

## ATTORNEY GENERAL CODE

### BE IT ENACTED BY THE KAW NATION:

#### **Section 1. Title.**

This Act shall be known as the Attorney General Code.

#### **Section 2. Legislative History.**

Article VII of the Kaw Nation Constitution created the position of the Attorney General as well as established certain duties.

#### **Section 3. Purpose.**

The purpose of this Code is to assign to the Kaw Nation's Attorney General those "other duties as may be prescribed by legislation and approved by the General Council" as provided for in Article VII, of the Kaw Nation Constitution. The Tribal Council recognizes the duties and powers delegated to the Attorney General by said Constitution and finds that nothing herein shall be construed to diminish or abridge those duties and powers delegated to the Attorney General by said Constitution.

#### **Section 4. Definitions.**

For purposes of this Code:

- A. "Administration" shall mean the Executive Branch of the Kaw Nation as provided for in Article VI of the Kaw Nation Constitution.
- B. "Department" shall mean Tribal committees, commissions, governmental boards, and boards of Kaw Nation entities.
- C. "Contract" shall mean a written agreement between two or more parties.
- D. "Tribal Council" shall mean the Tribal Council of the Kaw Nation as provided for in Article V of the Kaw Nation Constitution.
- E. "General Council" shall mean the General Council of the Kaw Nation as provided for in Article IV of the Kaw Nation

Constitution.

- F. "Government-owned company" or "Entities" means those companies in which the Kaw Nation is the sole or majority stockholder or owner.
- G. "Nation" shall mean the Kaw Nation.
- H. "Person" means a department, an individual, a Kaw Nation citizen, a corporation, a trust, a general partnership, a limited partnership, a limited liability company, an association, or any other legal, commercial, government-owned company, or governmental entity.
- I. "State" means a state, territory, or possession of the United States, the District of Columbia or the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

**Section 5. Official Office and Work Schedule**

- A. The Attorney General shall have an office at the Kaw Nation.
- B. The Attorney General shall work with the Tribal Council to determine a schedule of hours where the Attorney General is available to provide consultation to any person, and where the Attorney General is able to complete the duties and functions outlined in this Code.
- C. The Attorney General shall attend the quarterly meetings of the General Council and any Special General Council Meetings.

**Section 6. <sup>VU</sup> Functions and Duties of the Attorney General.**

- A. Pursuant to Article VII, of the Kaw Nation Constitution, the Attorney General "shall represent the Kaw Nation in all criminal cases in the courts of the Kaw Nation, and in all civil actions wherein the Kaw Nation is a party, and shall provide an opinion as to the constitutionality of laws at the request of the Chair, Tribal Council, or General Council, and shall have such other duties as may be prescribed by legislation and approved by the General Council."
- B. In addition to the duties prescribed by the Constitution, the duties of the Attorney General as the Chief Legal Officer of the Kaw Nation shall be:
  - 1. To direct and supervise all activities of the Attorney General's Office; and
  - 2. To prepare and submit to the Tribal Council the budget for the

Attorney General's Office; and

3. To designate an individual to act as Attorney General in the absence of the Attorney General so long as said designation does not exceed three (3) months (the acting Attorney General shall meet the same requirements of the Attorney General as outlined in the second sentence of Article VII of the Kaw Constitution); and
4. To engage in other activities as may be prescribed in other sections of the Kaw Nation Code; and
5. Coordinate with law enforcement on the following:
  - a) Bailiff duties;
  - b) Transportation of prisoners;
  - c) Protection of the Courthouse and the court staff;
  - d) Protection of witnesses, parties and prosecutors;
  - e) Service of process; andTo obey the lawful orders and directions of the courts; and includes the authority to initiate or appear in any action involving a government-owned company, however the Attorney General shall consult and collaborate with the contracted attorney for the government-owned company prior to appearing or initiating any actions; and
6. To prosecute all actions necessary for the protection and welfare of children and juveniles in the Kaw Nation courts, and to intervene, at the discretion of the Attorney General, in any action in any state court wherein intervention is permitted pursuant to the federal Indian Child Welfare Act, 25 U.S.C.A. § 1901 et seq.; and
7. ~~X~~ To give an official opinion upon all questions of law submitted to the Attorney General by a majority of the Tribal Council, the Chair, or by vote of the General Council, and only upon matters in which the requesting party is officially interested. Said opinion shall have the force of law in the Kaw Nation until a differing opinion or order is entered by a Kaw Nation court; and
8. To prepare drafts of regulations, and of contracts and other instruments as requested in which the Kaw Nation Government is interested and to render an opinion on the legal sufficiency of all contracts and other instruments in which the Kaw Nation is interested and the best interests of the people of the Kaw Nation are served; and
9. To review all proposed contracts as requested to be signed by the Chair and to provide information in regards to how the said

contact may affect the Sovereignty of the Kaw Nation; and

10. To review drafts of bills and resolutions as the Attorney General deems appropriate; and
11. To enforce the proper application of monies appropriated by the Tribal Council and to prosecute breaches of trust in the administration of such funds; and
12. To institute actions to recover Kaw Nation monies illegally expended, and to recover Kaw Nation property; and
13. To file all opinions of the Office of Attorney General with the Kaw Nation District Court and the Secretary of the Kaw Nation, and to insure an index of all such opinions according to subject and section of the law construed or applied and to cause to be published such of his/her opinions as he/she considers valuable for preservation and to prescribe the manner for the publication of the opinions; and
16. To keep a register or docket of all actions, demands and investigations prosecuted, defended or conducted by the Attorney General on behalf of the Kaw Nation. Said register or docket shall give the type of the case or investigation, where pending, court number if any, the substance of the matter, and result; and
17. To keep a complete office file of all cases and investigations handled by the Attorney General on behalf of the Kaw Nation and be kept in the Office of the Attorney General; and said files shall always remain the property of the Kaw Nation; and
18. Upon request to furnish legal advice to Kaw Nation officials and all executive departments, Tribal committees, commissions, governmental boards, boards of Kaw Nation entities, and officers of the Kaw Nation concerning any matter arising in connection with the exercise of their official powers and duties;; and
19. Upon setting an appointment, any Kaw Nation Citizen shall have the right to consultation(s) in regards to a legal issue affecting the Kaw Nation; however the Attorney General will not represent any individual in his/her capacity as the Kaw Nation Attorney General in any private legal matter, and
20. To investigate any official report filed with the Attorney General and prosecute all actions, civil or criminal, relating to such reports or violations of the laws of the Kaw Nation regarding the

management of public funds or property; and

21. To investigate and prosecute all actions, civil or criminal, relating to civil actions or crimes against or within the jurisdiction of the Kaw Nation, provided that any such criminal actions should be investigated in coordination with the Kaw Nation Police Department, and when deemed appropriate by the Attorney General (under section 9B of this act), with any federal or local law enforcement agency; and
22. To settle any case or controversy on behalf of the Kaw Nation, with the approval of the Tribal Council.

**Section 7. Costs of Litigation.**

- A. Except as otherwise provided by law or written agreement, the cost of litigation in any case for which representation is provided pursuant to this Code shall be paid out of the Attorney General's budget.
- B. Costs of litigations shall include, but is not limited to, court fees and costs, deposition expenses, travel and lodging, witness fees and other similar costs; except that this Code shall not be construed as authorizing the payment by the Kaw Nation or any entity thereof of any judgment.

**Section 8. Appearance not waiver of immunity of the Kaw Nation; sovereign immunity waiver.**

- A. The appearance of the Attorney General or his/her designee(s) in any matter, proceeding or action in any court, before any committee, commission, board, office or other adjudicatory body, shall not be construed to waive the sovereign immunity of the Kaw Nation.
- B. The Attorney General or his/her designee(s) shall not have the authority or power to waive sovereign immunity of the Kaw Nation.

**Section 9. Prosecutors and other assistants to the Attorney General; delegation of authority.**

- A. Pursuant to Article VII of the Kaw Nation Constitution, the Attorney General is empowered "to designate such prosecutors and other assistants as deemed necessary to carry out the duties of office." The Attorney General may from time to time make such provisions as he/she considers appropriate authorizing the performance of any function of the Attorney General by any other officer or employee of the Office of Attorney General.

- B. The Attorney General may conduct investigations.
- C. The Attorney General shall appoint and fix the duties of all prosecutors, assistants, and other employees of the office of Attorney General as the Attorney General deems necessary to perform the duties imposed upon the Attorney General. The compensation of the Attorney General shall not be decreased during his/her term of office.
- D. The Attorney General is further authorized to appoint special assistants or special attorneys, including those from external law firms and entities, to fulfill the functions of the Attorney General where deemed necessary and appropriate to secure the best interests of the Kaw Nation, within the budget as set by the Tribal Council.

**Section 10. Interests of Kaw Nation in pending suits.**

Any attorney, officer, or employee of the Office of Attorney General may be sent by the Attorney General to any Tribe, State or district in the United States to attend to the interests of the Kaw Nation in a suit pending in a court of the United States, a Tribe or State, or to attend to any other interest of the Kaw Nation.

**Section 11. Vacancy in position of Attorney General.**

In case of a vacancy in the position of Attorney General by reason of removal, death, resignation or disability lasting for more than three (3) months, the Office of Attorney General shall be filled in accordance with Article VII of the Kaw Nation Constitution.

**Section 12. Employment of attorneys, authority of boards or officials; defense of actions by Attorney General.**

- A. Any contract for an attorney for a Kaw Nation entity or government owned company, commission, committee, department, governmental board (may) be reviewed by the Attorney General upon a request of that body and after review, the Attorney General shall review and report to the requesting body.
- B. Any Attorney under contract with a department committees, commissions, governmental boards, or boards of Kaw Nation entities shall provide a written report to the Attorney General fifteen (15) days prior to every regular General Council Meeting detailing any work they have conducted on behalf of the Kaw Nation.

**Section 14. Legal representation of department or official of Kaw Nation; contracts.**

- A. A department or official of the Kaw Nation may obtain legal representation by one or more attorneys by means of one of the following:

1. Seeking representation by one or more private attorneys with the approval of the Tribal Council; or
  2. Seeking representation with the Attorney General's Office; or
  3. If the office of Attorney General is unable to represent the department or official due to a conflict of interest, or the Office of Attorney General is unable or lacks the personnel or expertise to provide the specific representation required by such department or official, approval from the Tribal Council to contract with a private attorney or attorneys should be obtained.
- B. Nothing herein shall prevent the Tribal Council, without approval from the Attorney General, from employing, contracting with, or otherwise seeking counsel with an attorney to provide day-to-day advice and counsel on matters within the purview of their respective powers and authorities. Provided, that the pay for these attorneys shall not come from the budget of the Attorney General.

**Section 15. Nation officer or employee; legal defense services; defense duties.**

- A. The Attorney General may, if necessary, defend any employee, elected or appointed Kaw Nation officer or employee of any Kaw Nation office, entity, department, board, committee, or commission of any branch of Kaw Nation government in any civil action or special proceeding in the courts of the Kaw Nation, a State or of the United States, by reason of any act done or omitted in the scope of the employee's authority and in the course of his/her employment. The employee named in the action may employ private counsel at his own expense to assist in his defense, however, such employment of private counsel shall not preclude the Attorney General from intervening in the action on the Kaw Nation's behalf. Failure of an employee to request representation shall not prohibit the Attorney General from intervening to protect the Kaw Nation's interests in any cause of action.
- B. The Attorney General shall not represent a Kaw Nation elected or appointed Kaw Nation officer or employee of any Kaw Nation office, entity, department, committee, board or commission of any branch of Kaw Nation government if that said individual acted outside the scope of his/her authority.
- C. The Attorney General may intervene in any such action or proceeding and appear on behalf of the Kaw Nation, or any of its officers or employees, where the Attorney General deems the Nation to have an interest in the subject matter of the litigation. However, in cases in the Kaw Nation's courts where the Tribal Council as a body brings a lawsuit against the Chair or vice versa, the Attorney General shall not represent either party

but may provide an opinion concerning the Kaw Nation's interests in the matter.

1. When an original action seeking either a writ of mandamus or prohibition against a district judge, or special judge of the district court is commenced or when a cause of action challenging the authority of any Kaw Nation court is commenced in state or federal court, the Attorney General shall represent such judicial officer(s) if, and only if, directed to do so, in writing, by the Chief Justice of the Kaw Nation Supreme Court or their designee in the event of a conflict of interest, upon the finding of the Chief Justice's that such representation is necessary to protect either the function or integrity of the judiciary. Such finding by the Chief Justice or their designee shall be final and binding.
2. In the event that the Attorney General is or shall be disqualified from representing such judicial officer, the Attorney General shall immediately notify, in writing, the Chief Justice. The Chief Justice then may appoint counsel to represent the judicial officer. The appointed counsel shall determine the method of preparation and presentation of such defense. The appointed counsel shall not be held civilly liable for the exercise of such discretion. The appointed counsel shall, upon approval by the Chief Justice, be entitled to be compensated by the Court for services rendered.

**Section 17. Provisions not cumulative.**

The provisions of this Code shall not be cumulative to existing law and the provisions of this Code shall supersede any existing law in conflict. Chapter 6 of the Court Procedures Act is also hereby repealed.

**Section 18. Severability.**

The provisions of this Code are severable, and if any part or provision hereof shall be held void, the decision of the court so holding shall not affect or impair any of the remaining parts or provisions of this Code.

**Section 19. Amendments**

Amendments to this Code may be proposed by the Tribal Council and shall be presented at a General Council meeting for a vote, and shall become effective upon receiving a majority vote of those present and voting.

**Section 20. Effective Date**

This Code shall take effect and be in full force after its passage and approval by the General Council.