermore, nothing herein shall be construed to prevent disclosure under any of The Tribe's laws or any applicable law recognized by The Tribe requiring such disclosure.

Sec. 1-258. Disclosure Information Required.

Each individual required to submit an economic disclosure statement shall certify, under oath, that the information disclosed for the previous calendar year is true and complete. The Chief Commissioner shall have the discretion to determine the format and information to be contained in the disclosure statement. However, if the individual filed a disclosure statement in the prior year for the same office, he or she shall be required only to report material changes. Such information shall not exceed the level of disclosure required by executive officers and directors of publicly held corporations for SEC filing purposes, as determined by the Chief Commissioner (or otherwise required to comply with regulatory requirements) in order to reasonably determine compliance by such individual with this Article.

Notwithstanding the foregoing, the Chief Commissioner may excuse the delay or failure to file an economic disclosure statement for good cause. Good cause shall mean circumstances beyond the individual's reasonable control, such as a serious health condition or death of the individual or a member of such individual's immediate family.

Sec. 1-259. Failure to File Disclosure Statement.

- (a) If any public official who is required under this Article to file an economic disclosure statement does not file such by March 15, the Chief Commissioner shall issue a warning letter and either hand-deliver it or send it certified mail to such individual. The warning letter shall notify the individual that if the Chief Commissioner is not in receipt of a fully complete disclosure statement within ten (10) days, a notice of hearing shall be issued to the individual and the Governmental Body on which such public official serves. If the public official

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delivers the completed disclosure statement to the Chief Commissioner within the ten (10) days, he or she shall be deemed in compliance.

- (b) If the public official fails to deliver the completed disclosure to the Chief Commissioner within the ten (10) days, a notice of hearing shall be issued to the public official and the Governmental Body on which such Public Official serves. The hearing shall be in front of the Chief Commissioner and shall be limited, but shall allow an opportunity for the individual to be heard. If the Chief Commissioner determines that the individual was required to file an economic disclosure statement and failed to do so by March 15, the Chief Commissioner may issue the following sanctions:
- (1) The recommendation of removal from an appointed office forwarded to the Tribal Council or any other Governmental Body with appointment authority over such public official for final removal action;
 - (2) The prohibition against any Governmental Body having appointment power from appointing such person to any appointed office within three (3) years from the decision;
 - (3) Referral of the decision to the Administrator of the Department established under the Achukma Nation Tribal Employment Rights Ordinance for determination of whether and for how long such person may be prohibited from conducting business with The Tribe or any Governmental Body;
 - (4) Issuance of a written public reprimand, which shall be entered into such person's permanent record of public office;
 - (5) Issuance of a private reprimand, with or without suspension of any or all other penalties provided herein;
 - (6) Restitution for the cost of the process, including but not limited to attorney's fees and Commission fees due to the non-disclosure; and/or
 - (7) Fine up to \$1,000.00.

Sec. 1-260. Complaints.

- (a) *Filing.* Any person or the Commission on its own initiative, believing there may be a violation of this Article, may file a written sworn complaint, under the penalty of perjury, with the Commission. A filing fee of \$100.00 shall be required to be paid for the filing of a complaint, except if the complaint is filed by the Commission on its own initiative. This fee may be waived or reduced by order of the Chief Commissioner when the party submits an affidavit of indigence in form prescribed by the Chief Commissioner. This filing fee shall be fully refunded if the Chief Commissioner finds that the complaint is not frivolous. In addition, the complaint shall:
- (1) Identify the person or persons who allegedly committed the violation;
 - (2) Provide a statement of facts on which the complaint it based;
 - (3) To the extent possible, identify the ethics provision or provisions allegedly violated;
 - (4) Identify the evidence to prove the facts alleged and provide a copy of any relevant written materials; and
 - (5) Be signed by the complainant.
- (b) *Multiple complaints.* If there are multiple complaints involving either substantially similar facts or issues, the complaints shall be investigated and heard together, regardless of whether the parties are different.
- (c) *Confidentiality.* The complainant and respondent shall keep the complaint, the response and all information contained in the complaint and response confidential at all times until reasonable cause is found. If either

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party breaches this requirement of confidentiality, that party shall be subject to a fine up to \$1,000.00, as determined by the Chief Commissioner.

- (d) *Notification.* Within ten (10) days after receipt of the complaint, the Chief Commissioner shall send by either hand delivery or certified mail, return receipt requested, a notice to the respondent that a complaint has been filed against him or her and a copy of the complaint. The notice shall advise the respondent that he or she may file a written response (i.e. answer) to the complaint within ten (10) days after such notice to be considered by the Chief Commissioner in determining whether reasonable cause exists. Notice shall also be given to the Selection Committee to determine if a Tribal representative alternate must be appointed to serve on the Commission for the complaint pursuant to Section 1-254(f).
- (e) *Stay of ethics complaint.* If a civil complaint is or has been filed in any court alleging substantially similar facts or legal issues against a public official who is the respondent to a complaint brought under this Article, the Chief Commissioner upon his or her own initiative, or upon request of the respondent, may order a stay of the proceedings at any stage prior to the completion of an investigation. The stay of the proceedings under this Article shall remain in effect until there is a disposition at the trial level of the civil court. The investigator shall within ten (10) days of such disposition obtain a copy of the civil court's file and shall utilize it in the investigation of the complaint brought under this Article. The purpose of this provision is to minimize investigative costs, if a similar investigation was or will be conducted in a civil proceeding that has already been filed.
- (f) *Initial Review and Reasonable Cause Determination.*
- (1) *Initial Review.* Within ten (10) days of filing of complaint, the Chief Commissioner shall initially make a determination as to whether the complaint is frivolous. If the Chief Commissioner determines that the complaint is frivolous, the complaint shall be dismissed and the Chief Commissioner may issue sanctions under Section 1-265 of this Article.
- (2) *Reasonable cause determination.* If the Chief Commissioner determines that the complaint is not frivolous, the Chief Commissioner, within ten (10) days after the written response from respondent is due, shall issue a written preliminary finding to the complainant, respondent and the Tribal Council containing its ruling on the sufficiency of the complaint and whether the complaint has reasonable cause to proceed. The preliminary finding shall state the specific provision or provisions of this Article where there is reasonable cause of a violation. If the preliminary finding is that the complaint does not state a claim under this Article or does not have reasonable cause, based upon the statements and evidence submitted with the complaint and any response from the respondent, the complaint shall be dismissed.
- (g) *Hearing on the merits.*
- (1) If there is reasonable cause under this Article, within three (3) days after the determination of reasonable cause, the Chief Commissioner shall set a date for a hearing on the merits before the Commission and send notice of the hearing to the investigator, complainant, and respondent. The hearing on the merits must be held within thirty-five (35) days of such notice, unless good cause is found by the Chief Commissioner, in his or her sole discretion, to extend such time. If the Chief Commissioner determines that the complaint is of the nature that it may be resolved informally without a hearing on the merits, the Chief Commissioner may facilitate informal resolution, provided, however, that the Chief Commissioner shall not extend the date for the hearing on the merits in order to facilitate informal resolution of the complaint. If the respondent agrees to informally resolve the complaint, the Chief Commissioner, after consultation with the complainant, shall enter a disposition by stipulation reflecting the resolution. The Chief Commissioner shall have the authority to enforce the disposition by stipulation and any monies due to civil penalties imposed thereunder shall be collected in any manner authorized for recovery of debts or obligations to The Tribe. Any such disposition by

- stipulation shall dispose of the complaint, and no hearing on the merits will proceed. Any such disposition by stipulation shall not bar referral of the matter to the Council of Elders for a good standing determination.
- (2) The investigator shall commence and complete an investigation within fifteen (15) days after notification from the Chief Commissioner of the reasonable cause determination (unless good cause is found by the Chief Commissioner, in his or her sole discretion, to extend such (time) and shall afford the respondent an opportunity to confidentially review the findings of the investigation before the hearing.
 - (3) *General rules.* There must be a quorum of three (3) Commissioners for a hearing to proceed. A determination of violation of this Article can be made only upon the affirmative vote of a majority of the Commissioners. A finding that a violation occurred must be supported by a preponderance of the evidence.
 - (4) *Presentation of case.* The investigator shall present the results of the investigation in front of the Commission at the hearing. The investigator shall also have the opportunity to rebut any evidence and cross-examine any witnesses presented by the respondent.
 - (5) *Rights of the respondent.* The respondent has the right to attend the hearing, the right to make a statement, the right to present evidence, the right to present and cross-examine witnesses, and the right to be represented by legal counsel.
- (h) *Disposition of complaint.*
- (1) *Written decision.* The Commission shall make all reasonable efforts to issue a written decision within ten (10) days from the closing of the hearing. The Commission shall state its findings in the written decision. The written decision shall either:
 - (i) Dismiss the complaint, with the grounds for dismissal set forth in the decision; or
 - (ii) Find that there has been a violation of this Article, identify the particular provision or provisions violated, and specify the sanctions and/or penalties imposed pursuant to Section 1-262.
 - (2) *Notification.* Copies of the findings and decision must be forwarded to the complainant, the respondent, and the appropriate branch of the government.
 - (3) *Similar charges barred.* If the complaint is dismissed because the evidence failed to establish a violation of this Article, the Commission shall not have jurisdiction for any other similar complaint based on substantially the same evidence.
- (i) *Independent legal counsel.* The Chief Commissioner, in consultation with the Attorney General, shall prepare and maintain a list of independent legal counsel who may serve to assist and advise the Commission when its duties require legal work that is beyond the qualifications of the Commissioners. However, the Commission shall only use independent legal counsel when the cost is covered within its budgeted funds, unless a request therefore is otherwise approved by the Tribal Council. The Tribal Council shall not unreasonably withhold approval of such request.

Sec. 1-261. Advisory Opinions and No Objection Letters.

- (a) Any public official who is subject to this Article may request advice from the Chief Commissioner with respect to a course of action which the requesting party proposes to pursue.
- (b) The Chief Commissioner shall handle all requests for advice.
 - (1) *Limitations on issuance of advisory opinions.*

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- (i) The Chief Commissioner will in his or her sole discretion only grant requests when:
 - (A) The matter involves a substantial or novel question of fact or law and there is no clear Commission or Achukma Nation Court precedent; or
 - (B) The subject matter of the request is of significant interest to The Tribe.
 - (ii) Hypothetical questions will not be answered.
 - (iii) A request normally will be considered inappropriate where:
 - (A) The same or substantially the same course of action is under investigation or is or has been the subject of a current proceeding involving the Commission or another governmental agency; or
 - (B) An informed opinion cannot be made or could be made only after extensive investigation, clinical study, testing, or collateral inquiry.
 - (iv) Opinions are available with respect to proposed conduct, not conduct that is ongoing; and it needs to be intended conduct, not merely possible conduct. If the Commission becomes aware of ongoing conduct that it believes is in violation of this Article, the Commission may file a complaint in accordance with Section 1-260 of this Article.
 - (v) The proposal must be in writing and fully enough developed so that it can be evaluated.
- (c) *Nature of advice.* If the request is granted, the Chief Commissioner or other Commissioner, if assigned, will inform the requesting party of his or her opinion of legality based on the materials submitted, as well as any other information available.
- (d) *Effect of advisory opinion.* Any advice contained in an advisory opinion is without prejudice to the right of the Commission to reconsider the questions involved and, where the public interest so requires, rescinding or revoking the advisory opinion. Notice of such rescission or revocation will be given to the requesting party so that he or she may discontinue the course of action taken pursuant to the advice. The Commission will not proceed against the requesting party with respect to any action taken in good faith reliance upon the advice under this Section, where all relevant facts were fully, completely, and accurately presented and where such action was promptly discontinued upon notification of rescission or revocation of the advisory opinion.
- (e) *Request for an advisory opinion.*
- (1) All requests must be made in writing and forwarded to the Chief Commissioner.
 - (2) The request should:
 - (i) State clearly the question(s) that the applicant wishes resolved;
 - (ii) Cite the provisions of law under which the question arises; and
 - (iii) State all facts which the applicant believes to be material.Submittal of additional facts may be requested prior to the rendering of any advice.
 - (3) The Advisory Opinion has no application to a party that does not join in the request. All requests and advisory opinions are confidential.
- (f) *Request for no objection letter.* Any public official with a question about the application of this Article to intended conduct to be taken by the public official or a member of his or her immediate family and who believes that the question may have already been determined under Achukma Nation law or by prior advisory opinion may make a written request to the Chief Commissioner for a no objection letter. Upon receipt of such a request, the Chief Commissioner may:

- (1) Request additional information;
- (2) Reject the request if the conduct is clearly not permitted under Achukma Nation law or prior advisory opinion;
- (3) Provide a no objection letter confirming that the Commission has no objection to the intended conduct as in compliance with this Article, which letter may include conditions or requests for additional or ongoing disclosures; or
- (4) If he or she finds that the question presented is new or requires Commission attention, he or she shall handle the request as an advisory opinion, with notice thereof to the requesting public official who shall have the option of withdrawing the request. All no objection letters shall be kept confidential except that any public official or immediate family member may disclose a no objection letter to his or her investors, lenders or advisers and may provide a copy of such letter in connection with any bid or contract for the provision of products or services to The Achukma Nation Tribe.

Sec. 1-262. Sanctions and Penalties.

(a) *Administrative sanctions.*

- (1) Upon finding that there has been violation of any provisions of this Article, the Commission may impose any or all of the following penalties or sanctions:
 - (i) When a violation is clearly unintentional and minor, issuance of a letter of notification to the respondent advising the respondent with steps to take to avoid future violations;
 - (ii) When a violation is minor and unintentional, but calls for a more substantial response than a letter of notification, issuance of a private reprimand, with or without suspension of any or all other sanctions provided herein;
 - (iii) When a violation is intentional or committed through disregard of this Article, issuance of a written public reprimand, which shall be entered into such person's permanent record of public office maintained by The Tribe or by the Tribal Entity in which such person is a member;
 - (iv) When a violation is serious or repeated and has been committed intentionally or through culpable disregard of this Article, the recommendation of removal from an appointed office forwarded to the Tribal Council or any other Governmental Body of The Achukma Nation with appointment authority over such public official for final removal action;
 - (v) Imposition of restitution or other civil penalties to The Achukma Nationas hereinafter provided under Subsection (b) of this Section for any violation of this Article;
 - (vi) Suspension of business dealings between a business in which the Public Official has an interest in the profits and The Tribe or any Tribal Entity; and
 - (vii) Referral to the Council of Elders for a good standing determination, subject to the good standing provisions of the Achukma Nation Membership Ordinance and applicable Rules and Procedures adopted pursuant thereto.
- (2) The Commission shall be limited to the issuance of the sanctions and penalties enumerated in this Article. No sanctions or penalty provided herein shall limit any other powers of the Tribal Council, the Council of Elders, the arbitration Disputes Court, or the Achukma Nation Tribal Court or of any other entity or administrative officials or employees under other applicable law, rules, regulations or procedures.

(b) *Other penalties.*

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- (1) A person found in violation of this Article by the Commission shall be further subject to, and personally liable for, the following penalties which may be imposed by the Commission, without regard to the imposition of any administrative sanctions:
 - (i) Any Public Official who realizes an economic benefit as a result of violation of any prohibition or restriction set forth in this Article shall be liable to The Tribe for up to three (3) times the amount or value of the benefit or benefits so obtained; and/or
 - (ii) Restitution for the cost of the process, including but not limited to attorney's fees and Commission fees due to his or her violation of any Standard of this Article.
- (2) If two (2) or more persons are responsible for any violation, they shall be jointly and severally liable to The Tribe for the full amount of any civil penalties prescribed herein.
- (3) Any civil penalties imposed hereunder shall be collected in any manner authorized for recovery of debts or obligations owed to The Tribe and shall be paid into the treasury of The Tribe.
- (4) No imposition of any or all civil penalties provided herein shall be a bar to institution of any civil, criminal or misdemeanor action, liability, judgment, conviction or punishment otherwise applicable hereto, nor shall determination of any such civil damages be barred thereby.

Sec. 1-263. Appeals.

- (a) Any party aggrieved by a final decision of the Commission may appeal such decision to the Achukma Nation arbitration Disputes Court or the Achukma Nation Tribal Court, as appropriate, in accordance with the appropriate court rules.
- (b) Such appeal must be made within twenty (20) days of notice of such final decision of the Commission. The Achukma Nation Court shall hear the appeal on the record, unless an application is made to the Achukma Nation Court by a party for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the Commission; the court may order that the additional evidence be taken before the Commission upon conditions determined by the court. The Commission may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions, with the reviewing court.
- (c) The appeal shall be conducted by the Achukma Nation Court without a jury and shall be confined to the record, except as provided by this Section.
- (d) The Achukma Nation Court shall not substitute its judgment for that of the Commission as to the weight of the evidence on questions of fact.
- (e) The Achukma Nation Court shall issue its decision, affirming, modifying, remanding or reversing the decision of the Commission. If particular action by the Commission is required by law, then the Court may render a judgment which modifies the Commission action, orders the particular Commission action, or orders the Commission to take such action as may be necessary to effectuate the particular action. The decision of the Achukma Nation Court shall include its findings, conclusions of law and award. Any decision of the Achukma Nation Court, in the absence of an appeal there from, shall become final after a period of twenty (20) days has expired from the issuance of the Court's judgment or decision.

Sec. 1-264. Retaliatory Action Prohibited.

Neither The Achukma Nation nor any public official shall retaliate or discriminate against an employee or Tribal member as a result of such person's filing of a complaint relating to this Article or because such person testified or is about to testify in a proceeding related to this Article. If any person violates this section, he or she

should be held accountable, if applicable, to Standard Q of this Article and to any other applicable policies or laws of The Achukma Nation Tribe.

Sec. 1-265. Frivolous Complaints or False Statement.

- (a) If the Chief Commissioner finds that a complainant knowingly filed a frivolous complaint, the Chief Commissioner may impose any or all of the following sanctions:
 - (1) A civil fine up to \$1,000.00;
 - (2) Prohibition from filing any additional complaint for up to one (1) year;
 - (3) A referral to the Council of Elders for a good standing determination; and/or
 - (4) Restitution for the cost of the process, including but not limited to attorney's fees and fees of the Chief Commissioner due to the filing of the frivolous complaint.
- (b) The Commission may impose on any individual who makes a false statement under oath to the Commission a civil fine of up to \$1,000.00 and refer such individual, if he or she is a Tribal member, to the Council of Elders for a good standing determination.
- (c) Any sanctions imposed under this Section can be appealed through the appropriate Achukma Nation Court pursuant to Section 1-263 of this Article.

Secs. 1-266—1-310. Reserved.

ARTICLE III. FREEDOM OF INFORMATION ORDINANCE

Sec. 1-305. Title, Effective Date, Authority and Purpose.

- (a) The Achukma Nation here by enacts a Freedom of Information Ordinance (FOIO) that shall become effective upon passage and shall apply to all requests made by Achukma Nation Tribal Members for inspection and/or copying of records in the possession of and belonging to the Achukma Nation Tribe. This Article shall only apply to requests made by Achukma Nation Tribal Members.
- (b) This Article is adopted by the Tribal Council of the Achukma Nation pursuant to the Achukma Nation Constitution, Article IX, Section 1 and Section 2(c) to establish procedures for the conduct of government and business operations; Section 2(l) to promote and protect the health, peace, morals, education, and general welfare of the Tribe and its members; Section 2(n) to establish and enforce all ordinances governing tribal members, including, but not limited to, ordinances delineating civil laws and providing for the maintenance of law, order and the administration of justice; Section 2(q) to establish departmental structure and delegate appropriate powers; and Section(t) to pass ordinances necessary or incidental to the exercise of any of its constitutional powers or duties.
- (c) The intent of the Article is to afford to Achukma Nation Tribal Members, but not the members of the general public, a right of access to records, while permitting some categories of information to be withheld where nondisclosure is believed to be in the interest of the Achukma Nation Tribe. Access to records by Achukma Nation Tribal Members, however, is conditioned upon the obligation not to disclose such records to the general public unless, as to any such record only, the Achukma Nation has released such record to the general public pursuant to applicable law or by other official action, or unless public disclosure of such record is specifically required by applicable law.

Sec. 1-306. Definitions.

- (a) "Achukma Nation Court" shall mean the Achukma Nation Tribal Court or the Achukma Nation arbitration Disputes Court, whichever is applicable, and applicable appellate divisions and/or bodies therefrom.
- (b) "Achukma Nation Tribe" shall mean the Achukma Nation Tribal government, its instrumentalities, commissions, agencies and businesses wholly owned by the Achukma Nation Tribe, or any other entity which has filed or intends to file statements or reports to the U.S. Securities Exchange Commission pursuant to federal securities laws or financing requirements.
- (c) "Achukma Nation Tribal Members" shall mean members in good standing of the Achukma Nation who are over the age of eighteen (18) years old.
- (d) "Records" shall mean all official documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar material prepared and maintained or received by the Achukma Nation in the course of its operation, but does not include drafts, notes, recommendations, opinions, materials related to policy or goal formulation, interoffice communications relating to proposals, electronic mail, or purely personal property materials of the custodian. Records that will be available to Achukma Nation Tribal Members are set forth in Section 1-409 herein.

Sec. 1-307. Tribal Freedom of Information Commission.

- (a) *Creation and Composition.* There is hereby created a Freedom of Information Commission ("Commission") that shall be composed of a minimum of three (3) members to be appointed as hereinafter provided.
- (b) *Appointment.* There shall be appointed one (1) Chief Commissioner and a minimum of two (2) other Commissioners and one (1) alternate. Initially, the Chief Commissioner shall be appointed to a two-year term and the other Commissioner(s) shall be appointed to a one-year term. After the first appointments, every appointment shall be for a term of two (2) years. There shall be no prohibition on Commissioners being reappointed. There shall be no prohibition against appointing an existing or a former Commissioner to be the Chief Commissioner.
- (c) *Chief Commissioner.* All communications on behalf of the Commission with any outside parties shall be conducted through the Chief Commissioner, and the Chief Commissioner shall perform other duties as may be prescribed by the rules and regulations promulgated pursuant to this Article, except as otherwise provided in this Article.
- (d) *Removal.* Each Commissioner shall be sworn to the faithful performance of his or her duties and to uphold the integrity and independence of his or her position by avoiding impropriety in all activities and by remaining personally impartial, conducting himself or herself without consideration of partisan or factional interests, public sentiment or criticism. Each Commissioner shall perform the duties of the position diligently. The Achukma Nation Tribal Council may remove a Commissioner for neglect of duty, incompetence, misconduct, disability that makes the Commissioner unable to discharge his or her powers or duties, engagement in behavior involving moral turpitude, or criminal conviction of any misdemeanor or felony.
- (e) *Qualifications.* A Commissioner must meet the following minimum qualifications:
 - (1) A bachelor's degree from an accredited college or university and ten (10) years of professional work experience. The degree or work experience shall be in relevant areas, such as law, accounting, or business. Advanced degrees and certifications, such as Certified Public Accountant, Juris Doctorate, and Master of Business Administration are helpful, but not required;
 - (2) Demonstrated experience in analyzing and interpreting laws, regulations, financial reports, policies and procedures;
 - (3) Demonstrated knowledge of freedom of information laws;

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- (4) Strong interpersonal, verbal and written communication skills; and
 - (5) Demonstrated ability to deal effectively and efficiently with situations requiring resolution and negotiations skills.
- (f) *Disqualification.* No person shall be appointed to the Commission who is related by blood or by marriage up to the degree of first cousin to any public official; is in or has within the prior three (3) years had an employment or business relationship with the Achukma Nation Tribe; and/or has any other conflict of interest; provided, however, that the Tribal Council, by resolution, may appoint one or more members to the Commission who serve on the Ethics Commission. This subsection does not automatically prevent a Achukma Nation Tribal Member from being appointed. However, a Achukma Nation Tribal Member can be disqualified under this section as any other person.
- (g) *No application of Tribal Employment Rights Ordinance.* The Achukma Nation Tribal Employment Rights Ordinance shall not apply to any appointment or removal of any Commissioner under this Article. However, the Achukma Nation will encourage Achukma Nation Tribal Members to apply for the positions.
- (h) *Status.* Commissioners shall be independent contractors of the Achukma Nation and shall be compensated at an hourly rate, as determined by the Achukma Nation Tribal Council.
- (i) *Powers and Duties.*
- (1) The Commission will be responsible for reviewing appeals of the decisions of the Achukma Nation Tribe's Deputy Attorney General ("Deputy Attorney General") by majority vote. The Chief Commissioner shall have the additional duty of recommending to the Tribal Council regulations to assist the Commission in the fulfillment of its duties.
 - (2) The Commission shall have the authority to inspect the records subject to the appeal by an in-camera review to make its decisions. It shall have all the power to: summon and examine under oath such witnesses, direct the production of, examine or cause to be produced or examined tribal records at issue and issue subpoenas, except for records that are clearly and expressly excluded by any exemption herein.
 - (3) In the case of a refusal to comply with such production of records or request for a lawful interrogation, or a subpoena under Section 1-307(i)(2) herein, through a proceeding, the Achukma Nation Court may issue an order requiring compliance on an application of the Commission.

Sec. 1-308. FOIO Procedures.

- (a) *Standing.* Only Achukma Nation Tribal Members shall possess the right to:
- (1) Obtain copies of records that have been released by the Achukma Nation to the general public or that have been published by the Achukma Nation on the official Achukma Nation Tribal Member website; and
 - (2) Obtain access by on-site inspection to all other non-exempt tribal records.
- (b) *Form of Request.* The request for records ("request") shall be made in writing and signed by the Achukma Nation Tribal Member making the request on the official forms prescribed by the Deputy Attorney General that describe, with specificity, the nature of the record(s) being requested so that the Deputy Attorney General will be able to make a determination as to whether or not access should be granted. The request shall be mailed by certified mail or hand-delivered to the Deputy Attorney General at the Tribal offices.
- (c) *Determination.* The initial determination as to whether access for inspection under Section 1-409(c) will be granted shall be made by the Deputy Attorney General, after consultation with the agency, authority, commission or department of the Achukma Nation which is custodian of the requested record and with the Attorney General within ten (10) business days of the request ("determination"), unless the Deputy Attorney

General finds good cause for a longer time period within his or her sole discretion. Each determination shall be provided to the requesting Achukma Nation Tribal Member, the custodian of the record for the Achukma Nation Tribe, the Attorney General and the Tribal Council in writing detailing the reasons for access or denial and either hand-delivered or sent by certified mail within said ten (10) business days of the request. Each determination shall notify the requester of his or her right to appeal to the Commission, if the requester disagrees with the determination.

- (d) *Access.* Within five (5) business days after the determination, if the determination was to grant access, the Deputy Attorney General or his or her designee will make the records available for the Achukma Nation Tribal Member to inspect during business hours as set forth in Section 1-409(c) of this Article; or give the Achukma Nation Tribal Member a written description of responsive records, if such records are not readily available, along with a timetable stating when such records will be available for inspection.
- (e) *Appeal.* The requesting Achukma Nation Tribal Member can appeal the determination to the Commission, only if the appellant makes the written request for the appeal within ten (10) business days of the determination. If no request for appeal is filed within this ten (10) business day period, the determination shall be final and not subject to any appeal. However, the determination shall be enforceable within the Achukma Nation Court.
- (f) *Commission procedures.* If an appeal is filed with the Commission within the time limit contained in Section 1-408(e), the Commission's review of the determination shall be de novo. The Commission shall issue its decision by majority vote within twenty (20) business days of the filing of the appeal. The decision of the Commission shall not be subject to any appeal, but shall be enforceable within the Achukma Nation Court.

Sec. 1-309. Access to Records.

- (a) The Achukma Nation makes the following information available to the general public. Accordingly, such information shall be delivered to a Achukma Nation Tribal Member promptly (within two (2) business days) upon a request:
 - (1) Achukma Nation Court pleadings and opinions, in accordance with the Achukma Nation Court System Ordinance, the Achukma Nation arbitration Disputes Ordinance and the rules and regulations of the Achukma Nation Court;
 - (2) Official laws and regulations adopted by the Tribal Council and the Council of Elders;
 - (3) Publicly filed organizing documents of any Achukma Nation entity;
 - (4) All financial disclosures that have been made public; and
 - (5) Such other information as the Achukma Nation Tribe, under other applicable law or by other official action, releases to the general public
- (b) The Achukma Nation also makes the following records available to Achukma Nation Tribal Members through the official Achukma Nation Tribal Member website. Accordingly, a copy of such records shall be promptly delivered (within two (2) business days) to a Achukma Nation Tribal Member upon a request:
 - (1) Minutes of Tribal Council and Council of Elders open session meetings; and
 - (2) Resolutions adopted by the Tribal Council and Council of Elders in open session meetings.
- (c) The following Records shall be made available to a requesting Achukma Nation Tribal Member at the Achukma Nation Tribe's offices for inspection during business hours, unless otherwise exempt by this Article:
 - (1) Department structure of the tribal government;
 - (2) Salary and benefits received by elected officials of the Achukma Nation Tribe;
 - (3) Human Resources policies and policies regarding Tribal Member services;

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- (4) Semi-annual non-audited financial statements, limited to balance sheets and income statements;
 - (5) Annual financial audits;
 - (6) Prepared presentations, subsequent to and in the form presented to the tribal membership at a quarterly meeting; and
 - (7) Summary of the annual budget as prepared by the Achukma Nation Tribe's Finance Department.
- (d) Nothing in this Section 1-409 shall be construed to amend or otherwise prevent Achukma Nation Tribal Members from obtaining access to documents that are otherwise available for review to Achukma Nation Tribal Members under applicable law (for example, documents available for review under Section 1-255(d) of the Ethics Code).
- (e) All records of the Achukma Nation are proprietary information of the Achukma Nation and remain proprietary to the Achukma Nation notwithstanding that Achukma Nation Tribal Members are given access thereto. If a Achukma Nation Tribal Member obtains any record under the procedures set forth in this Article or in any other manner and discloses such record to the general public (unless the Achukma Nation has made such record available to the general public), it is a violation of law. The Achukma Nation may bring an action against the Achukma Nation Tribal Member for damages and/or for equitable relief for wrongful disclosure of records hereunder. The Achukma Nation Tribal Member also may be referred for a good standing determination under the Membership and Enrollment Ordinances of the Achukma Nation for wrongful disclosure of records hereunder.

Sec. 1-310. Exempt Records.

- (a) Tribal government records often include matters relating to Tribal business enterprises or relating to the personal information about tribal members, their spouses and employees. Often the Tribal Government's business enterprises compete with other businesses. Furthermore, some of the Tribal government's businesses are required to comply with federal securities regulations. The purpose of these exceptions is to address the non-disclosure of records of a sensitive nature, where the Achukma Nation Tribal Member's right to access is outweighed by the Achukma Nation Tribe's interest in keeping such records private. The following records shall be exempt from being available to Achukma Nation Tribal Members and therefore any request for inspection thereof shall not be granted:
- (1) Any personal identifiable information including but not limited to medical, financial (including individual compensation) and personnel records or information, social security numbers, addresses, and phone numbers, which would constitute an invasion of privacy;
 - (2) Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity;
 - (3) Matters specifically exempted from disclosure by applicable federal, state, or tribal statute or law or a law with which the Achukma Nation complies out of comity. These include, but are not limited to, the Achukma Nation Tribal Roll and enrollment information as set forth in the Tribal Enrollment Ordinance and any financial disclosures that would be material and non-public;
 - (4) Any and all records related to contracts containing a confidentiality or nondisclosure provision; any proposed contracts; and employment-related contracts;
 - (5) Any records containing trade secrets or information that would be deemed privileged in litigation;
 - (6) Records from the Tribal Council or the Council of Elders executive session meetings;
 - (7) Records that would reveal the exact location of archaeological sites;
 - (8) Records related to security;

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- (9) Any court records that would otherwise not be disclosed to the public by the Achukma Nation Court; and
 - (10) Records or information for which disclosure would jeopardize the functioning of the tribal government or an entity owned, in whole or in part, by the Achukma Nation Tribe.
- (b) Nothing in this Section 1-410 shall be construed to prevent a Achukma Nation Tribal Member from obtaining access to such Achukma Nation Tribal Member's information (for example, medical or financial records of such Achukma Nation Tribal Member).

Sec. 1-311. Sovereign Immunity.

Nothing contained in this Article is intended or shall be construed to either waive the sovereign immunity of the Achukma Nation or its entities, agencies and instrumentalities or create a private right of action in any individual or individuals, partnership, association, corporation, business trust, legal representative, any organized group of individuals or any other person or entity. Only determinations and Commission decisions may be enforced in the Achukma Nation Court. Nothing in this Article shall be construed to be a waiver for any monetary or other damages whatsoever.

The sovereign immunity of the Achukma Nation shall attach to the actions of the Achukma Nation Tribe; the Deputy Attorney General; any Department Head, and any individual acting on behalf of the Achukma Nation Tribe, or any of their affiliated governmental entities.

Sec. 1-312. Reserved.

ACHUKMA NATION OF INDIANS CODE
Chapter 1 - GOVERNMENT
ARTICLE IV. RESERVED

ARTICLE IV. RESERVED

Sec. 1-325—1-427. Reserved.

Sec. 1-428—1-449. Reserved.

ARTICLE V. ACHUKMA NATION CODE

CODIFICATION OF AMENDMENT 5 OF THE ACHUKMA NATION CONSTITUTION THE UNLAWFUL POSSESSION OF PROPERTY ACT OF THE ACHUKMA NATION INDIAN TRIBE

Sec. 1-450. Short Title

This Act may be cited as the Unlawful Possession of the Achukma Nation Indian Tribe Property Act.

Sec. 1-451. Definitions

In this Act:

This Act addresses the legal issue of theft of intellectual property and tribal land within the jurisdiction of the "Georgia, Achukma Nation Indian Tribe".

1. " The Act applies to Any property belonging to the Tribe or any enrolled tribal member" includes any property, tangible or intangible, that is owned or held by the Tribe or any of its enrolled members, including but not limited to land, house, businesses, intellectual property, trademarks, trade secrets, data and other forms of property.

2. Authorized person: means

- a. any enrolled tribal member who owns any property tribal or personal.
- b. any person authorized and appointed to arrest suspected persons.

3. Color of Title:

Color of title refers to a claim of ownership or legal right to a property that appears to be valid on the surface, but is actually defective or invalid in reality.[1][2][3][4] Some key points about color of title:

a. It arises when a person holds documents or evidence that seem to give them legal title to a property, but there is some flaw or defect that makes the title invalid.[1][2][3]

- Examples include a deed with errors, a forged title, or a title obtained through fraud or mistake.[2][3][4]

b. Resolving color of title issues is important to establish clear and valid ownership of a property, which is necessary for tasks like selling, transferring, or insuring the property.[2][4]

In summary, color of title refers to an apparent claim of ownership that is legally flawed or invalid, but may still have legal implications, particularly around adverse possession.[1][2][3][4]

Citations:

[1] <https://www.merriam-webster.com/legal/color%20of%20title>

[2] <https://www.realestateexamscholar.com/what-does-color-of-title-mean/>

[3] <https://realestatelicensewizard.com/color-of-title/>

[4] <https://realestateexamninja.com/color-of-title/>

[5] <https://www.legalmatch.com/law-library/article/real-property-color-of-title.html>

4. Court: means Yerushalayim County Tribal Court, Achukma Nation Tribal Court, Federal Court, Common Law Court and/or local or State Courts.

5. Data: A collection of discrete or continuous values that describe quantity, quality, facts, statistics, or symbols, which may be interpreted formally.

6. defective title: defects that can make a title "colorable" or defective:

a. Deed Errors:

- Mistakes or inaccuracies in the legal description of the property
- Failure to comply with local real estate standards or formalities
- Forged or fraudulent deeds

b. Ownership Issues:

- Title held by a minor, person of unsound mind, or undocumented immigrant
- Contested or unknown heirs after the owner's death
- Impersonation of the true property owner

c. Liens and Encumbrances:

- Unpaid taxes or other debts that result in a lien on the property
- Unresolved mortgages or judgments from prior owners

d. Boundary Disputes:

- Errors or discrepancies in property surveys or legal descriptions
- Overlapping claims of ownership with neighboring properties

e. Clerical or Recording Errors:

- Mistakes in the public records when the deed or title was filed
- Missing or incomplete documentation in the chain of title

These types of defects, even if they appear to give valid title on the surface, can ultimately make the title "colorable" rather than a clear, legally recognized ownership. This can lead to issues when trying to sell, transfer, or insure the property.

The key is that the title has some flaw or defect that prevents it from being a fully valid and marketable title, even if it seems legitimate at first glance. Resolving these color of title issues is important to establish clear ownership.

Citations:

[1] <https://attorneysre.com/color-of-title/>

[2] <https://metropolitantitle.com/2020/08/13/8-common-title-defects/>

[3] <https://www.legalmatch.com/law-library/article/real-property-color-of-title.html>

[4] <https://www.realestateexamscholar.com/what-does-color-of-title-mean/>

[5] https://www.law.cornell.edu/wex/color_of_title

7. Enrolled tribal member: means a member of the Achukma Tribe who is listed on the official tribal roll.

8. Government: means the Achukma Nation and includes any entity that is acting as a de jure or de facto government, government agency, local, state, federal, or international government, quasi-governmental agency, supported by the government but managed privately agency, political sub-division.

9. Indian Tribe: means the Achukma Nation Indian Tribe.

10. Infringer: means any person who violates any provision of this Act.

11. Nation: means the Achukma Nation Indian Tribe and or any other nation.

12. person:

(1) Any person residing, located or present within the Achukma Nation Reservation.

(2) Any person who transacts, conducts, or performs any business or other activity within the Achukma Nation Reservation, either in person or by an agent or representative, for any civil cause of action for any act expressly prohibited by this Article or other Achukma Nation Tribal law arising from such business activity.

(3) Any person who owns, rents, leases, uses or possesses any property within the Achukma Nation Reservation, for any civil cause of action prohibited by this Article or other Achukma Nation Tribal law arising from such ownership, use or possession.

(4) Any person who commits a civil offense prohibited by this Article or other Achukma Nation Tribal law, by his/her own conduct or the conduct of another for which he/she is legally accountable, if:

(i) The conduct occurs either wholly or partly on the Achukma Nation Reservation; or

(ii) The conduct which occurs outside the Achukma Nation Reservation constitutes an attempt, solicitation, or conspiracy to commit an offense within the Achukma Nation Reservation, and an act in furtherance of the attempt or conspiracy occurs within the Achukma Nation Reservation; or

(iii) The conduct which occurs within the Achukma Nation Reservation constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense prohibited by this Article or other Achukma Nation Tribal law and such other jurisdiction.

(5) Any person who is served with process on the Achukma Nation Reservation.

(6) Any person who consents to such jurisdiction.

(7) Any person who violates the civil rights of any person, as defined in the Indian Civil Rights Act, 25 U.S.C. §§ 1301-1303, on the Achukma Nation Reservation to the extent permitted by the Achukma Nation Constitution.

13. Property: includes both tangible and intangible property, owned, leased, or rented.

14. Public official: includes any and all public officials, government officials, and tribal officials.

15. Quasi-governmental agency: means any association, commission, agency, authority, organization, public-private entity, or any other entity, in which one or more public agencies exercise substantial control as evidenced by whether the public agency maintains the ability to review, approve, or reject the quasi-governmental agency's proposals or plans, holds a beneficial interest in the quasi-governmental agency's assets,

is the primary source of funding of, or is indebted to, or is a creditor of, or guarantor of the debts of, the quasi-governmental agency.

16. Suspected person: means any person who:

(a) Has in their possession or control any land, property, Tribal property personal property or article of agricultural produce in any place, or

(b) Has in their possession or control anything, any land, property, Tribal property personal property including an article of agricultural produce, under circumstances that reasonably cause any constable or authorized person to suspect that it has been stolen or unlawfully obtained.

17. Trademark: Any Mark that is Common law and/or Registered with any agency, tribal or governmental agency under the Laws of International law and the Lanham act.

18. Theft is the unlawful taking and removing of personal property from the possession of another person without their consent, with the intent to deprive the rightful owner of that property.

a. The key elements of theft are:

1. The unauthorized taking or exerting of control over the property of another person.
2. The intent to deprive the owner of the property, either permanently or temporarily.
3. The property must be capable of being stolen, such as physical goods, money, or services.

b. Theft encompasses various specific crimes like larceny, robbery, burglary, and embezzlement.

1. It is considered a property crime and can range in severity from petty theft to grand theft depending on the value of the stolen property.

19. Theft of service refers to the crime of knowingly obtaining a service without paying for it. Examples include leaving a cab, bus, or subway without paying the fare, eating at a restaurant and leaving without paying the bill, or obtaining utility services through deception.

20. "Tribe" means the Achukma Nation Indian Tribe.

21. Tortious interference: Occurs when one person intentionally damages someone else's contractual or business relationships with a third party, causing economic harm.

a. Tortious interference is a common law tort that allows a plaintiff to claim damages against a defendant who wrongfully interferes with the plaintiff's contractual or business relationships. The key elements are:

1. Existence of a valid contract or beneficial business relationship between the plaintiff and a third party.
2. The defendant's knowledge of this contract or relationship.
3. The defendant's intentional and improper interference that induces the third party to breach the contract or disrupt the business relationship.
4. Lack of any privilege or justification for the defendant's actions.
5. Damages suffered by the plaintiff as a result of the interference.

a. The interference can take various forms, such as using threats, coercion, or deception to induce a breach of contract, or engaging in independently tortious conduct like fraud or defamation to disrupt a prospective business relationship. Tortious interference can be either with an existing

contract (intentional interference with contractual relations) or with a prospective economic advantage (interference with prospective economic relations). The legal standards and elements differ slightly between these two types of tortious interference claims. Overall, the key is that the defendant must have intentionally and improperly interfered with the plaintiff's contractual or business relationships, causing the plaintiff to suffer economic harm. The defendant's actions must go beyond mere competition and involve wrongful or unjustified conduct.

22. Trespass is the unlawful entry or intrusion onto the land or property of another without permission or invitation.

a. It is a tort (civil wrong) that involves the violation of a person's exclusive right to possess and use their real property. The key elements of trespass include:

1. An unauthorized entry or invasion of the plaintiff's real property.
2. The entry must be intentional, although some jurisdictions also recognize negligent trespass.
3. The trespasser does not need to cause any actual damage to the property to be liable.
4. Trespass can take different forms, including:
 5. Trespass to land - Entering or remaining on someone else's property without permission.
 6. Trespass to chattels - Interfering with or using another's personal property without authorization.
 7. Trespass to the person - Intentionally invading someone's personal space or bodily integrity.
 8. Trespass is generally considered a strict liability tort, meaning the defendant can be held liable even without proof of negligence or intent to trespass.

Sec. 1-452. Unauthorized Use of Property or Funds of the Tribe

1. The Act prohibits the unauthorized use of property or funds of the Tribe by any public official. A public official shall not use any property of the Tribe or of any governmental body or any other property held for the benefit of the Tribe for personal activities, except where authorized and approved for official purposes and activities or where it does not interfere with official business and involves minimal additional expense to the Tribe.
2. **No public official of any Governmental Body** shall use any property of the Tribe or any other property held for the benefit of The Tribe for personal activities, except where authorized and approved for official purposes and activities or where it does not interfere with official business and involves minimal additional expense to The Tribe.
3. **No Foreign Governmental use of Tribal Land.**
4. Land not to be Sold-WAYYIQRA 25:23'And the land is not to be sold beyond reclaim, for the land is Mine, for you are sojourners and settlers with Me.

Sec. 1-453. Jurisdiction

1. This Act applies to any person who commits an offense within the jurisdiction of the Achukma Nation Indian Tribe.

Sec. 1-454. Theft of Intellectual Property

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1. The theft of intellectual property, including but not limited to patents, copyrights, trademarks, trade secrets, and other forms of intellectual property, belonging to the Tribe or any enrolled tribal member, is prohibited and punishable by law.
 2. In the jurisdiction of Achukma Nation Indian Tribe, this Act applies to the legal issue of theft of intellectual property and tribal land. The Act provides a means for protecting the property rights of the Tribe and its members, and for holding accountable those who unlawfully possess or use Tribe property. The Act also provides for the appointment and authorization of persons to enforce its provisions and to arrest suspected persons. The Act is subject to amendment at any time by the Tribe.

Sec. 1-455. Theft of Tribal Land

1. The theft of tribal land, including but not limited to any land that is owned or held by the Tribe or any enrolled tribal member, is prohibited and punishable by law.
2. This section is intended to protect the land rights of the Tribe and its members. It is important to note that this section applies to both owned and held land, and covers a wide range of land, including residential, commercial, and agricultural land.

Sec. 1-456. Penalties

1. Any person who violates any provision of this Act shall be subject to penalties, including but not limited to fines and imprisonment, as determined by the court.
2. This section outlines the penalties for violating the Act. It is important to note that the penalties may vary depending on the severity of the offense, and will be determined by the court.

(a) Replevin. Any person found in possession of any property belonging to the Achukma Nation Indian Tribe or any enrolled tribal member, in violation of this Act, shall be liable for replevin of such property. The Achukma Nation Indian Tribe or any enrolled tribal member may initiate replevin proceedings to recover the property.

1. Replevin refers to the act of taking possession of property that has been unlawfully taken or detained. In the context of this Act, replevin may be used to recover property that belongs to the Tribe or any enrolled tribal member and has been stolen or unlawfully obtained.
2. Replevin is a legal remedy that allows the Tribe or an enrolled tribal member to recover property that has been unlawfully taken or possessed. This section allows the Tribe or an enrolled tribal member to initiate replevin proceedings to recover the property.

(b) Disgorgement. In addition to replevin, any person found guilty of unlawfully possessing any property belonging to the Achukma Nation Indian Tribe or any enrolled tribal member, in violation of this Act, shall be liable for disgorgement of any proceeds, benefits, or advantages derived from such unlawful possession.

1. Disgorgement refers to the act of giving up or returning any profits or benefits that have been obtained through unlawful means. In the context of this Act, disgorgement may be used to ensure that any person who has profited from the theft of intellectual property or tribal land returns those profits to the rightful owner.
2. Disgorgement is a legal remedy that allows the Tribe or an enrolled tribal member to recover any profits, benefits, or advantages that have been derived from the unlawful possession of their property.

This section allows the Tribe or an enrolled tribal member to recover any profits, benefits, or advantages that have been derived from the unlawful possession of their property.

(c) Criminal Penalties. Any person found guilty of unlawfully possessing any property belonging to the Achukma Nation Indian Tribe or any enrolled tribal member, in violation of this Act, shall be subject to criminal penalties as provided by law.

(d) Civil Penalties. Any person found liable for disgorgement under this Act shall be subject to civil penalties as provided by law and set by the Tribal Fee schedule.

(e) Exceptions. The provisions of this section shall not apply to any person authorized by law to possess the property in question.

(f) Enforcement. The Achukma Nation Indian Tribe or any enrolled tribal member may enforce the provisions of this section through any legal means available under law.

1. This section allows the Tribe or an enrolled tribal member to enforce the provisions of this section through any legal means available under law.

(g) Jurisdiction. This section shall apply to any legal issue involving the theft of intellectual property, tribal land, or any other property belonging to the Achukma Nation Indian Tribe or any enrolled tribal member, with the following terms: "Achukma Nation Indian Tribe".

1. This section clarifies that the provisions of this section apply to any legal issue involving the theft of intellectual property, tribal land, or any other property belonging to the Tribe or an enrolled tribal member.

Sec. 1-458. Enforcement

This Act shall be enforced by the appropriate authorities, including but not limited to the Tribal Officials, Federal Law Enforcement, local and State police and other law enforcement agencies, and the Tribal and Federal courts.

Sec. 1-459. Effective Date

- a. This Act shall take effect on the April 2nd, 2004 pursuant to the amendment of the 2016 Achukma Nation Constitution which was ratified and Amended on the 14th day of the 2nd New Moon in the year 5783 [Man's 17th day of June, 2023] and shall apply to any offenses committed on or after April 2nd, 2004 the date that the 2023 Achukma Nation Constitution was ratified to reflect the change of the original Trust name and date of founding .
- b. This section specifies the effective date of the Act, which is April 2nd, 2004. The Act applies to any offenses committed on or after this date, as the 2023 Achukma Nation Constitution was ratified on the 14th day of the 2nd New Moon in the year 5783 (Man's 17th day of June, 2023) and reflects the change of the original Trust name and date of founding. This means that the Act will be in force and applicable to any offenses committed on or after April 2nd, 2004, regardless of when the offense was committed.

Sec. 1-460. Amendment

We reserve the right to amend this Act at any time.

Approved by the Tribal Council of the Achukma Nation Indian Tribe on April 2nd, 2004.

Sec. 1-461. Color of title

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1. Any person being found to have a color of title to any tribal property, intentionally or unintentionally shall be guilty of violating **Sec. 1-455**. of the UNLAWFUL POSSESSION OF PROPERTY ACT OF THE ACHUKMA NATION INDIAN TRIBE and shall be penalized pursuant to **Sec. 1-456**. To be determined by the Court.

Sec. 1-462. colorable or defective title

1. Any person being found to have a colorable or defective title to any tribal property, intentionally or unintentionally ownership shall be determined by the Tribal Court pursuant title 25 U.S. Code § 194 - Trial of right of property; burden of proof.

Here are some key examples of defects that can make a title "colorable" or defective:

1. Deed Errors:

- Mistakes or inaccuracies in the legal description of the property
- Forged or fraudulent deeds

2. Ownership Issues:

- Title held by a minor, person of unsound mind, or undocumented immigrant
- Contested or unknown heirs after the owner's death
- Impersonation of the true property owner

3. Liens and Encumbrances:

- Unpaid debts that result in a lien on the property

4. Boundary Disputes:

- Errors or discrepancies in property surveys or legal descriptions
- Overlapping claims of ownership with neighboring properties

5. Clerical or Recording Errors:

- Mistakes in the public records when the deed or title was filed
- Missing or incomplete documentation in the chain of title

These types of defects, even if they appear to give valid title on the surface, can ultimately make the title "colorable" rather than a clear, legally recognized ownership. This can lead to issues when trying to sell, transfer, or insure the property.

Sec. 1-463. — Sec. 1-475. Reserved.

ARTICLE VI. RESERVED

Sec. 1-476—1-499. Reserved.

ARTICLE VII. RESERVED

Sec. 1-500—1-599. Reserved.

ARTICLE VIII. RESERVED

Sec. 1-600—1-699. Reserved.

ARTICLE IX. RESERVED

Sec. 1-700—1-799. Reserved.