

CAYUGA NATION JUDICIARY LAW
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Preamble

As a sovereign nation, we, the Cayuga Nation, consistent with the principles of self-determination and self-governance, hereby adopt through our lawful governing body, the Cayuga Nation Council, this Judiciary Law.

In adopting this Judiciary Law, we seek to establish and administer justice among our citizens and others on our lands in a manner befitting and respecting our heritage, laws, customs, and traditions.

1. Purpose and Policy

- 1.1 The purpose of this law is to establish a Judiciary, and to provide for the administration of law, justice, judicial procedures, and practices by the Cayuga Nation as a sovereign nation by exercising the inherent power to make, execute, apply, and enforce its own law, and to apply its own customs and traditions in matters affecting Cayuga Nation citizens.
- 1.2 It is the policy of the Nation to provide a fair and impartial forum for the resolution of all matters that come before it pursuant to a grant of authorization by law.

2. Adoption, Amendment, Repeal

- 2.1 This law is adopted by the Cayuga Nation Council by duly-authorized Resolution.
- 2.2 This law may only be amended by the Cayuga Nation Council in accordance with Cayuga Nation laws, customs, and traditions.
- 2.3 Should a provision of this law or the application thereof to any person or circumstances be held as invalid, such invalidity shall not affect other provisions of this law which are considered to have legal force without the invalid portions.

3. Definitions

- 3.1 The definitions below shall govern the words and phrases used within this law. All words not defined herein shall be used in their ordinary and everyday sense:
 - (a) “Agency” means any Nation board, committee, commission, department, or officer acting on behalf of such an entity and where relevant, a hearing body of such an entity.
 - (b) “Background investigation” means the process utilized by the Nation’s Personnel Department.
 - (c) “Benefit” means money, a service, or thing of value, to which a person is entitled by Nation law upon the satisfaction or fulfillment of named requirements.
 - (d) “Council” means the Cayuga Nation Council.
 - (e) “Court” means the specific court being referred to in any particular section. For example, if the section covers the Trial Court, the term shall mean that court.
 - (f) “Indian” means any person who is a member of any federally recognized Indian tribe or nation.

- (g) “Interlocutory appeal” means an appeal that occurs before the Trial Court issues a final ruling on a case.
- (h) “Judge” means a judge who sits on either the Trial Court or Court of Appeals within the Judiciary.
- (i) “Nation” means the Cayuga Nation.
- (j) “Non-Cayuga judgment” means a judgment, decree or order of any other court which may be entitled to full faith and credit by the Judiciary as determined by the Judiciary.
- (k) “Person” means an individual or group of individuals and any firm, association, organization, partnership, estate, trust, company, or corporation.
- (l) “Pro Tem Judge” means a decision maker who is not currently seated on the Judiciary, but who is appointed on a temporary (pro tempore), case-by-case basis to hear and decide matters in the Trial Court, Court of Appeals, and/or judicial disciplinary panels.
- (m) “Reservation” means all land within the boundaries of the Cayuga Nation’s 64,015 acre Reservation as established by the 1794 Treaty of Canandaigua.
- (n) “Nation law” means the Nation’s traditional laws as well as any statute, rule, regulation, policy, resolution, or ordinance enacted by the Cayuga Nation Council.

4. General Provisions

- 4.1 *Establishment.* There is hereby established a Judiciary, which shall administer the judiciary authorities and responsibilities of the Nation. The Judiciary shall support a separation of Nation governmental powers.
- 4.2 The Judiciary shall consist of the following:
 - (a) The Trial Court as provided under Rule 5, which shall include the following divisions:
 - (1) Mediation Division as provided under Rule 6.
 - (2) General Civil Division as provided under Rule 7.
 - (3) Such other courts or divisions that may be created by Nation law.
 - (b) The Court of Appeals as provided under Rule 8.
- 4.3 *Seals of the Courts.* The Trial Court and the Court of Appeals shall each adopt a seal to be used to authenticate their respective judgments and other documents.

- 4.4 *Proceedings.* Attendance at proceedings of the Trial Court and Court of Appeals by members of the public shall be at the sole discretion of the presiding Judge(s).
- 4.5 *Civil Contempt.* The following provisions shall apply to the courts of the Judiciary.
- (a) Any person who willfully disrupts, obstructs, or otherwise interferes with the conduct of any proceeding in any Nation court, or who obstructs or interferes with the administration of justice by any court, or who disobeys or resists or interferes with any lawful summons, subpoena, process, order, rule, decree, or command of any court shall be subject to punishment for contempt of court.
 - (b) Any person found in contempt of court may be fined in an amount not to exceed one thousand dollars (\$1,000) per act of contempt, and not to exceed five thousand dollars (\$5,000) per instance of continuing contempt. In instances of continuing contempt, each day shall constitute a separate act of contempt.
- 4.6 *Court Personnel.* Court personnel shall serve in accordance with the Nation laws.
- (a) *Court Administrator.* The Chief Judge of the Court of Appeals shall hire a Court Administrator.
 - (b) *Clerks of Court.* The Chief Judge of the Court of Appeals shall hire a person to serve as the clerk of the Court.
 - (c) Court personnel positions shall be contingent upon funding availability.

5. Trial Court

- 5.1 *Judges.* The Trial Court shall consist of one or more judges, duly appointed, as the case may.
- 5.2 *Subject Matter Jurisdiction.* The Nation is a sovereign nation and reserves all sovereign rights, authority, and jurisdiction consistent with being a sovereign nation. The Trial Court shall have subject matter jurisdiction over cases and controversies arising under the following:
- (a) Nation laws which specifically authorize the Trial Court to exercise jurisdiction.
 - (b) Where an agency has denied a person a benefit or has provided a person with an incorrect or incomplete benefit, or has imposed a fine on a person, and the person has exhausted the process provided by law, if any, for review of the action, and
 - (1) A hearing body has not been designated by law for the purpose of an appeal; or

- (2) There is no law providing that the agency's decision is final or not appealable.
- (c) Where a disagreement over the terms, interpretation or enforcement of a written contract, where at least one (1) of the parties is an agency or where both parties meet the personal jurisdiction requirements listed in Rule 5.4.
 - (1) Statute of Limitations. In all cases requiring interpretation or enforcement of a contract, the suit must be filed within twenty-four (24)-months after either:
 - (A) The date a party breaches the terms of the contract; or
 - (B) In actions for declaratory relief, the date a dispute arises as to the interpretation of the contract.
- (d) Where a declaratory judgment is sought to determine the validity of a Nation law, the Trial Court shall render a declaratory judgment in such action only when it appears from the petition and the supporting evidence that the law or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights and privileges of the petitioner. The Trial Court shall declare the law invalid if it finds that:
 - (1) The law violates Nation law; or
 - (2) The law was adopted without compliance with law making procedures required under Nation law.
- (e) Small claims actions where the amount in controversy is five thousand (\$5,000) or less.

5.3 *Territorial Jurisdiction.* The territorial jurisdiction of the Trial Court shall extend to the Reservation and all lands held in trust by the United States for the benefit of the Nation.

5.4 *Personal Jurisdiction.*

- (a) *Indians.* The Trial Court shall have jurisdiction over all Indians.
- (b) *Non-Indians.* The Trial Court shall have jurisdiction over non-Indians who have consented to the jurisdiction of the Nation or Trial Court or as otherwise consistent with federal law.
 - (1) *Consent to Jurisdiction.* For purposes of Rule 5.4(b) above, a person shall have consented to the jurisdiction of the Trial Court by:
 - (A) Entering into a consensual relationship with the Nation, Nation entities, Nation corporations, or Nation members, including but not limited to contracts or other agreements; or

- (B) Other facts which the Trial Court determines manifest an intent to consent to the authority of the Nation or the jurisdiction of the Trial Court, including failure to raise an objection to the exercise of personal jurisdiction in a timely manner.
 - (c) *Long-arm Jurisdiction.* Consistent with Rules 5.4(a) and (b), in any case in which the Trial Court has subject matter jurisdiction, the Trial Court may exercise jurisdiction over any person who has sufficient contacts with the Reservation or Nation trust land. Such sufficient contacts can be demonstrated where a person purposefully avails himself of the Reservation such that he or she could reasonably anticipate being haled into the forum for the resolution of a case or controversy.
- 5.5 *Full Faith and Credit or Comity.* The Trial Court shall give full faith and credit to the orders and judgments of the courts of other Nations, states, and local governments unless:
- (a) The court in question does not recognize the orders and judgments of the Trial Court;
 - (b) The court in question did not have jurisdiction over the case or a party or parties to it;
 - (c) The order or judgment was based on fraud;
 - (d) To do so would violate the public policy of the Nation or would be likely to harm the culture, traditions, or sovereignty of the Nation; or
 - (e) The order or judgment is on appeal or is being contested in another jurisdiction.
- 5.6 *Non-Cayuga Judgments.* A certified copy of any non-Cayuga judgment may be filed with the Clerk of Court. Except as provided under Rule 15.5, the Clerk of Court shall treat the non-Cayuga judgment in the same manner as a judgment of the Judiciary. A judgment so filed shall have the same effect and is subject to the same procedures and status as a judgment of the Judiciary, and may be enforced or satisfied in like manner, except that the Judiciary shall reserve the right to review and modify any non-Cayuga order for the enforcement of a judgment, including but not limited to garnishment orders.
- 5.7 *Writs, Orders and Judgments.* The Trial Court may issue all writs, orders, and judgments necessary in aid of its jurisdiction. All writs, orders, and judgments issued by the Court shall be in the name of the Nation, shall bear the date and the day they are issued, the seal of the Court, and be attested to in the name of the Judge who issued it.

6. Mediation Division

- 6.1 There is hereby established a Mediation Division, under the jurisdiction of the Trial Court, to provide a forum for the use of mediation to resolve disputes in a fair manner. Mediation shall be available at all stages of litigation, including appeals.
- (a) In addition to the requirements set forth in this law, the Trial Court shall ensure that, where necessary, procedural rules governing the operation of mediation are promulgated in accordance with Nation law, except that culturally sensitive information may be omitted from such rules.
- 6.2 A Judge of the Trial Court shall inform the parties of every case of the availability of mediation to resolve their dispute and, except where prohibited by law, may refer the parties to mediation if the parties agree.
- 6.3 *Mediation.* The Judiciary may provide mediation to parties, by any person or public or private entity recognized by the Trial Court and contracted to conduct mediation. Every mediator provided by the Judiciary shall have not less than twenty-five (25) hours of mediation training or not less than three (3) years of experience in dispute resolution.
- (a) *Private Mediator.* The parties may, at their own expense, receive mediation services from a mediator other than the mediator they are referred to by the Judge. Parties who receive services from a private mediator shall be responsible for the cost and shall sign and file with the appropriate Clerk of Court a written notice stating the mediator's name and the date of the first meeting with the mediator.
- (b) *Powers and Duties of a Mediator.* A mediator may:
- (1) Require a party to provide written disclosure of facts relating to any legal issue; and/or
 - (2) Suspend mediation when necessary; and/or
 - (3) Terminate mediation if a party does not cooperate or if mediation is not appropriate.
- 6.4 *Agreement.* Any agreement that resolves issues between the parties and that is reached as a result of mediation shall be prepared in writing, reviewed by the attorney, if any, for each party and submitted to the Judge to be included in the order as a stipulation. The mediator shall certify that the written agreement accurately reflects the agreement made between the parties.
- (a) If, after mediation, the parties do not reach an agreement on all issues in dispute, the mediator shall so notify the Judiciary. The parties may return to mediation at any time during litigation, including appeals.

- (b) Violation of an order that is entered as a result of a mediation agreement is punishable as contempt of court.

7. General Civil Division

- 7.1 There is hereby established a General Civil Division, under the jurisdiction of the Trial Court, to provide a forum for the resolution of all civil actions and proceedings, unless jurisdiction is given to some other division or court.

8. Court of Appeals

8.1 Judges.

- (a) The Court of Appeals shall consist of a full-time Chief Judge.

8.2 Jurisdiction.

- (a) The jurisdiction of the Court of Appeals shall be limited to review of:
 - (1) Final orders, sentences, and judgments of the Trial Court;
 - (2) Appeals of agency decisions or administrative decisions where a provision of Nation law expressly vests such jurisdiction in the Court of Appeals; and
 - (3) Interlocutory appeals of an intermediate ruling, judgment, or order during an original hearing, that wishes to seek intermediate relief. The Court of Appeals shall implement rules that address the timelines for the initial review of an interlocutory appeal, criteria for acceptance of an interlocutory appeal, and procedures for the hearing of such an appeal.
- (b) The Court of Appeals shall be the court of final appeal within the Nation.

8.3 Scope of Appellate Review.

- (a) *Scope of Review.* In hearing an appeal, the Court of Appeals shall not substitute its judgment or wisdom of the credibility of testimony or the weight of evidence for that of the original hearing body.
 - (1) The Court of Appeals' review shall be limited to matters of record in the case, and may reject a finding of fact only where it determines that the finding is clearly erroneous. Where the rejected finding is necessary for the resolution of the issues, the Court of Appeals shall issue an order of reversal. Where the Court of Appeals determines that the original hearing body erred in not admitting relevant evidence, or in admitting irrelevant and prejudicial evidence, the Court of Appeals shall not take additional evidence or make its own judgment, but shall remand the matter to

the original hearing body to reconsider the matter on a proper evidentiary basis.

- (2) Except as otherwise provided by law or rule, the Court of Appeals shall not hear new or additional facts, and issues not raised in the proceedings from which an appeal is taken shall be deemed waived and shall not be considered on appeal.

- (b) *Burden of Persuasion.* The appellant shall have the burden of persuasion.

- (c) *Harmless Error and Discretionary Decisions.* Without limiting the appropriate standard of review, the Court of Appeals shall give due deference to the rule of harmless error and discretionary decisions of the Nation or any Nation agency.

8.4 *The Appellate Decision.* The Court of Appeals' decision shall consist of a written opinion setting forth the reasoning by the Court in resolving the issues of the appeal and an order that shall affirm the decision below, remand the case for further proceedings, including proceedings to supplement the record, or reverse the decision below, in whole or in part, if substantial rights have been denied because the decision of the lower hearing body:

- (a) Violates applicable provisions of the this Judiciary Law;

- (b) Violates provisions, substantive or procedural, of applicable Nation law or applicable federal law;

- (c) Is an administrative decision that is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with applicable law; or

- (d) Is not supported by the substantial evidence on the record taken as a whole.

8.5 *Writs or Orders.* The Court of Appeals may issue all writs and orders necessary in the aid of its jurisdiction. A writ or order issued from the Court shall be in the name of the Nation, shall bear the date it is issued, the seal of the Court, and be attested to in the names of the Judges who issued it.

8.6 *The Chief Judge of the Court of Appeals: Duties.* In addition to his or her other judicial duties, the Chief Judge of the Court of Appeals shall have the duty of administering the Court of Appeals, which shall include the following:

- (a) To oversee proper and impartial management of the Court's calendar and business;

- (b) To appoint Pro Tem Judges to preside over matters where the required number of Judges is not otherwise available;

- (c) To supervise the Court Administrator, the Court of Appeals Clerk of Court, and other Court of Appeals personnel;

- (d) To prescribe standards concerning the training and continued education for Judges of the Court of Appeals; and
- (e) Other duties as prescribed by Nation law or the Judiciary's internal operating procedures.

9. Internal Operating Procedures

- 9.1 *Internal Operating Procedures.* The Judiciary is authorized to establish internal operating procedures governing the operation of the court. The procedures shall not affect substantive rights and shall not conflict with existing law, the Rules of Procedure, or other rules enacted or approved by the Council.

10. Rules of Pleading, Practice, and Procedure

- 10.1 The Judiciary shall create rules of pleading, practice, and procedure to regulate all hearings conducted before it. All submitted comments shall be considered by the Judiciary prior to forwarding the rule to the Council for final action on the rule.
- 10.2 Rules of pleading, practice, and procedure shall be codified as part of the Cayuga Code of Laws.
- 10.3 This section shall not abridge the right of the Council to adopt, amend, or repeal rules relating to pleading, practice, or procedure in accordance with the Nation's lawmaking procedures.
- 10.4 Rules of pleading, practice, and procedure which are in effect on the date of implementation of this law shall remain valid and in effect until amended or repealed under the provisions of this law.

11. Judges

- 11.1 *Qualifications for Judges.* All candidates for, or individuals who may be appointed to, the position of Judge shall submit to a thorough background investigation which shall be completed prior to placement on the ballot or being considered for appointment.
- (a) A person shall be eligible to stand for election, or be eligible for appointment in accordance with Rule 11.9, and to serve as a Judge if such individual:
 - (1) Is an enrolled member of the Nation and is at least thirty (30) years of age on the date of the election or appointment; and
 - (2) Agrees to attend mandatory training, upon election or appointment, as required by the Judiciary training requirements; and
 - (3) Has not been convicted of, or entered a plea of guilty or nolo contendere to, any offense involving fraud or misrepresentation or any felony, unless:

- (A) A pardon has been granted in accordance with the Nation's pardon law at least ten (10) years before the election is held or the appointment is made; or
 - (B) The conviction has been removed from his or her record by executive pardon or state court order at least ten (10) years before the election is held or the appointment is made.
- (4) Is not mentally disabled or mentally unstable.
- (b) Chief Judges. In addition to satisfying the requirements of Rule 11.1(a)(1) through (3), candidates for election or appointment to serve as a Chief Judge shall hold at least one (1) of the following from an accredited institution:
 - (1) A master's degree;
 - (2) A juris doctor degree; or
 - (3) A bachelor's degree and shall have three (3) years of experience as a Judge.
- (c) Non-Chief Judges. In addition to satisfying the requirements of Rule 11.1(a)(1) through (3), candidates for election or appointment to serve as a non-Chief Judge shall hold at least one (1) of the following from an accredited institution:
 - (1) A master's degree;
 - (2) A juris doctor degree; or
 - (3) A bachelor's degree in one (1) of the following fields of study, provided that a degree in a similar field of study shall also qualify:
 - (A) Criminal Justice
 - (B) Education
 - (C) Political Science, including Government, Politics or Public Policy
 - (D) Human Rights
 - (E) Journalism
 - (F) Legal Studies
 - (G) Native American Studies
 - (H) Psychology

- (I) Sociology
- (J) Public Administration
- (K) History
- (L) Business Administration
- (M) Economics or Finance
- (N) Philosophy
- (O) Judicial Studies
- (P) Paralegal Studies
- (Q) Family Law

11.2 *Disclosure.* Prior to placement on a ballot, or prior to appointment to fill a vacancy, candidates seeking to serve as a Judge shall disclose to the Council all previous convictions, including those for which a pardon has been granted, which may disqualify the candidate from serving on the Judiciary.

11.3 *Prohibitions.*

- (a) While serving a term of office, no Judge may:
 - (1) Be elected or appointed to serve on any Nation board, committee or commission, including a Nation-chartered board, committee or commission; or
 - (2) Be otherwise employed by the Nation.
- (b) Candidates elected or appointed to the Judiciary shall resign from any applicable board, committee or commission, or from any paid position with the Nation, with such resignation to be effective prior to that candidate taking the Judicial oath of office.

11.4 *Election of Judges.*

- (a) Judges elected in the first judicial election shall serve terms as provided by resolution. Thereafter, judges shall serve for a term of six (6) years.
- (b) In the event that the swearing-in of a successor is delayed, the successor's term of office shall be diminished by the length of the delay, in order to maintain the staggered terms.
- (c) Any Judge selected by special election shall meet the qualifications listed in Rule 11.1.

- 11.5 *Oath of Office.* Every elected or appointed Judge shall take and file an oath to uphold the Constitution, abide by the Canons of Judicial Ethics, and impartially administer justice.
- 11.6 *Duties of Judges.* Judges shall represent the Judiciary with professionalism and competence. In addition to all other duties imposed by this and other Nation laws, Judges shall:
- (a) Hear and adjudicate cases in accordance with Nation law;
 - (b) Abide by all court rules, Nation laws, and applicable state and federal laws;
 - (c) Complete assignments given by the appropriate Chief Judge;
 - (d) Represent the Judiciary at functions and meetings where appropriate;
 - (e) Maintain the integrity of the system by upholding the Canons of Judicial Ethics, acting ethically and honestly both in private and in public; and
 - (f) Remain informed about changes to Nation, state, and federal laws, and state and federal court and administrative hearing body decisions that may impact Indian country.
- 11.7 *Vacancies.* If a Judge dies, resigns, is removed from office, becomes incapacitated for a period in excess of one hundred eighty (1) consecutive days, or is declared *incompetent* by a court of competent jurisdiction, the office of such Judge shall be declared vacant by the Council; and:
- (a) A special election shall be held to fill the office for the remainder of the Judge's term of office, if two hundred seventy (270) days or more remain in the term of office; or
 - (b) The Council shall appoint a successor to fill the office for the remainder of the Judge's term of office, if fewer than two hundred seventy (270) days, but more than one hundred eighty (1) days, remain in the term.
- 11.8 *Eligibility for Appointment.* Only those persons who meet the requirements of 11.1 are eligible to be appointed by the Council to fill a vacancy on the court.
- 11.9 *Compensation and Benefits.*
- (a) Compensation for Judges shall be initially established through the passage of a resolution by the Cayuga Nation Council. Future compensation shall be in accordance with the Nation budget process, upon approval from the Council.
 - (b) The compensation of Judges shall not be diminished during their term of office, unless a majority of a particular court votes to reduce that entire Court's own compensation equally for that Court's term.

- (c) Full-time Judges shall receive the same fringe benefits that are provided to Nation employees in accordance with established Nation policy.
- (d) Part-time Judges shall receive stipends for their services.

11.10 *Pro Tem Judges.*

- (a) Pro Tem Judges shall be appointed as follows:
 - (1) Where the necessary number of Judges is unable to hear a matter due to conflict of interest, extended absence, or for any other reason, the appropriate Chief Judge shall, subject to approval of such appointment by the Council, appoint Pro Tem Judges to hear the matter.
 - (2) Where a complaint against a Judge has been filed, the Judiciary shall appoint Pro Tem Judges to sit on a disciplinary panel to hear the complaint.
 - (A) A disciplinary panel shall be comprised of three (3) Pro Tem Judges who are currently serving as a Judge for any court located in the state of New York except for the Nation courts. Enrolled citizens of the Cayuga Nation shall be disqualified from serving on a disciplinary panel.
 - (B) An individual shall not serve on a disciplinary panel as a Pro Tem Judge where that individual:
 - (i) Is related to either the Judge facing the complaint, or to the complainant. For purposes of this section, “related to” shall include spouses, parents and parents-in-law, children and son-or-daughter in-law, grandparents, grandchildren, siblings, half siblings, siblings-in-law, first cousins, aunts, uncles, nieces, nephews, step-parents and stepchildren; or
 - (ii) Currently maintains, or has previously maintained, a personal or professional relationship with either the Judge facing the complaint, or with the complainant, whereby the Pro Tem Judge could know of facts unrelated to the proceeding that could cause the Judge to be biased or that could cause the appearance of bias. For the purposes of this section, “a personal or professional relationship” shall include romantic or domestic relationships, caretaker/dependent, attorney/client, counselor/patient and similar relationships.

- (b) While hearing a matter, Pro Tem Judges shall be afforded the same authority and decision making power as an elected or appointed Judge, and shall abide by the requirements of Rule 11.7.
- (c) *Compensation.* Until such time as the Judiciary establishes a payment schedule, Pro Tem Judges shall be compensated in the same manner as part-time Judges and shall be reimbursed for travel and accommodations at the same rate that Nation employees are compensated.

12. Reprimand, Suspension, and Removal of Judges

12.1 Each Judge shall be subject to reprimand; suspension without pay for a definite period of time, not to exceed six (6) months; or removal from office, as set forth in this section for:

- (a) Willful misconduct in office;
- (b) Willful disregard of or failure to perform his or her duties, including upholding Nation law;
- (c) Habitual intemperance;
- (d) Conviction of a crime involving moral turpitude;
- (e) Conduct prejudicial to the administration of justice that brings the judicial office into disrepute; or
- (f) Violating the Canons of Judicial Ethics.

12.2 Any person aggrieved by the conduct of a Judge may file a complaint with the Judiciary, requesting that the Judge be disciplined for violating Rule 12.1.

- (a) Where a complaint has been filed, the Judiciary shall convene a disciplinary panel in accordance with Rule 11.11(a)(2). The disciplinary panel shall conduct an initial hearing to determine if probable cause exists to believe that the Judge has engaged in misconduct. The Judiciary shall, by rule, provide for initial and formal hearing procedures for disciplinary panels.
- (b) In serving on a disciplinary panel, Pro Tem Judges shall abide by the requirements of Rule 11.7.

12.3 If the disciplinary panel does not find probable cause to believe that the Judge has engaged in misconduct, the panel shall dismiss the complaint. All papers filed with, and proceedings before and during the initial hearing shall remain confidential. The filing of a complaint and other papers and the testimony given before the panel during an initial hearing shall be deemed a privileged communication, unless probable cause is found.

- 12.4 If the disciplinary panel does find probable cause, the panel shall provide formal notice of the complaint and finding of probable cause to the Judge and:
- (a) Issue the Judge a reprimand in accordance with Rule 12.5; or
 - (b) Hold a formal hearing in accordance with Rule 12.6, to determine the appropriate discipline.
- 12.5 *Reprimand.* If the disciplinary panel deems it appropriate, and the Judge consents, the disciplinary panel shall discipline the Judge by issuing a reprimand after finding probable cause. A reprimand shall be read to the Judge in question, in a closed session, in the presence of the assembled body of the Judges within the Judiciary. The reprimand shall contain:
- (1) A recitation of the allegations;
 - (2) The findings of the disciplinary panel; and
 - (3) A statement of reprimand.
- 12.6 *Formal Hearing.* If the disciplinary panel deems a reprimand is inappropriate, or the Judge does not agree to a reprimand, the panel shall hold a formal hearing, with a record preserved of the proceedings, to determine whether the Judge should be disciplined. At any such hearing, which shall be open to the public, the complainant and the Judge shall have the opportunity to present testimony and other evidence, and the Judge shall have the opportunity to cross-examine adverse witnesses.
- (a) Where the disciplinary panel determines that a formal hearing shall be held, the panel shall have discretion to order a Judge to cease performing judicial duties, without loss of salary, pending the formal hearing and release of an official disciplinary report.
 - (b) The disciplinary panel shall announce formal hearings by publication in two (2) consecutive issues of the Cayuga Chronicles. The announcement shall contain information:
 - (1) Confirming that a complaint has been filed;
 - (2) Stating the subject and nature of the complaint; providing the date and time of the hearing, including procedural aspects; and
 - (3) Reciting the right of a Judge to a fair hearing.
 - (c) If, after a formal hearing, and after considering the record, the disciplinary panel finds that the charges are established by clear and convincing evidence, the disciplinary panel shall make specific factual findings based upon the record, and shall issue an official disciplinary report, which shall include a report of the formal hearing, the factual findings made based on

the hearing, and identifying any specific penalties to be imposed. This decision shall be final.

- (d) Disciplinary reports shall be submitted to the Judiciary within thirty (30) days after the formal hearing is concluded. The Judiciary shall immediately carry out any and all disciplinary action ordered in the disciplinary report.
 - (1) *Reprimand.* Where a disciplinary report recommends a reprimand, a reprimand shall be read to the Judge in question and shall contain the same information and be available as if the Judge had consented to a reprimand under Rule 12.5.
 - (2) *Suspension.* Where a disciplinary report recommends a suspension, the Judge shall draw no salary and shall perform no judicial functions during the period of suspension. Suspension shall not create a vacancy in the office of Judge, and the Judge may resume his or her office upon the completion of the suspension and the satisfaction of any other requirements that may be imposed as a pre-condition of resuming office.
 - (3) *Removal.* Where a disciplinary report recommends that a Judge be removed from office, removal proceedings shall be commenced in accordance with applicable removal law.
- (e) On a semi-annual basis, the Judiciary shall provide a report to the Cayuga Nation Council identifying all disciplinary panels conducted, including findings of misconduct and all disciplinary action ordered and taken against any Judge.

12.7 *Additional Grounds for Suspension and Removal.*

- (a) *Suspension.* The Judiciary shall order a Judge to immediately cease performing judicial duties, without loss of salary, while there is a pending indictment or information charging him or her with any offense involving fraud or misrepresentation or a crime punishable as a felony.
- (b) *Ineligible for Election or Appointment.* The Judiciary shall immediately begin removal proceedings against a Judge when the Judge no longer meets the qualifications of Rule 11.1 to be a candidate for or appointed to the Judgeship which he or she holds.
- (c) *Overtured Convictions.* If the conviction for which the Judge is removed is later overturned, a Judge shall not be reinstated, provided that, the overturned conviction shall not prevent the Judge from seeking future election.

- 12.8 *Judges shall at all times be subject to removal.* The complaint process established in this section shall not supersede or otherwise affect the rights of eligible voters to petition for removal of a Judge in accordance with applicable removal law.

13. Retirement

- 13.1 A Judge may be retired for physical or mental disability seriously interfering with the performance of his or her duties if such disability is determined to be permanent or reasonably likely to become permanent.
- (a) Initial and formal hearings regarding the retirement of a Judge for physical or mental disability shall be closed to the public, and the record of such proceedings shall be confidential.
 - (b) The Judiciary shall, by rule, provide for additional initial and formal hearing procedures for this section.
- 13.2 *Initial Hearing.* Any person aggrieved by the conduct of a Judge may file a complaint requesting that the Judge be retired for disability. In such event the remaining Judges of the respective court shall convene a panel and conduct an initial hearing to determine if probable cause exists to believe that the Judge suffers from mental or physical disability which seriously interferes with the performance of his or her duties.
- (a) If the panel does not find probable cause, the panel shall dismiss the complaint.
 - (b) If the panel does make a finding of probable cause, the panel shall provide formal notice of the complaint and finding to the Judge, as well as notice including the date and time of a formal hearing, within ten (10) days after finding probable cause.
- 13.3 *Formal Hearing.* Formal hearings shall be recorded and shall be scheduled no sooner than thirty (30) days after the Judge receives formal notice of the complaint and finding. At such a hearing, the panel shall convene to determine whether the Judge suffers from mental or physical disability which seriously interferes with the performance of his or her duties.
- (a) The panel shall consider, in confidence, any evidence that presents sufficient information to support an allegation of possible medical incapacity, and may require that relevant medical and mental health records be provided.
 - (b) The complainant and the Judge shall have the opportunity to present testimony and other evidence, and the Judge shall have the opportunity to cross-examine adverse witnesses.
 - (c) If the panel finds, by a standard of clear and convincing evidence, that the Judge suffers from mental or physical disability which seriously interferes with the performance of his or her duties, the panel shall retire the Judge.

- (d) Upon being retired by the panel, the Judge shall thereby be retired with the same rights and privileges as if he or she had retired voluntarily.

End.

Adopted: _____