

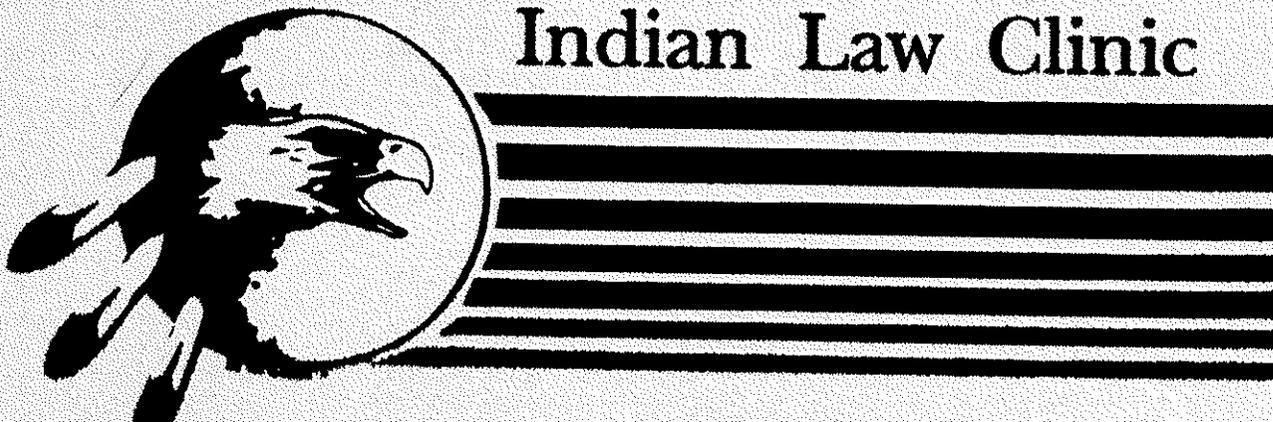
**TRIBAL CODE OF THE
NORTHERN CHEYENNE RESERVATION**

**NORTHERN CHEYENNE TRIBE
LAME DEER, MONTANA**

Adopted August 7, 1987

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NORTHERN CHEYENNE TRIBE

SEPARATION OF POWERS ORDINANCE

Final — 10/6/97

ADOPTION OF SEPARATION OF POWERS ORDINANCE.

WHEREAS, certain amendments (the "Constitutional Amendments") of the Constitution and Bylaws of the Northern Cheyenne Tribe have been adopted by: (1) vote of the Tribal membership in an election held by the Secretary of the Interior ("Secretary") on May 10, 1996; and (2) approval of the Billings Area Director, acting on behalf of the Secretary, on May 31, 1996;

WHEREAS, among other revisions, the Constitutional Amendments in Article XI established the principle of separation of powers for Northern Cheyenne Tribal Government;

WHEREAS, to assist in implementing the principle of separation of powers, the Tribal Council wishes to reorganize the Judicial Branch of the Tribal Government in order to enhance its independence and quality;

WHEREAS, to that end, over much of the past year the Tribal Council has prepared, presented publicly, solicited comment on, and revised a draft Separation of Powers Ordinance; and

WHEREAS, the final product is the attached Separation of Powers Ordinance which the Tribal Council has concluded should be adopted.

THEREFORE, BE IT ORDAINED AS FOLLOWS:

1. The attached Ordinance, hereafter to be known as the "Separation of Powers Ordinance," is hereby approved and adopted.
2. As provided in section 19.1 of the attached Separation of Powers Ordinance, the Ordinance may be amended, repealed or suspended only by affirmative vote of two-thirds of all Tribal Council seats (whether such seats are filled or vacant), i.e., by affirmative vote of 8 Tribal Council members.

CERTIFICATION

PASSED, ADOPTED AND APPROVED by vote of the Northern Cheyenne Tribal Council by 7 votes for passage and adoption and 0 votes against passage and adoption with 0 abstentions this 6th day of October, 1997.

for Norma Bourneau UP
William Walksalong, President
Northern Cheyenne Tribe

ATTEST:

Sharlene Evans
Sharlene Evans, Secretary
Northern Cheyenne Tribe

APPROVED: [Signature]
SUPERINTENDENT

CALVIN WILSON

TITLE IA

SEPARATION OF POWERS CODE

TITLE IA

SEPARATION OF POWERS CODE

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WILSON

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EXHIBIT A - Form of Certification of Constitutional Claim to Constitutional Court

CHAPTER 1. DEFINITIONS

- 1.A-1-11-1** **Definitions.** When used in this Ordinance Title, the following terms shall have the following meanings:
- Aa.** "Appellate Court" means the appellate court of the Northern Cheyenne Court established and operating under Chapter 5.
 - Bb.** "Appellate Judge" means a judge of the Appellate Court, serving as provided in section 5-21A-5-2.
 - Cc.** "Associate Appellate Judge" means an associate judge of the Appellate Court.
 - Dd.** "Associate Trial Judge" means an associate judge of the Trial Court.
 - Ee.** "Automatic Removal" means the removal of a Judge because of conviction of a felony, conviction of a Misdemeanor Involving Moral Turpitude, or lack of required qualifications, as confirmed by the Constitutional Court under section 17-21A-17-2.
 - Ff.** "Chapter" means a chapter of this Ordinance Title.
 - Gg.** "Chief Appellate Judge" means the chief judge of the Appellate Court, selected as provided in section 5-31A-5-3.
 - Hh.** "Chief Trial Judge" means the chief judge of the Trial Court, selected as provided in section 4-31A-4-3.
 - Ii.** "Code of Judicial Conduct" means the code of conduct for Judges reaffirmed or adopted under section 15-21A-15-2.
 - Jj.** "Constitutional Claim" means a claim between any parties, whether made in a civil or criminal context, that a resolution, ordinance, code or other legislative enactment of the Tribal Council adopted after the Effective Date of this Ordinance Title is in whole or in part invalid because it violates: (i)(1) the Tribal Constitution and Bylaws; (ii)(2) a referendum adopted under Article VIII of the Tribal Constitution; (iii)(3) a Tribal resolution, ordinance or code; or (iv)(4) applicable federal law including without limitation the Indian Civil Rights Act.
 - Kk.** "Constitutional Court" means the constitutional court of the Northern Cheyenne Court established and operating under Chapter 6.

- Ll.** "Council Enactment" means the resolution, ordinance, code or other legislative enactment of the Tribal Council which is the subject of a Constitutional Claim.
- Mm.** "Court Clerk" means the court clerk in charge of the Office of the Court Clerk, appointed and functioning under Chapter 7.
- Nn.** "Declaratory Judgment" means a final declaration by the Constitutional Court under section 6-41A-6-4 that a Constitutional Claim is in whole or in part valid or invalid.
- Oo.** "Domestic Relations Code" means Title VIII of the Law and Order Code (as amended or supplemented) now or hereafter in force.
- Pp.** "Effective Date" means the date on which this Ordinance Title has been enacted by the Tribal Council, signed by the Tribal President, and reviewed by the Secretary of the Interior or his authorized representative. *(Note: This Title was enacted as an ordinance, Ordinance DOI 1(98), signed by the President on October 1, 1997, and reviewed by BIA on October 27, 1997. The Effective Date of this Title is therefore October 27, 1997.)*
- Qq.** "*en banc*" means three Appellate Judges sitting as a panel as provided in section 5-51A-5-5.
- Rr.** "Executive Branch" means the Tribal President, Vice President, Secretary and Treasurer, and the administrative agencies, departments and other instrumentalities of the Executive Branch.
- Ss.** "Heirship and Probate Code" means Title IX of the Law and Order Code (as amended or supplemented) now or hereafter in force.
- Tt.** "Judge" means any one of the Chief Trial Judge, an Associate Trial Judge, the Chief Appellate Judge, or an Associate Appellate Judge.
- Uu.** "Judge Pro Tem" means a temporary judge appointed and assigned under Chapter 16 to temporarily fill-in for a sitting Judge.
- Vv.** "Judicial Branch" means the Trial Court, Appellate Court, Constitutional Court, and Office of the Court Clerk.
- Ww.** "Judicial Review" means the power of the Constitutional Court to review and declare unlawful legislative actions of the Tribal Council, as provided in Chapter 6.
- Xx.** "Juvenile Code" means Title III of the Law and Order Code (as amended or

supplemented) now or hereafter in force.

- Yy.** "Law and Order Code" means the Tribe's Law and Order Code, consisting of Titles I through IX (as amended or supplemented) now or hereafter in force.
- Zz.** "Misdemeanor Involving Moral Turpitude" means a misdemeanor or gross misdemeanor involving an intentional act or omission which is vile, immoral, or otherwise gravely violative of the moral sentiments or accepted moral standards of the Tribal community. This shall include, by way of example but not limitation, an intentional act or omission involving violence, child abuse, spousal abuse, manufacture or distribution of alcohol, drugs or other mind-altering substance, or theft or other dishonesty.
- AAaa.** "Northern Cheyenne Court" means the Trial Court, Appellate Court and Constitutional Court.
- BBbb.** "Office of the Court Clerk" means the office of the Court Clerk established and operating under Chapter 7.
- CCcc.** "Regular Presidential Election" means the regular Tribal election to be held, in accordance with the Revised Tribal Election Ordinance (as it may be amended), in November 2000 and on the dates set for regular Congressional elections every four years thereafter, for Tribal President, Tribal Vice President, open seats on the Tribal Council, and all Trial Judges.
- DDdd.** "Removal" means Automatic Removal or Removal by Complaint of a Judge under Chapter 17.
- EEee.** "Removal by Complaint" means removal of a Judge by the Constitutional Court as a result of the filing and processing of a Complaint as provided in section 17-31A-17-3.
- FFff.** "section" means a section of this Ordinance Title.
- GGgg.** "Term of Office" or "Term" means the term of office of a Judge as described in Chapter 9.
- HHhh.** "Trial Court" means the trial court of the Northern Cheyenne Court established and operating under Chapter 4.
- Ii.** "Trial Judge" means a judge of the Trial Court.
- Jj.** "Tribal Constitution and Bylaws" means the constitution and bylaws of the Tribe, as amended in 1960 and 1996, and as it may be further amended.

~~KKkk~~. "Tribal Entity" means any governmental or proprietary branch, division, department, agency or other instrumentality of the Tribe.

~~LLll~~. "Tribal Representative" means any officer, councilperson, board member, director, executive, other employee, or agent of the Tribe or any Tribal Entity.

~~MMmm~~. "Tribe" means and "Tribal" refers to the Northern Cheyenne Tribe.

CHAPTER 2. BASIS, PURPOSE, LAW AND ORDER CODE, IMPLEMENTATION

~~2-11A-2-1~~

Constitutional Basis.

~~aA~~. **Article XI.** Article XI of the Tribal Constitution in its entirety provides:

SEPARATION OF POWERS

Section 1. Three Branches of Tribal Government. The power of the government of the Tribe shall be divided into three distinct branches -- Legislative, Executive and Judicial. No person or entity charged with the exercise of power of one branch shall exercise a power belonging to another branch unless expressly authorized to do so in this Constitution and Bylaws, Tribal law, or applicable federal law.

(a) The Legislative Branch shall consist of the Tribal Council and all committees of the Tribal Council. The Tribal Council shall exercise the legislative power of the Tribe, subject to the right of referendum reserved to the Tribal membership under Article VIII.

(b) The Executive Branch shall consist of the Tribal President, Vice President, Secretary and Treasurer, and all administrative agencies, departments and other instrumentalities of the Executive Branch.

(c) The Judicial Branch shall consist of all courts established by ordinance under Article IV, section 1(i) or any other provision of this Constitution and Bylaws.

~~bB~~. **Article IV, Section 1(i).** Under Article IV, section 1(i) of the Tribal Constitution, the Tribal Council is empowered to establish the Judicial Branch of Tribal government and define its powers. Specifically, the Council is authorized:

To promulgate and enforce ordinances, which shall be subject to review by the Secretary of the Interior . . . providing for the maintenance of law and order and the administration of justice by establishing a reservation court and defining its duties and powers.

c. Judicial Branch a Distinct Branch of Tribal Government. Under the above Constitutional provisions: The Judicial Branch is one of the three distinct branches of Tribal government. Once the Judicial Branch is established by the Tribal Council, neither the Legislative Branch nor the Executive Branch may exercise powers granted to the Judicial Branch, except if otherwise provided in the Tribal Constitution and Bylaws, or Tribal or federal law.

2.21A-2-2 Purpose. The purpose of this Ordinance Title is to reorganize the Judicial Branch to facilitate implementation of the Tribal Constitutional requirement of separation of powers.

2.31A-2-3 Relationship to Remainder of Law and Order Code. This Ordinance does not repeal the Tribal Law and Order Code, but does include provisions which are inconsistent with the Law and Order Code. In all any cases of such inconsistency between a provision of this Title (as it may be amended as provided in section 1A-19-1) and any provision of any other Title of this Law and Order Code or of, or inconsistency with any other Tribal resolution, ordinance or code (except the Amended Revised Election Ordinance as provided in section 1A-10-5 below) in force on the Effective Date of this Ordinance, the provisions of this Ordinance shall be controlling. After the Effective Date of this Ordinance, the Tribal Council shall prepare and adopt formal amendments of the Law and Order Code to fully conform it to this Ordinance.

2.41A-2-4 Implementation Period. To enable orderly implementation of the reorganization of the Judicial Branch under in this Ordinance Title, there shall be a transition period for the implementation of Chapters 3 through 17 ("Implementation Period"). All involved Tribal governmental personnel shall make best efforts to complete the reorganization of the Judicial Branch by the close of the Implementation Period. It is estimated that the Implementation Period will end no earlier than 180 days after the Effective Date of this Ordinance Title.

CHAPTER 3. COMPOSITION OF JUDICIAL BRANCH

3.11A-3-1 Composition. The Judicial Branch shall consist of the:

- Trial Court described in Chapter 4;
- Appellate Court described in Chapter 5;

- Constitutional Court described in Chapter 6; and
- Office of the Court Clerk described in Chapter 7.

CHAPTER 4. TRIAL COURT

4.11A-4-1 **Court of General Jurisdiction.** The Trial Court shall be a trial-level court of general civil jurisdiction and limited criminal jurisdiction, including without limitation jurisdiction over matters arising under the Tribe's Juvenile Code, Domestic Relations Code, and Heirship and Probate Code. The scope of the Trial Court's jurisdiction is set forth in Chapter 14.

4.21A-4-2 **Trial Judges.** The Trial Court shall have at least two full-time Trial Judges, including a Chief Trial Judge and one or more Associate Trial Judges. Each Trial Judge shall:

- aA.** possess the qualifications applicable to Trial Judges set forth in Chapter 8;
- bB.** be elected as provided in Chapter 10 (or appointed as permitted by section 10.41A-10-4 or 12.21A-12-2);
- cC.** have a Term of Office as provided in Chapter 9; and
- dD.** be subject to Removal from office as provided in Chapter 17.

4.31A-4-3 **Selection of Chief Trial Judge.** The Tribal President with the concurrence of the Tribal Council shall designate one Trial Judge as the Chief Trial Judge. The designee shall serve as Chief Trial Judge through his or her Term of Office as Trial Judge, provided that the Tribal President with the concurrence of the Tribal Council, in their absolute discretion, may at any time designate another Trial Judge as the Chief Trial Judge.

4.41A-4-4 **Authority of Chief Trial Judge.** The Chief Trial Judge shall have overall administrative authority over the Trial Court, including without limitation authority to assign cases among the Trial Judges, assign Judges Pro Tem to Trial Court proceedings as provided in section 16.31A-16-3, manage the Trial Court calendar, and supervise the Court Clerk.

CHAPTER 5. APPELLATE COURT

5.11A-5-1 **Hears All Appeals.** The Appellate Court shall hear all appeals and other authorized requests for appellate review of decisions of the Trial Court.

5.21A-5-2 **Appellate Judges.** The Appellate Court shall have at least three part-time Appellate Judges, including a Chief Appellate Judge and at least two Associate Appellate

Judges. Each Appellate Judge shall:

- aA. possess the qualifications applicable to Appellate Judges set forth in Chapter 8;
- bB. be appointed as provided in Chapter 11;
- cC. have a Term of Office as provided in Chapter 9;
- dD. be subject to Removal from office as provided in Chapter 17; and
- eE. not preside over any appeal from Trial Court proceedings where the Appellate Judge decided any material matter in the Trial Court proceedings.

5.31A-5.3 Selection of Chief Appellate Judge. The Tribal President with the concurrence of the Tribal Council shall designate one Appellate Judge as the Chief Appellate Judge. The designee will serve as Chief Appellate Judge through his or her Term of Office as Appellate Judge, provided that the Tribal President with the concurrence of the Tribal Council, in their absolute discretion, may at any time designate another Appellate Judge as the Chief Appellate Judge.

5.41A-5.4 Authority of Chief Appellate Judge. The Chief Appellate Judge shall have overall administrative authority over the Appellate Court and the Constitutional Court, including without limitation authority to assign cases among the Appellate Judges, designate *en banc* Appellate panels, designate Constitutional Court panels, assign Judges Pro Tem to Appellate Court or Constitutional Court proceedings as provided in section 16.31A-16.3, and manage the calendars of the Appellate Court and the Constitutional Court.

5.51A-5.5 One Judge Review; En Banc Review. All appeals and other authorized requests for review before the Appellate Court shall be heard and decided by one Appellate Judge. However, *en banc* review (by a panel of three Appellate Judges) of the decision of a single Appellate Judge may be sought and shall be granted if two Appellate Judges, in their absolute discretion, vote in favor of *en banc* review. Requests for *en banc* review must be in writing and filed and served within 30 days of issuance of the single Appellate Judge's decision. Any other party may file and serve a written response to the request within 10 days of its receipt of the request. The Court Clerk shall assure that copies of all requests for *en banc* review and all responses thereto are promptly distributed to each Appellate Judge.

5.61A-5.6 Review on Record Below. All appeals and other authorized requests for review before the Appellate Court shall be based and decided on the files, records and transcripts of the Trial Court proceedings. No new evidence may be introduced or trial *de novo* conducted in the Appellate Court.

CHAPTER 6. CONSTITUTIONAL COURT

6.11A-6-1 **Judicial Review.** The Constitutional Court shall have the exclusive power of Judicial Review -- the power to review and declare unlawful legislative actions of the Tribal Council as provided in this Chapter

6.21A-6-2 **Three-Judge Panel.** The Constitutional Court shall consist of three Judges of the Appellate Court, sitting as a panel and acting by majority vote. All claims brought in the Constitutional Court shall be tried to and adjudicated by the panel; there shall be no jury trials in the Constitutional Court.

6.31A-6-3 **Exclusive and Original Jurisdiction Over Constitutional Claims.** The Constitutional Court shall have original jurisdiction over, and be the exclusive Tribal judicial forum to adjudicate, any and all claims ("Constitutional Claims") between any parties, whether made in a civil or criminal context, that a resolution, ordinance, code or other legislative enactment of the Tribal Council adopted after the Effective Date of this Ordinance Title ("Council Enactment") is in whole or in part invalid because it violates:

- aA.** the Tribal Constitution and Bylaws;
- bB.** a referendum adopted under Article VIII of the Tribal Constitution;
- cC.** a Tribal resolution, ordinance or code; or
- dD.** applicable federal law including without limitation the Indian Civil Rights Act;

provided that the Constitutional Court may not adjudicate a Constitutional Claim if and to the extent the Council Enactment which is the subject of the Claim has been explicitly designated as final and not subject to review by any court in any controlling source of law described in paragraphs ~~a - d~~ subsections A - D above.

6.41A-6-4 **Relief.** Unless authorized to grant Other Relief as provided in section 6.11A-6-11, the Constitutional Court shall have authority to issue only one form of relief on a Constitutional Claim -- a declaration that the Claim is in whole or in part valid or invalid ("Declaratory Judgment"), along with such supporting findings of fact, conclusions of law, and/or opinion as the Constitutional Court considers necessary or appropriate.

6.51A-6-5 **Participation of Tribal Council.** The Tribal Council, as an entity, shall be made a party-defendant in any Constitutional Court proceedings on a Constitutional Claim, whether the claim is brought directly in the Constitutional Court or is certified to the Court under section 6.91A-6-9.

6.61A-6-6 **Procedures and Rules.** Except to the extent inconsistent with this Chapter 6,

Constitutional Claims and Other Claims (other than appeals) authorized under section 6-11A-6-11, shall be initiated in and adjudicated by the Constitutional Court in accordance with all relevant trial-level rules and procedures, evidentiary standards, and statutes of limitation applicable to trial-level civil actions under the Law and Order Code. In the event of any inconsistency between such provisions of the Law and Order Code and this Chapter, the provisions of this Chapter shall be controlling. The Constitutional Court shall have continuing authority to adopt general or case-specific special procedural rules for its proceedings (including without limitation proceedings on Constitutional Claims certified under section 6-91A-6-9), to cover matters not addressed by the foregoing provisions of this section 6-61A-6-6.

6-71A-6-7 Standing; Case or Controversy. In order to bring a Constitutional Claim, a party must have standing to do so and there must be an actual case or controversy, under recognized legal principles.

6-81A-6-8 Principles of Judicial Restraint. In adjudicating Constitutional Claims, the Constitutional Court shall observe all established doctrines of judicial restraint, including without limitation the following:

- aA.** requiring exhaustion of available remedies within the Executive Branch and/or the Legislative Branch;
- bB.** presuming that the Council Enactment is valid and requiring that its invalidity be clearly and convincingly shown;
- cC.** deferring to the Tribal Council's judgment on policy matters and political questions;
- dD.** deferring to determinations of administrative agencies within the Executive Branch in matters within their particular expertise;
- eE.** avoiding Constitutional issues;
- fF.** deciding on non-Constitutional grounds;
- gG.** abstaining from hypothetical or moot questions; and
- hH.** upholding all valid and severable portions of the enactment or other action of the Tribal Council under challenge.

6-91A-6-9 Certification of Constitutional Claim by Other Courts. In the event a Constitutional Claim is made in a civil or criminal proceeding between any parties in another Tribal Court or other Tribal adjudicatory body (if any) (together "Other Tribal Adjudicatory Body"), such Other Tribal Adjudicatory Body shall not have jurisdiction to adjudicate the Constitutional Claim, but may certify it to the Constitutional Court

for adjudication. Subject to and in accordance with the provisions of this Chapter 6, the Constitutional Court shall have authority to adjudicate and issue a Declaratory Judgment on the Constitutional Claim so certified. Upon so certifying a Constitutional Claim, and pending the issuance of a Declaratory Judgment on it by the Constitutional Court, the Other Tribal Adjudicatory Body may, as it considers appropriate, proceed with the adjudication of any other claim (other than a Constitutional Claim) within its jurisdiction in the proceeding pending before it. In addition, the Constitutional Court shall have authority to adjudicate Constitutional Claims certified to it by any federal, state or tribal court or adjudicatory body. Constitutional Claims shall be certified to the Constitutional Court by execution and delivery of a written instrument generally in the form of the attached Exhibit A. Claims so certified shall be adjudicated in accordance with all rules, procedures and standards set forth, referred to, or authorized in this Chapter for Constitutional Claims initiated in the first instance in the Constitutional Court.

6.101A-6-10 Limited Waiver of Immunity. With respect to Constitutional Claims, the sovereign immunity of the Tribal Council, as an entity, is hereby waived in the Constitutional Court (and in no other court) solely with respect to Declaratory Judgments on Constitutional Claims brought or certified in strict compliance with this Ordinance Title. The sovereign immunity of the Tribe, any Tribal Entity, or any Tribal Representative is not otherwise waived in any respect.

6.111A-6-11 Other Claims or Relief. In addition to Constitutional Claims, the Tribal Council by resolution, ordinance or code may in its absolute discretion explicitly empower the Constitutional Court to:

- aA.** adjudicate or hear appeals on other claims brought by or against the Tribe, any Tribal Entity, or any Tribal Representative, or any other claim of import to the Tribe (collectively "Other Claims"); and/or
- bB.** provide relief other than or in addition to a Declaratory Judgment on a Constitutional Claim or Other Claim ("Other Relief").
- cC.** Any such resolution, ordinance or code must describe each Other Claim and/or the Other Relief with specificity and must explicitly set forth any necessary limited waiver of Tribal sovereign immunity with respect thereto in the Constitutional Court.

6.121A-6-12 Removals. The Constitutional Court shall confirm the Automatic Removal of a Judge as provided in section 17.21A-17-2, and shall hear and decide any Complaint for Removal of a Judge as provided in section 17.31A-17-3.

6.131A-6-13 Decisions Binding. All Declaratory Judgments of the Constitutional Court on matters within its jurisdiction:

aA. shall be final, conclusive and binding on the Tribal Council, all other parties to the Constitutional Court proceeding, the Judicial Branch, and any Other Tribal Adjudicatory Body certifying the Constitutional Claim under section 6-91A-6-9; and

bB. may not be modified, vacated or reversed by the Tribal Council or the Executive Branch.

6-141A-6-14 Implementation of Declaratory Judgment Vindicating a Constitutional Claim. Upon issuance of a Declaratory Judgment vindicating a Constitutional Claim in whole or in part, the Tribal Council shall bring the Council Enactment at issue into compliance with the Declaratory Judgment and may, in its absolute discretion, explicitly provide other remedial relief to any party. The decision of the Tribal Council with respect to such other remedial relief shall be final and not reviewable by any court. The Executive Branch and all other Tribal Entities and Tribal Representatives shall give full faith and credit to the Declaratory Judgment and take such action as may be necessary to assure that their actions are not inconsistent with the terms of the Declaratory Judgment.

CHAPTER 7. OFFICE OF THE COURT CLERK

7-11A-7-1 Clerk's Office. There shall be an Office of the Court Clerk serving the entire Northern Cheyenne Court. The Office of the Court Clerk shall be administered by the Court Clerk, subject to the supervision of the Chief Trial Judge.

7-21A-7-2 Clerk's Duties. The Court Clerk shall have administrative authority over the Office of the Court Clerk and its staff, and overall responsibility for: maintenance of all court files, exhibits, evidence and records; receipt of all filing fees, fines, and other revenues; preparation and transmission of all records on appeal and transcripts to the Appellate Court; and performance of all other necessary duties and functions of the Office of the Court Clerk.

7-31A-7-3 Appointment and Term of Clerk. The Court Clerk shall be nominated by the Chief Trial Judge and appointed by the Tribal President with the concurrence of the Tribal Council. The Court Clerk shall serve for the same four-year Term of Office established for Judges in Chapter 9, and until a successor is appointed and takes office. Upon the death, resignation or removal of a Court Clerk, a successor Clerk shall be appointed who shall serve for the remainder of the former Clerk's term of office.

7-41A-7-4 Removal. The Court Clerk may be removed or suspended from office at any time by concurrence of the Chief Trial Judge, Tribal President and Tribal Council, in their absolute discretion.

CHAPTER 8. QUALIFICATIONS OF JUDGES

- 8-11A-8-1 Certification of Qualifications.** Before a candidate for the position of Trial Judge is placed on a primary or general election ballot (or appointed under section ~~10-41A-10-4~~ or ~~12-21A-12-2~~), and before a person is appointed to the position of Appellate Judge or appointed to the panel of Judges Pro Tem, the Tribal President must (aA) assure that the qualifications of the candidate for appointment have been carefully investigated, and (bB) certify in writing that such an investigation has been performed and that the candidate possesses the requisite qualifications.
- 8-21A-8-2 Age.** All Judges must be at least 30 years old.
- 8-31A-8-3 Tribal Membership.** All Trial Judges must be enrolled members of the Tribe. At least one Appellate Judge must be an enrolled member of the Tribe.
- 8-41A-8-4 Education and Bar Membership.** Every Judge must be a high school graduate or hold a G.E.D. certificate or its equivalent. At least two Appellate Judges must have graduated from an accredited law school and be a member of a state bar, which credentials are desirable, but not mandatory, for all other Appellate Judges and all Trial Judges.
- 8-51A-8-5 No Felony Conviction.** A Judge must never have been convicted of a felony in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure. The foregoing shall not include convictions which have been vacated.
- 8-61A-8-6 No Serious Misdemeanor Conviction Within 10 Years.** Within the 10-year period preceding the date set for the primary election or the date of appointment to office, as the case may be, and at all times thereafter through the end of the Term of Office, a Judge must not have been convicted of a Misdemeanor Involving Moral Turpitude in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure. The foregoing shall not include convictions which have been vacated.
- 8-71A-8-7 No Removal Within Three Years.** Within the three-year period preceding (aA) the date set for the primary election (and through the date of the general election) or (bB) the date of appointment to office, as the case may be, a candidate for Judge must not have been removed as a Judge on a Complaint for Removal under section ~~17-31A-17-3~~.
- 8-81A-8-8 Domicile.** All Trial Judges must be domiciled on the Reservation throughout the Term of Office. At least one Appellate Judge must be domiciled within 150 miles of Lane Deer throughout the Term of Office. As used herein, the term "domicile" means the residence in which a person customarily and actually resides during the applicable time period.
- 8-91A-8-9 Not a Party to Tribal Court Proceedings.** At the time of filing for election to office

or of appointment to office, as the case may be, a candidate for Judge must not be a plaintiff or defendant in any civil or criminal action pending in the Northern Cheyenne Court.

8-101A-8-10 Legal Knowledge. All Judges must be familiar with the Tribal Constitution, the Tribal Law and Order Code, civil and criminal procedures, the Indian Civil Rights Act, the Indian Child Welfare Act, and federal Indian law generally.

8-111A-8-11 Legal Skills. All Judges must have ability and competence to: conduct efficient and organized proceedings; research and apply applicable law; timely decide or otherwise resolve disputes; and set forth clear and reasoned decisions and orders in writing.

8-121A-8-12 Deal with Conflict. All Judges must be able to deal effectively with people in highly emotional, adversarial and confrontational situations.

8-131A-8-13 Familiarity with Cheyenne Language. It is desirable, but not mandatory, that all Judges have some familiarity with the Cheyenne language.

CHAPTER 9. JUDGES' TERMS OF OFFICE

9-11A-9-1 Four-Year Terms. There shall be a four-year Term of Office for all Judges, ending with the first Regular Presidential Election occurring after appointment, except that it is projected that the first set of Judges will not take office until approximately late 1997 and will therefore have three-year Terms approximately, ending with the Regular Presidential Election in the year 2000.

9-21A-9-2 Serve Until Successor Elected or Appointed.

aA. Trial Judges. Each Trial Judge shall serve until his or her Term of Office expires and thereafter until the election and swearing-in of his or her successor. The person whose Term has expired may be re-elected to office.

bB. Appellate Judges. Each Appellate Judge shall serve until his or her Term of Office expires and thereafter until the appointment and swearing-in of his or her successor or the assignment of a Judge Pro Tem to temporarily fill the position pending the appointment of a successor. The person whose term has expired may be re-appointed to office.

CHAPTER 10. ELECTION OF TRIAL JUDGES

10-11A-10-1 Primary and General Elections; Filing Fee. All Trial Judges shall be selected through a primary election followed by a general election, both conducted at-large, and otherwise generally conducted on the same conditions and under the same procedures as those applicable to the selection of the Tribal President and Vice President, as more particularly set forth in the Revised Tribal Election Ordinance as

amended pursuant to section ~~10-51A-10-5~~ below (as it may be further amended) ("Amended Revised Election Ordinance"). All persons filing to run for Trial Judge must pay a non-refundable \$200 filing fee as more particularly described in section 7.a of the Amended Revised Election Ordinance, provided that, for each Regular Presidential Election, the Tribal Council may adjust the filing fee to account for inflation or other factors.

~~10-21A-10-2~~ **First Election.** As promptly as reasonably possible after the Effective Date of this Ordinance~~Title~~, an at-large primary election followed by an at-large general election shall be held to elect two Trial Judges. Each winner in that election shall have a Term of Office which expires upon the occurrence of the Regular Presidential Election in the year 2000. *(Note: These primary and general elections were held on November 24, 1997, and December 29, 1997, respectively.)*

~~10-31A-10-3~~ **Regular Elections.** In the Regular Presidential Election in the year 2000, and in the Regular Presidential Election every four years thereafter, there shall be an at-large primary election followed by an at-large general election to fill all Trial Judge positions. The winner in each regular election shall serve a four-year Term of Office.

~~10-41A-10-4~~ **Filling Vacancies.** If the office of Trial Judge becomes vacant due to death, resignation, removal, or other cause, there shall be an at-large primary election followed by an at-large general election to fill the vacancy for the remainder of the Term of Office, provided that, if the vacancy in office occurs when there is less than 180 days remaining in the Term of Office, the Tribal Council in its discretion may choose not to hold the election, whereupon the Tribal Council shall appoint a qualified person to the office.

~~10-51A-10-5~~ **Amended Revised Election Ordinance.** Contemporaneous with or promptly after the adoption of this Ordinance~~Title~~, the Tribal Council shall prepare and adopt amendments of the Revised Election Ordinance to implement the foregoing provisions of this Chapter 10. *(Note: The Revised Election Ordinance was so amended by Ordinance DOI (98), adopted , 1998.)*

Thereafter, all elections of Trial Judges shall be conducted under the Revised Election Ordinance as so amended (and as it may be further amended). In the event of any conflict between the foregoing provisions of this Chapter 10 and the provisions of the Revised Election Ordinance, as so amended, the latter shall be controlling.

CHAPTER 11. APPOINTMENT OF APPELLATE JUDGES

~~11-11A-11-1~~ **Appointment.** All Appellate Judges shall be appointed by the Tribal President with the concurrence of the Tribal Council.

~~11-21A-11-2~~ **Expiration of Term.** Upon expiration of the Term of Office, a successor Appellate Judge shall be appointed for the four-year Term described in section ~~9-11A-9-1~~.

~~11:31A-11-3~~ **Death, Resignation or Removal.** Upon the death, resignation or Removal of an Appellate Judge, a successor shall be appointed to fill the vacancy. The appointee shall serve for the remainder of the former Appellate Judge's Term of Office.

CHAPTER 12. ADJUSTMENT OF JUDGESHIPS

~~12:11A-12-1~~ **Retained Power to Add Judges or Adjust Their Work Schedules.** In light of the needs of the Northern Cheyenne Court and available Tribal financial resources, the Tribal Council may at any time temporarily or permanently: increase the number of Judges specified in this Ordinance~~Title~~ for any Court; and convert any Judgeship specified as a part-time position in this Ordinance~~Title~~ to a full-time position (or vice versa). Judges added under this section are referred to in this Chapter as "Added Judges," "Added Trial Judges," or "Added Appellate Judges," as the case may be.

~~12:21A-12-2~~ **Added Trial Judges.** If it is intended that an Added Trial Judge will hold office for a term of 180 days or more, the Added Trial Judge shall be selected through a primary election followed by a general election in the manner described in Chapter 10. If, however, it is intended that an Added Trial Judge will hold office for a term less than 180 days, the Tribal Council in its discretion may choose not to hold such election, whereupon the position shall be filled through appointment by the Tribal President with the concurrence of the Tribal Council.

~~12:31A-12-3~~ **Added Appellate Judges.** All Added Appellate Judges shall be appointed by the Tribal President with the concurrence of the Tribal Council.

~~12:41A-12-4~~ **Expiration of Term.** In no case may any Added Judge have a term of office which expires after expiration of the four-year Term of Office specified in section ~~9:11A-9-1~~ during which the Added Judge was elected or appointed, plus the additional period described in section ~~9:21A-9-2~~.

CHAPTER 13. OVERSIGHT OF JUDICIAL BRANCH

~~13:11A-13-1~~ **Audits, Reports and Removal.** The following mechanisms are intended to enable the Tribal Council, Tribal membership, and Judicial Branch to monitor and take action in light of the capabilities or performance of the Judicial Branch:

aA. Annual Audits. The annual Tribal financial audit shall include a financial audit of the Judicial Branch.

bB. Annual Reports. Within 90 days after the close of each fiscal year, the Chief Trial Judge shall present to the Tribal President and Tribal Council a written report on the operations of the Judicial Branch during the preceding fiscal year. The report may also include recommendations for action by the Tribal Council or others with respect to the future operations or needs of the Judicial Branch.

- cC.** **Removal Proceedings.** A Judge may be removed for cause through proceedings for Automatic Removal under section 17-21A-17-2 or Removal by Complaint under section 17-31A-17-3.

CHAPTER 14. TRIAL AND APPELLATE COURT JURISDICTION

14-11A-14-1 **Civil Jurisdiction.** The Trial Court and Appellate Court shall have and exercise the full reach of the Tribe's lawful civil jurisdiction (except for matters committed to the exclusive jurisdiction of the Constitutional Court). This includes the following so long as not inconsistent with controlling federal statutory or decisional law:

- aA.** civil jurisdiction over all persons, entities, property, lands, natural resources, environmental interests or values, cultural interests or values, transactions and/or activities located or occurring on the Reservation (collectively "On-Reservation Persons, Matters and/or Interests");
- bB.** civil jurisdiction over matters arising or occurring outside the Reservation which have sufficient effect on, or sufficient minimum contacts with, On-Reservation Persons, Matters and/or Interests to legally justify the assertion of such civil jurisdiction;
- cC.** civil jurisdiction over matters in which a plaintiff or defendant is a resident or has a place of business on the Reservation; and
- dD.** civil jurisdiction over all persons, entities, property, lands, natural resources, environmental interests or values, cultural interests or values, transactions and/or activities (collectively "Off-Reservation Persons, Matters and/or Interests") located or occurring on lands located outside the Reservation which are owned in trust or in fee by the Tribe or are controlled by the Tribe ("Off-Reservation Tribal Lands");

14-21A-14-2 **Criminal Jurisdiction.** The Trial Court and Appellate Court shall have and exercise the full reach of the Tribe's lawful criminal jurisdiction (except for matters committed to the exclusive jurisdiction of the Constitutional Court) over all offenses committed by Tribal members or other Indians on the Reservation or on Off-Reservation Tribal Lands, and over any other offenses, persons or entities within the Tribe's criminal jurisdiction under applicable law, compact, or consensual arrangement.

14-31A-14-3 **Subject Matter Jurisdiction.** Applying appropriate choice of law and jurisdictional rules, the Trial Court and Appellate Court shall hear civil claims and criminal matters within their jurisdiction (as set forth in sections 14-11A-14-1 and 14-21A-14-2) arising under:

- aA.** the Tribal Constitution and Bylaws;

- bB.** a referendum under Article VIII of the Tribal Constitution;
- cC.** Tribal codes, ordinances and resolutions;
- dD.** Tribal decisional law;
- eE.** Tribal customs and traditions, provided that the content of relevant customs and traditions must be proven and may be rebutted by testimony from qualified persons or the submission of authoritative written materials ;
- fF.** the Indian Civil Rights Act, Indian Child Welfare Act or other applicable federal law; or
- gG.** principles of state common law used by the Tribal Court to guide its fashioning of decisional principles under Tribal law not found in applicable existing provisions of the foregoing bodies of Tribal and federal law, provided that, absent federal law to the contrary or lawful consent of the Tribal Council, state law shall not govern or apply to On-Reservation Persons, Matters and/or Interests or Off-Reservation Persons, Matters and/or Interests.

14.41A-14-4 Sovereign Immunity. Nothing in this Chapter 14 is intended or shall be interpreted to in any respect waive the sovereign immunity of the Tribe, any Tribal Entity or any Tribal Representative.

CHAPTER 15. JUDICIAL TRAINING, CODE OF CONDUCT, COMPENSATION

15.11A-15-1 Judicial Training. Subject to the availability of funds, there shall be mandatory training for all Judges, as directed by the Chief Trial Judge for the Trial Judges and by the Chief Appellate Judge for the Appellate Judges.

- aA. Annual Training.** Each Judge will receive training at least annually.
- bB. Subjects.** The training must cover subjects relevant to the Judge's function, including without limitation pre-trial, trial, or appellate procedures, discovery, legal research, legal writing, Tribal law, and federal Indian law.
- cC. Conduct of Training.** The training shall be conducted by authorities in their respective fields.

15.21A-15-2 Code of Judicial Conduct. The Tribal Council, in consultation with the Chief Trial Judge and Chief Appellate Judge, shall either reaffirm the Code of Judicial Conduct for the Judicial Branch in force on the Effective Date of this Ordinance Title ("Current

Code"), or adopt an amended or new Code of Judicial Conduct based on American Bar Association or other appropriate models. Until such Tribal Council action, the Current Code shall remain in force.

~~15.31A-15-3~~ **Judge's Compensation.** Except for cases where the Tribal Council, acting under section ~~12-11A-12-1~~, converts a full-time Judgeship to a part-time Judgeship, the compensation of a Judge may not be reduced while the Judge is in office, unless the reduction is part of a program which provides for comparable and proportionate reductions in compensation for the President, Vice President and all Tribal Council members.

CHAPTER 16. JUDGES PRO TEM

~~16.11A-16-1~~ **Appointment of Panel; Removal of Judge Pro Tem.** The Tribal President with the concurrence of the Tribal Council shall endeavor to appoint and maintain a panel of Judges Pro Tem available to temporarily fill-in for a sitting Judge who is recused, disqualified, or otherwise temporarily unavailable to serve in a particular case or for a discrete period of time. The Tribal President with the concurrence of the Tribal Council, in their absolute discretion, may at any time remove a Judge Pro Tem from the panel, provided that such removal shall not be effective with respect to any Trial Court, Appellate Court or Constitutional Court matter which has been assigned to the Judge Pro Tem unless the removal has been concurred in by the Chief Trial Judge or Chief Appellate Judge making the assignment.

~~16.21A-16-2~~ **Qualifications.** To serve as a Judge Pro Tem in a particular Court, one must possess the qualifications set forth in sections ~~8-2, 8-4 - 8-7, and 8-9 - 8-12~~ ~~1A-8-2, 1A-8-4 to 1A-8-7, and 1A-8-9 to 1A-8-12~~ for Judges of that Court, provided that a sitting or recently retired judge of any federal or state court shall be deemed fully qualified to sit as a Judge Pro Tem in the Trial Court, Appellate Court or Constitutional Court.

~~16.31A-16-3~~ **Assignment.** For the temporary purpose described in section ~~16-11A-16-1~~ above, the Chief Trial Judge may assign a qualified Judge Pro Tem to serve in the Trial Court and the Chief Appellate Judge may assign a qualified Judge Pro Tem to serve in the Appellate Court or Constitutional Court, provided that, in removal proceedings under Chapter 17 directed at an Appellate Judge, only the Chief Trial Judge may assign a Judge Pro Tem to the Constitutional Court as provided in section ~~17-11A-17-1~~.

~~16.41A-16-4~~ **Pro Tem Assignment of Sitting Judges.** If assignment of a Judge Pro Tem is not feasible, for the temporary purpose described in section ~~16-11A-16-1~~ above, the Chief Trial Judge and Chief Appellate Judge may jointly designate ~~(a)~~ any Trial Judge to serve pro tem in the Appellate Court or in the Constitutional Court, or ~~(b)~~ any Appellate Judge to serve in the Trial Court, provided the designee possesses the qualifications for Judge of the Court to which he or she has been assigned as set forth in Chapter 8 and has not previously decided any material matter in the particular case; provided further that, in removal proceedings directed at an Appellate Judge under

Chapter 17, only the Chief Trial Judge may assign a Trial Judge to the Constitutional Court as provided in section 17-11A-17-1.

CHAPTER 17. REMOVAL OF JUDGES

17-11A-17-1 Exclusive Method -- Before Constitutional Court. The following shall be the exclusive procedures and standards for removal of any Judge. As described below, there are two types of removal -- Automatic Removal and Removal by Complaint -- both administered and decided by the Constitutional Court. If the removal is directed at an Appellate Judge ("Respondent"), and if there are fewer than three other available sitting Appellate Judges, the Respondent's seat on the Constitutional Court shall be filled in the removal proceedings by a Trial Judge or a qualified Judge Pro Tem designated by the Chief Trial Judge.

17-21A-17-2 Automatic Removal. A Judge shall forfeit and be removed from office ("Automatic Removal") as provided in this section 17-21A-17-2;

aA. Conviction of Felony. Automatic Removal shall occur if the Judge, while holding his or her current position as Judge, is convicted of any felony in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure, irrespective of whether the conduct on which the conviction is based occurred before or during the Judge's current term of office.

bB. Conviction of Misdemeanor Involving Moral Turpitude. Automatic Removal shall occur if the Judge, while holding his or her current position as Judge, is convicted of any misdemeanor or gross misdemeanor in any tribal, federal or state court, whether after a plea of guilty or nolo contendere, a trial, or other procedure, which the Constitutional Court determines is a Misdemeanor Involving Moral Turpitude, irrespective of whether the conduct on which the conviction is based occurred before or during the Judge's current term of office.

cC. Lack of Qualifications. Automatic Removal shall occur if the Judge does not possess a qualification for office set forth in this Ordinance Title, irrespective of whether the lack of qualification arises from events which occurred before or during the Judge's current term of office.

dD. Confirmation by Constitutional Court. An Automatic Removal shall not take effect until it is confirmed by the Constitutional Court as provided in this subsection dD:

ii. Upon receiving advice it deems reliable that indicates that a Judge ("Respondent") stands convicted of a felony as described in subsection aA above or a Misdemeanor Involving Moral Turpitude as described

in subsection **bB** above, or lacks any qualification for office as described in subsection **cC** above, the Constitutional Court shall, as a matter of highest priority, proceed with dispatch to determine whether such ground for Automatic Removal in fact exists, and if it does, to confirm the Automatic Removal of the Respondent, in the following manner. Such proceedings shall not be delayed or suspended because judicial proceedings to reconsider, vacate or appeal a conviction described in subsection **aA** or **bB** are pending.

- ii2.** The Constitutional Court shall issue a written notice to the Respondent, Tribal President and Tribal Secretary advising that the Constitutional Court will convene a hearing to determine whether the Automatic Removal of Respondent from office must be confirmed. The notice shall state the date, time and place of the Constitutional Court hearing, and summarize the indicated grounds for Automatic Removal, and shall include a copy of this Ordinance Title. The hearing shall be held as promptly as possible but no sooner than 10 days from the date of issuance of the written notice.
- iii3.** At the hearing, the Respondent shall be accorded an adequate opportunity to be heard on the matter, and may be represented by an attorney or advocate at his or her own expense. Conviction of a felony or a Misdemeanor Involving Moral Turpitude must be evidenced either by a copy of the judgment of conviction certified by the court in which the Respondent was convicted or by Respondent's sworn admission to such conviction. The Constitutional Court may consider any additional factual or legal materials, information or submissions it deems relevant.
- iv4.** After considering the materials, information and submissions before it, the Constitutional Court shall decide, as the case may be, whether the Respondent stands convicted of a felony as described in subsection **aA** or a Misdemeanor Involving Moral Turpitude as described in subsection **bB**, or lacks any requisite qualification for office as described in subsection **cC**. If the Court decides that such ground for Automatic Removal in fact exists, it shall be dutibound to immediately confirm Respondent's Automatic Removal from office, effective immediately. The Constitutional Court's decision shall be in writing.
- v5.** The decision of the Constitutional Court on Automatic Removal shall be final, binding on the Tribe and all branches of Tribal government, and not subject to review in any court.
- vi6.** While Automatic Removal proceedings are pending, the Constitutional Court may suspend or otherwise limit Respondent's

status or authority as a Judge.

eE. **Effect of Subsequent Vacation of Conviction.** An Automatic Removal based on a conviction described in subsection **aA** or **bB**, which is confirmed by the Constitutional Court as provided in subsection **dD**, shall not be suspended or reversed because of a subsequent decision rendered in any judicial proceeding to vacate the conviction. However, as provided in sections ~~17.4.a and b~~ **1A-17.4.A and B**, if the conviction is vacated it will not disqualify Respondent from later serving as a Judge.

17.31A-17.3 **Removal by Complaint.** In addition to Automatic Removal under section ~~17.21A-17.2~~, any Judge may be removed from office by complaint ("Removal by Complaint") as provided in this section ~~17.31A-17.3~~:

aA. **Complaint.** Proceedings for Removal by Complaint shall be initiated by a written complaint ("Complaint") seeking removal of a single Judge only ("Respondent"). The Complaint shall specify the grounds for removal, allege the facts supporting such grounds in reasonable detail, and be sworn to and signed by one or more enrolled members of the Tribe who are at least 18 years old ("Complainants"), provided that any Judge, irrespective of tribal membership, may be a Complainant. The Complaint, accompanied by a \$25 filing fee, shall be filed with the Court Clerk ("Filing"), who promptly shall provide a true copy thereof to the Respondent, each member of the Constitutional Court, the Tribal President, and the Tribal Secretary. The Constitutional Court shall have continuing authority to adjust the filing fee to account for inflation or other factors.

bB. **Grounds.** Removal by Complaint may be sought and effected on the ground that the Respondent:

- i1.** has grossly or repeatedly failed to competently perform the duties of office;
- ii2.** while performing the duties of office, has used alcohol, drugs or other mind-altering substance, or engaged in immoral behavior, unethical conduct, or corruption or abuse of power, provided that where such misconduct has resulted in a conviction as described in section ~~17.2.a or b~~ **1A-17.2.A or B**, the convicted Judge shall be Automatically Removed in the manner described in section ~~17.21A-17.2~~;
- iii3.** suffers from physical or mental incapacity preventing the competent performance of the duties of office, including the loss of essential physical or mental capabilities due to illness, injury, or addiction to alcohol, drugs or other mind-altering substance; or

iv4. has grossly or repeatedly violated the Code of Judicial Conduct.

cC. **Withdrawal of Complaint.** At any time prior to the commencement of a hearing under subsection **gG** below, any Complainant may withdraw his or her signature on the Complaint by filing with the Court Clerk a signed and sworn certificate of such withdrawal. If all signatures on a Complaint are so withdrawn, all further proceedings on the Complaint shall terminate. The Court Clerk promptly shall provide true copies of any signature withdrawal(s) to the Respondent, any other Complainant(s), each member of the Constitutional Court, the Tribal President, and the Tribal Secretary

dD. **Review by Tribal Secretary.** Within 7 days after the Filing of the Complaint, the Tribal Secretary shall make best efforts to review the Complaint and any signature withdrawal(s) filed to date, determine the validity and sufficiency of all signatures thereon, and report the results of this review in writing to the Respondent, the Complainant(s), the Court Clerk, each member of the Constitutional Court, and the Tribal President.

eE. **Review by Constitutional Court.** If the report of the Tribal Secretary states that the Complaint is supported by valid signature(s), the Constitutional Court, under such procedures as it considers appropriate, promptly shall review the Complaint and determine: **(i)(1)** if it meets the formal and procedural requirements of this Ordinance; and **(ii)(2)** if it alleges grounds and sufficient supporting facts which, if proven to the satisfaction of the Court, would justify Removal by Complaint. The Constitutional Court shall make best efforts to report its determinations on items **(i)(1)** and **(ii)(2)** in writing to the Respondent, Complainant(s), Tribal President and Tribal Secretary within 21 days after the Filing of the Complaint. If the Court reports negatively on either item **(i)(1)** or **(ii)(2)**, the Complaint shall thereupon be deemed dismissed and no further action shall be taken on it. If the Court reports positively on items **(i)(1)** and **(ii)(2)**, the Court shall make best efforts to schedule a hearing on the Complaint to be commenced within 35 days after the Filing of the Complaint. Pending such a hearing and its decision on the Complaint, the Constitutional Court may suspend or otherwise limit Respondent's status or authority as a Judge.

fF. **Timelines.** On a case-by-case basis, the Constitutional Court may adjust any time period specified in paragraphs **d** or **e** or subsection **D** or **E** above, as it deems warranted.

gG. **Hearing.** If the Constitutional Court determines to hold a hearing on the Complaint, the hearing shall be conducted as follows:

ii. At least 10 days before the hearing, the Court Clerk shall issue a written notice to the Respondent, Complainant(s), Tribal President

and Tribal Secretary which states the date, time, place and purpose of the hearing, and includes a copy of this Ordinance Title.

ii2. The hearing shall be conducted in accordance with such procedures and evidentiary standards as the Constitutional Court considers necessary to afford fair and reasonable opportunity to the Complainant(s) and the Respondent to support and refute the Complaint, and to enable the Court to make an informed and fair decision on the Complaint. The Complainants collectively and the Respondent may each be represented by an attorney or advocate at the hearing at their own expense.

iii3. The hearing shall be conducted in public and on the record. A verbatim stenographically or electronically recorded transcript of the hearing shall be maintained.

hH. **Decision.** After the hearing, the Constitutional Court shall issue a decision on the Complaint. The decision shall be in writing and shall set forth findings of fact, conclusions as to whether grounds for Removal by Complaint have been established, and the Court's decision with respect to such removal. The Constitutional Court may dismiss the Complaint, or may decide that Respondent shall be removed as Judge, that Respondent's status as Judge shall be suspended for no more than 90 days, or may impose conditions on Respondent's continued status or activities as Judge. The decision of the Constitutional Court shall be final, binding on the Tribe and all branches of Tribal government, and not subject to judicial review in any court.

~~17-41A-17-4~~ Effect of Removal on Future Eligibility for Judge.

aA. **Automatic Removal – Felony.** A Judge Automatically Removed from office due to a felony conviction as provided in section ~~17-21A-17-2~~, shall thereafter not be eligible for election or appointment as a Judge unless the conviction has been vacated and such person possesses all other qualifications for such office set forth in this Ordinance Title.

bB. **Automatic Removal -- Misdemeanor Involving Moral Turpitude.** A Judge Automatically Removed from office due to conviction of a Misdemeanor Involving Moral Turpitude as provided in subsection ~~17-21A-17-2~~, shall not be eligible for election or appointment as a Judge during the 10-year period following such conviction, unless the conviction has been vacated and such person possesses all other qualifications for such office set forth in this Ordinance Title.

cC. **Removal by Complaint.** A person who has been removed as a Judge by Complaint as provided in section ~~17-31A-17-3~~, shall not be eligible for

election or appointment as a Judge during the three-year period following such removal.

CHAPTER 18. FUNDING FOR JUDICIAL BRANCH

18:11A-18-1 Per Regular Tribal Budget. The Tribal Council shall provide funding for the operations of the Judicial Branch in the regular Tribal budget, after consulting with the Chief Trial Judge, the Chief Appellate Judge, and the Court Clerk about funding needs.

18:21A-18-2 Independent Fund Raising. With the prior approval of the Tribal Council, the Judicial Branch may independently raise funds for its operations, provided that funds shall not be sought from parties who have, or reasonably may in the future have, matters in litigation within the Judicial Branch. Any funds so raised shall be remitted to the Tribal Treasurer for administration for the benefit of the Judicial Branch and for accountability.

18:31A-18-3 Remittance of Court Revenues to Treasurer. Northern Cheyenne Court filing fees, copying charges and other charges, fines and penalties, and other sums paid to the Judicial Branch, shall be remitted to the Tribal Treasurer for administration for the benefit of the Judicial Branch and for accountability.

CHAPTER 19. AMENDMENT OR REPEAL.

19:11A-19-1 Two-Thirds Council Vote. This Ordinance ~~Title~~ may be amended, repealed or suspended only by affirmative vote of two-thirds of all Tribal Council seats (whether such seats are filled or vacant), i.e., by affirmative vote of 8 Tribal Council members.

* * * * *

4. I understand that, if the Constitutional Court accepts this certification and adjudicates the Constitutional Claim, the adjudication will be conducted in accordance with all rules, procedures and standards set forth, referred to or authorized in Chapter 6 of the Tribe's Separation of Powers Ordinance Code, which I have reviewed before making this request.

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TITLE I

GENERAL PROVISIONS CODE

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TITLE I

GENERAL PROVISIONS CODE

Chapter 1. ESTABLISHING AUTHORITY AND COURTS

1-1-1. Constitutional Authority.

The Code of the Northern Cheyenne Reservation is adopted pursuant to the authority vested in the Northern Cheyenne Tribal Council under Article IV, Section I(i) of the Constitution of the Northern Cheyenne Tribe.

1-1-2. Prior Inconsistent Ordinances and Resolutions Repealed.

Any and all ordinances, resolutions and policies inconsistent with or in conflict with or contrary to the spirit and purpose of the contents of this Code are hereby repealed and have no effect.

1-1-3. Amendments, Modifications, Additions to Any Code.

The Code may be amended by resolutions or ordinances in the manner provided for. The adoptions of Tribal ordinances and resolutions which effect modifications, additions or deletions to this Code shall be codified and incorporated in a manner consistent with the numbering and organization of this Code.

1-1-4. Courts Established.

There is hereby established a Northern Cheyenne Reservation Judicial System which consists of the Northern Cheyenne Court, Northern Cheyenne Juvenile Court and the Northern Cheyenne Court of Appeals. The Northern Cheyenne Reservation Judicial System shall be a Court of general civil and criminal jurisdiction and shall hear appeals from all Tribal Administrative bodies.

1-1-5. Availability of Code.

Copies of this Code and any amendments shall be kept available for public inspection during regular business hours at the office of the Clerk of Court.

Chapter 2. JURISDICTION

1-2-1. Criminal Jurisdiction.

Jurisdiction of the Northern Cheyenne Reservation Judicial System shall extend to any and all offenses which affect or concern the reservation, the Tribe, or its members when occurring within the exterior boundaries

of the Northern Cheyenne Reservation or on any other land or property owned or controlled by the Tribe.

1-2-2. Civil Jurisdiction.

Jurisdiction of the Northern Cheyenne Reservation Judicial System shall extend to all persons and to all civil actions enumerated in this Code or at common law when arising in whole or in part within the exterior boundaries of the Northern Cheyenne Reservation or on any other land or property owned or controlled by the Tribe.

Chapter 3. SOVEREIGNTY

1-3-1. Adoption by Reference Not a Waiver of Sovereign Power of the Northern Cheyenne Tribe.

The Adoption of any law, code or other document by reference into this Code shall in no way constitute a waiver or cession of any sovereign power of the Northern Cheyenne Tribe to the jurisdiction whose Law or Code is adopted or in any way diminish such sovereign power, but shall result in the Law or Code thus adopted becoming the law of the Northern Cheyenne Reservation.

1-3-2. Sovereign Immunity.

Except as required by federal law, or the Constitution and By-Laws of the Northern Cheyenne Tribe, or as specifically waived by a resolution or ordinance of the Northern Cheyenne Tribal Council, the Northern Cheyenne Tribe shall be immune from suit in any civil action, and its officers and employees immune from suit for any liability arising from the performance of their official duties.

Chapter 4. LIMITATIONS ON ACTIONS

1-4-1. Civil Actions.

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

- A. Any action against the Tribe or its officers or employees arising from the performance of their official duties must be commenced within one year of the date the cause of action accrued.
- B. Any other action must be commenced within three years of the date the cause of action accrued, provided, however, that any cause of action based on fraud or mistake shall not be deemed to have accrued until the aggrieved party has discovered or

reasonably should have discovered the facts constituting the fraud or mistake.

1-4-2. Criminal Actions.

- A. A prosecution for any offense must be commenced within the period specified:

Class A Offenses - 0-5 years

Class B Offenses - 0-2 years

Class C Offenses - 0-1 year

- B. The period of limitations does not run during any period in which the offender is not physically located on the Reservation or when a prosecution is pending in another jurisdiction against the offender for the same conduct.

Chapter 5. PRINCIPLES OF CONSTRUCTION

1-5-1. When Applied.

- A. The following principles of construction will apply to all of the Code unless a different construction is obviously intended:
1. Masculine words shall include the feminine, and singular words shall include the plural, and vice-versa.
 2. Words shall be given their plain meaning and technical words shall be given their usually understood meaning where no other meaning is specified.
 3. Whenever a term is defined for a specific part of this Code, that definition shall apply to all parts of this Code unless contrary meaning is clearly indicated.
 4. This Code shall be construed as a whole to give effect to all its parts in a logical, consistent manner.
 5. If any provisions of this Code or the application of any provision to any person or circumstance is held invalid, the remainder of this Code shall not be affected thereby and to this end the provisions of this Code are declared to be severable.
 6. Any typographical errors or omissions shall be ignored whenever the intended meaning of the provision containing the error or omission is otherwise reasonably certain to the Court.
 7. Any other issues of construction shall be handled in accordance with generally accepted principles of

construction giving due regard to the underlying principles and purposes of this Code.

Chapter 6. CARE OF BONDS, FINES AND FEES

1-6-1. Deposit and Disposition of Bonds, Fines and Civil Fees.

- A. All monies collected for fines imposed for the commission of offenses against ordinances passed by the Tribal Council of the Northern Cheyenne Reservation, or imposed under this Code shall be in the nature of an assessment for the support of the Northern Cheyenne Reservation Judicial System and for such other expenses as the Tribal Council may decide. Such expenses include but are not limited to the payment of fees provided for in the code or ordinances, to jurors and to witnesses answering subpoenas, to counselors and court officials, and expenses of the Judicial System and support of the police.
- B. The fines assessed shall be deposited by the Clerk of Court with the Tribal Council Treasurer of the Northern Cheyenne Tribal Council and shall, by said treasurer, be deposited in the appropriate account of the Northern Cheyenne Tribal Council. The Tribal Council Treasurer of the Northern Cheyenne Tribal Council shall draw checks from such funds in accordance with the existing budget.
- C. The Tribal Council Treasurer and the Clerk of Court shall keep an accounting of all such deposits and withdrawals.

Chapter 7. NORTHERN CHEYENNE COURT BAR ASSOCIATION RULES

1-7-1. General.

- A. Lay Counselors and Professional Attorneys shall be deemed officers of the Court for purposes of their representation of a party and shall be subject to the disciplinary authority of the Court in all matters related to their representative capacity.
- B. Any person appearing as a Lay Counselor or as an Attorney shall be subject to the same ethical obligations of honesty and confidentiality towards his client and the Lay Counselor/Attorney-client testimonial privileges shall apply in appropriate circumstances.
- C. Neither the Northern Cheyenne Tribe nor reservation shall have an obligation to provide or pay for such Lay Counselors and Professional Attorneys and such obligation shall rest entirely with the person desiring such a counselor or attorney.

1-7-2. Right to Be Represented by a Lay Counselor or Professional Attorney.

Any person appearing as a party in any civil or criminal action shall have the right to be represented by a Lay Counselor or Professional Attorney of his own choice and at his own expense; provided, however, that neither the Northern Cheyenne Tribe nor Reservation has an obligation to provide or pay for such a Lay Counselor or Attorney; provided further, that any such Lay Counselor or Attorney appearing before the Courts of the Northern Cheyenne Reservation shall have first obtained admission to practice before such Courts in accordance with the procedures set forth herein.

1-7-3. Eligibility for Admission.

- A. Any person admitted to practice must be of good moral character, be approved by the Reservation Court Bar, in writing, sign and take the oath, pay the Reservation Court Bar Fee, be at least twenty-one years of age, carry and display upon request verification of the admission to the Northern Cheyenne Court Bar, must not have been convicted of a felony or a misdemeanor within one year prior to the date of admission to the Reservation Court Bar.
- B. Any Lay Counselor to practice in the Courts of the Northern Cheyenne Reservation must show completion of a training session in Criminal Law and Procedure, Civil Law and Procedure and must have an understanding of the Appellate Court and Procedure and of legal writing and drafting of appropriate court forms.
- C. Any attorney who is an active member in good standing of the State Bar of Montana, or any attorney certified and eligible to practice before the highest Court of any other state or of the Supreme Court of the United States is eligible to be admitted to practice before the Courts of the Northern Cheyenne Tribe.
- D. Any person not a member of the Northern Cheyenne Tribe requesting admission to practice in the Courts of the Northern Cheyenne Reservation must agree to submit to the jurisdiction of the Court in any contempt proceeding arising out of an appearance before the Courts.

1-7-4. Procedure for Admission.

- A. Any Lay Counselor or Professional Attorney desiring to be admitted to practice before the Northern Cheyenne Courts shall apply for admission by certifying under oath and in writing to the following:
 1. That as Lay Counselor he has completed a training session

in Criminal Law, Civil Law and Procedures, operation of the Appellate Court and Procedure, and has knowledge of legal writing and drafting of appropriate court forms.

2. That as an Attorney he is an active member in good standing of the State Bar of Montana or of the bar of another state or is eligible to practice before the Supreme Court of the United States.
 3. That if admitted to practice before the Northern Cheyenne Courts he will take the required oath as prescribed in this Code for Attorneys and be bound thereby.
 4. That if admitted to practice, the Lay Counselor or Attorney will accept and represent indigent clients when asked by a Judge of the Court to do so.
- B. The Admission Fee of \$50.00 shall be tendered with the application, subject to return if the application is denied.
- C. Upon receipt of an application fee for admission to practice before the Northern Cheyenne Court, a Reservation Court Judge shall review the application and may, but need not, investigate into the truth of the matters contained therein. If satisfied that the applicant meets the qualifications set forth herein, the Court Clerk shall notify such person who may appear in person to take the oath prescribed herein or may subscribe to such oath and forward it to a Judge of the Court.
- D. Upon taking the oath, either in writing or orally, a Judge of the Court shall cause a certificate to be issued, evidencing the admission of the Lay Counselor or Attorney to practice before the Northern Cheyenne Courts.

1-7-5. Disbarment and Discipline.

- A. Whenever it is made to appear to a Judge of the Judicial System that any Lay Counselor or Professional Attorney admitted to practice before the Northern Cheyenne Courts has acted in an unethical or otherwise improper manner while functioning as a Lay Counselor or Attorney, a Judge may order such Lay Counselor or Attorney to appear within ten (10) days and show cause why he should not be suspended from practicing before the Northern Cheyenne Courts.
- B. Any Judge who finds a Lay Counselor or Attorney admitted to practice before the Northern Cheyenne Court to be in contempt of court may, in addition to any other sanction imposed, order the Lay Counselor or Attorney to appear within ten (10) days and show cause why he should not be suspended from practicing before the Northern Cheyenne Courts.

- C. All suspensions from practicing before the Courts of the Northern Cheyenne Reservation shall be for a period as ordered by the Judge.
- D. Any Lay Counselor or Attorney violating the Oath of Lay Counselors and Attorneys shall be subject to disbarment. Disbarment proceedings shall commence with the writing of a complaint against the Lay Counselor or Attorney, including the reasons for disbarment. A Judge of the Northern Cheyenne Court, within ten (10) days of the receipt of such a complaint, shall hold a hearing at which time the Lay Counselor or Attorney involved may present witnesses and a defense of his actions.

1-7-6. Contempt of Court - Appeal.

A Lay Counselor or Professional Attorney held to be in contempt of court can appeal immediately to the Appellate Court for action by the Appellate Judge.

1-7-7. Disbarment - Appeal.

A Lay Counselor or Professional Attorney disbarred from the Northern Cheyenne Courts can appeal to the Northern Cheyenne Appeals Court. There shall be no further appeal to the Tribal Council of the Northern Cheyenne Tribe.

1-7-8. Oath.

Upon the admission to practice as provided herein, a Lay Counselor or Professional Attorney shall take the following oath, either verbally before the Court, or subscribe his signature to such oath if admitted personally appearing:

"I, _____, do solemnly swear:

- (1) "I have read the Northern Cheyenne Code and am familiar with its contents."
- (2) "I will respect and obey the Charter, Constitution and by-laws of the Tribe in all respects."
- (3) "I will abide by the rules established by the Council and the Northern Cheyenne Reservation Court."
- (4) "I will at all times maintain the respect due the Northern Cheyenne Reservation Court and its officers."
- (5) "I will not counsel or speak for 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 Reservation, 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 statements."
- (7) "I will abstain from all offensive conduct in the Northern Cheyenne Reservation Court."
- (8) "I hereby submit to the jurisdiction and recognize the jurisdiction of the Northern Cheyenne Court in regard to its ability to fine and/or jail my person if found in Contempt of Court."

1-7-9. Admission Fees of Lay Counselors and Attorneys.

Before a Lay Counselor or Professional Attorney shall be admitted to practice before the Northern Cheyenne Court, and as an annual condition to maintaining that privilege, he shall pay a fee of \$50.00, payable prior to taking the oath set forth herein and annually thereafter. Any Lay Counselor or Attorney failing to pay such annual fee within 30 days after the anniversary date of his admission shall forfeit the right to practice before the Northern Cheyenne Courts until formally readmitted.

1-7-10. Waiver of Admission Fees.

The admission fee shall be waived for persons who represent the Northern Cheyenne Tribal Court, the United States, or any State, or any political subdivision of all the above, and for persons who appear without charge to their clients.

1-7-11. Reservation Court Bar Roster.

The Clerks of Court of the Northern Cheyenne Court and Juvenile Court shall maintain a roster of all Lay Counselors and Attorneys admitted to the Northern Cheyenne Court Bar.

Chapter 8. DEFINITIONS

1-8-1. Number and Gender.

As used in this Code, the singular shall include the plural, and the plural shall include the singular, and the masculine shall include the feminine, and the feminine shall include the masculine, except where contrary intent is manifest.

1-8-2. Signature, Written Instrument.

As used in this Code, "signature" shall mean any written signature, or any mark or thumbprint witnessed by the written signature of at least one witness to the act. Wherever this Code shall refer to a "written instrument," that shall be construed to mean an instrument typed, printed, or written out in hand, and signed by the person who shall make it.

1-8-3. Oath.

As used in this Code "oath" shall mean "oath or affirmation," and "sworn" shall mean "sworn by oath or affirmation."

1-8-4. Court Day.

As used in this Code, "Court Day" shall mean any and every day of the week, except Saturday and Sunday and legal holidays, provided, that whenever a legal holiday shall fall on a Monday, the Saturday preceding that Monday shall also be a Court Day.

1-8-5. Counsel and Representative.

As used in this Code, "Counsel" shall mean any person appearing, speaking, or acting for another in any criminal or civil proceeding who shall be paid for his services, and "Representative" shall mean any person who shall appear, speak or act for another in any criminal or civil proceeding who shall not be paid for so doing.

1-8-6. Code.

As used in this Code, "Code" shall mean the Northern Cheyenne Reservation Code.

1-8-7. Contempt.

Civil Contempt is conduct directed at someone other than the Court that is detrimental to the dignity and authority of the Court.

Criminal Contempt is conduct directed at and detrimental to the dignity and authority of the Court.

1-8-8. Council.

As used in this Code, "Council" shall mean the Tribal Council of the Northern Cheyenne Reservation.

1-8-9. Enrolled Member.

As used in this Code, "Enrolled Member" shall mean any person validly and currently listed on the official membership roll of the Northern Cheyenne Tribe of Indians.

1-8-10. Member of Council.

As used in this Code, "Member of Council" shall mean any person eligible to vote at meetings of the Tribal Council.

1-8-11. District.

As used in this Code, "District" shall mean any of the political districts of the Northern Cheyenne Reservation.

1-8-12. Jail, Juvenile Detention Facility, Detoxification Facility, Overnight Facility.

As used in this Code, "Jail", "Juvenile Detention Facility", "Detoxification Facility", and "Overnight Facility" shall mean whatever building or facilities are from time to time appointed and designated for those purposes by the appropriate authorities of the Northern Cheyenne Reservation, and those purposes as set forth in this Code.

1-8-13. Person.

As used in this Code, a "Person" may be a citizen of this or any reservation or any state or territory and includes, but is not limited to, natural persons, corporations, partnerships, trusts, unincorporated business associations and any other organization or entity involved in private or commercial activity.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:

AW Enforcement Services

OCT 19 1989

Mr. Edwin Dahle, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Dahle:

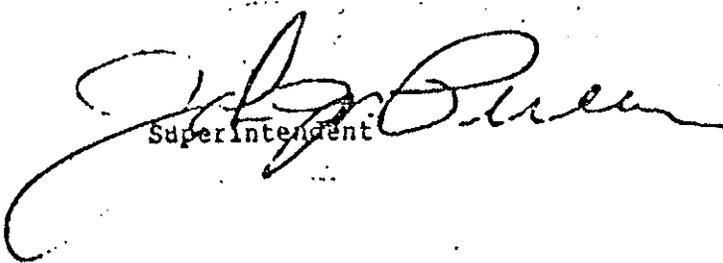
Attached is the original of Northern Cheyenne Tribal Ordinance 34(89) enacted by the Northern Cheyenne Tribal Council on September 19, 1989 and received in this office on October 1, 1989.

Ordinance No. 34(89) pertains to amending various sections of the Law and Order Code.

Upon review, I approve Ordinance 34(89) as written and enacted under authority of Article IV, Section 1(i) of the Northern Cheyenne Tribal Constitution and By-Laws.

We have retained sufficient copies for our files and submission to the Billings Area Office for review in accordance with your Tribal Constitution and By-Laws.

Sincerely,


Superintendent

Attachments

memorandum

Date: October 18, 1989

Reply to
Attn of: Division of Programs, Law Enforcement Services, Code 353

Subject: Northern Cheyenne Resolution No. 34-89

To: Tribal Government Services

From: Law Enforcement Services

DATE RECEIVED

OCT 18 1989

TRIAL OPERATIONS
BILLINGS AREA OFFICE

OCT 20 1989
A M
7 8 9 10 11 12 1 2 3 4 5 6

We have reviewed the above resolution and recommend approval. The suggested penalties are within the guidelines imposed on Indian tribes by the Indian Civil rights Act and Public Law 99-570, also known as the Omnibus Bill.

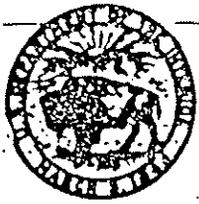
If you have any questions, let us know.



Walter J. Main
Area Special Officer



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:

Law Enforcement Services

FEB-5 1988

Mr. Robert Bailey, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Bailey:

Attached for your permanent records is the original of Ordinance No. 16(88) enacted by the Northern Cheyenne Tribal Council on January 18, 1988 and received in this office on January 28, 1988.

Ordinance No. 16(88) pertains to certain Civil Rights which will be guaranteed to all person(s) within the exterior boundaries of the Northern Cheyenne Indian Reservation due to the passage of this Ordinance.

Note: Under "So Be It Ordained" 1-1-6 Civil Rights Guarantees. Number (6) last word prior to first comma "trial" is misspelled.

However, upon my review, I approve Ordinance No. 16(88) as written and enacted under Authority of Article IV, Section (1) of the Northern Cheyenne Tribal Constitution and By-Laws.

We have retained sufficient copies for our files and submission to Billings Area Office for review in accordance with your Tribal Constitution and By-Laws.

Sincerely,


Superintendent

Attachments

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 16 (88)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL PROVIDING THAT CERTAIN CIVIL RIGHTS WILL BE GUARANTEED TO ALL PERSON'S WITHIN THE EXTERIOR BOUNDARIES OF THE NORTHERN CHEYENNE INDIAN RESERVATION.

WHEREAS, the 1968 Indian Civil Rights Act guaranteed that certain civil rights were to be provided to any person who appeared before the basic institutions on all Indian Reservations, and

WHEREAS, the Northern Cheyenne Tribal Council recently enacted a very comprehensive set of criminal and civil codes which contain a fairly comprehensive listing of most of the Indian Civil Rights Act rights, and

WHEREAS, the Tribal Council feels at this time, in addition to the rights persons have in the recently enacted criminal and civil codes, that a basic statement should be added to our Codes which reflect the fact that these rights are available to all persons who come in contact with the various tribal institutions.

SO BE IT ORDAINED that the following ten (10) Civil Rights will be added to the Title I (General Provisions Code), Chapter 1., as a new section to be numbered 1-1-6.:

1-1-6. Civil Rights Guarantees.

The following civil rights are guaranteed to all persons within the exterior boundaries of the Northern Cheyenne Reservation. The various institutions within the exterior boundaries of the Northern Cheyenne Reservation shall not (1) make or enforce any law prohibiting the free exercise of religion, or abridging the freedom of speech, or of the press, or the right of the people peaceably to assemble and to petition for a redress of grievances;

(2) violate the right of the people to be secure in their persons houses, papers, and effects against unreasonable search and seizures, nor issue warrants, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the person or thing to be seized;

(3) subject any person for the same offense to be twice put in jeopardy;

(4) compel any person in any criminal case to be a witness against himself;

(5) take any property for a public use without just compensation;

(6) deny to any person in a criminal proceeding the right to a speedy and public trial, to be informed of the nature and cause

of the accusation, to be confronted with the witness in his favor, and at his own expense to have the assistance of counsel for his defense;

(7) require excessive bail, impose excessive fines, inflict cruel and unusual punishments, and in no event impose for conviction of any one offense any penalty or punishment greater than imprisonment for a term of twelve (12) months or a fine \$5,000, or both;

(8) deny to any person within its jurisdiction the equal protection of its laws or deprive any person of liberty or property without due process of law;

(9) pass any bill of attainder or ex post facto law; or

(10) deny to any person accused of an offense punishable by imprisonment the right, upon request, to a trial by jury of not less than six persons.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council with 10 votes for passage and adoption and 0 votes against passage and adoption on this 18th day of January, 1988.

Robert Bailey, President
Robert Bailey, President
Northern Cheyenne Tribal Council

ATTEST:

RoGene Not Afraid
RoGene Not Afraid, Secretary
Northern Cheyenne Tribal Council

APPROVED: FEB - 5 1988
John W. Coleman
SUPERINTENDENT

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APPELLATE CODE
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TITLE II
APPELLATE CODE

Chapter 1. GENERAL SECTION

2-1-1. Composition of the Appeals Court.

The Appeals Court shall consist of three judges, a Reservation court judge who has not heard the case, a professional Montana Attorney, and a tribal member who is not a member of the tribal council. If, for any reason, a member of the court is unable to hear a case, an alternate judge may be appointed by procedures in the Law and Justice Plan of Operation.

2-1-2. Selection Procedure.

Judges shall be selected in accordance with the Law and Justice Commission Plan of Operation.

2-1-3. Term of Office.

The term of office for an appeals judge shall be set by the Law and Justice Commission pursuant to its Plan of Operation.

2-1-4. Compensation.

The appeals judges shall be compensated as set forth by the Law and Justice Commission pursuant to a Tribal Council approved budget.

2-1-5. Causes for Removal.

Once a judge has been appointed, he may be removed within the first two months for any reason. After that period, a judge may be removed only for justifiable cause. For the purposes of this section, justifiable cause exists only under the following circumstances:

- (1) Conviction of a felony;
- (2) Conviction of a misdemeanor involving dishonesty or conviction of acts offensive to the morals of the community;
- (3) Failure to perform the duties of the office for a period of six months;
- (4) Performance of official duties while intoxicated or under the influence of any drug or mind/behavior altering substance; or
- (5) Willful misconduct in office.

2-1-6. Procedure for Removal.

Any person residing within the exterior boundaries of the Reservation may request a hearing on the removal of an Appeals Court judge by filing a formal complaint, not unfounded or frivolous, with the Law and Justice

Commission, and shall deliver a copy of the complaint to the judge whose removal is being requested on the same day. The complaint shall allege all the particular facts indicating justifiable cause for removal.

If the Law and Justice Commission agrees that the complaint is not frivolous or unfounded and that it is based on particular facts, the Commission will set a date for a hearing and notify the judge of the date in writing. The judge shall have at least ten days from the notice to prepare a response, submit evidence, and present witnesses. After ten days, the Law and Justice Commission shall hold a hearing where the complaint is read and the judge responds. The Commission's decision shall be made in writing and issued within five days. The judge may, if he wishes, appeal the decision to the Tribal Appeals Board.

2-1-7. Conflict of Interest.

No judge shall be a member of the panel of judges hearing or deciding an appeal if that judge:

- (1) Heard the case on its merits in the trial court; or
- (2) Is related by blood or marriage to the appellant or appellee, if such relationship is in the first degree, such as brother, sister, parent, spouse, child, stepchild, foster child, adopted child, former spouse, grandparent, great grandparent, uncle or aunt (whether by blood or marriage), or a first cousin; or
- (3) Would benefit personally and to a much greater degree than members of the general public of the Northern Cheyenne Reservation; or
- (4) Would otherwise be in a position where his or her impartial judgment might be significantly affected.

An appellate judge shall disqualify himself in any appellate case in which he has a substantial interest, or as otherwise provided for above, or where, in that judge's opinion, it would be otherwise improper to sit on the appeal.

A party to an appeal may, in accordance with the above provisions, file an affidavit of prejudice with the Northern Cheyenne Appeals Court stating the facts and reasons for the belief that prejudice exists. The affidavit must be filed within five days of filing an appeal.

If the other two members of the Appeals Court both agree prejudice in accordance with the above provisions exists, an alternate judge will be appointed to hear the case.

A party may file only one such affidavit in any case.

Chapter 2. ADMINISTRATION

2-2-1. Administrative Responsibilities.

One of the appeals judges shall be responsible for court management, maintaining the calendar, developing and maintaining a record system, budgeting, and other necessary duties.

2-2-2. Clerk's Duties.

The Clerk of the Reservation Court System shall be responsible for forwarding all documents filed to judges and opposing parties as appropriate and shall be responsible for the maintenance of all completed files.

2-2-3. Court Sessions.

The Appeals Court shall convene whenever there is a case to be heard.

Chapter 3. GENERAL PROCEDURES

2-3-1. Who Can Appeal.

Any party adversely affected by a decision of the trial court in a civil case may appeal that decision. Any party in a criminal case, except the prosecution, may appeal from any final order, commitment, or judgment of the trial court. The prosecution in a criminal case may appeal only alleged procedural error.

2-3-2. How to Request an Appeal.

An appeal is commenced in a civil case by filing an original and one copy of a Request for Appeal with the Clerk of the Appeals Court within five days of the date of the trial court's adverse decision. In a civil case, the party requesting appeal must also file two copies of his brief and a copy of the trial transcript with the Clerk of the Appeals Court within twenty days of requesting an appeal. In criminal cases an appeal must be requested within two days of the decision and briefs are due within ten days.

2-3-3. Clerk's Duties.

When a Request for Appeal is received, the clerk will notify the Appeals Court judges and opposing parties within three days of the request. After the briefs and transcript are received, the Clerk will distribute the transcript and one copy of the brief to the court and the other brief to the opposing party within two days. The opposing party's brief, when received, will also be distributed in two days.

2-3-4. Opposing Party's Response.

In a civil case, the opposing party will have fifteen days from the date the appealing party's brief is received to file an opposing brief and make

any requests. In a criminal case the opposing brief is due within five days of the notice of appeal.

2-3-5. Consequences of Missing Filing Dates.

If any party does not file his Request for Appeal within the stated time limits, he loses his opportunity to appeal. If any party does not turn in their brief within the stated time limits, the case will be decided without that brief.

2-3-6. Filing Fee.

The appealing party shall pay a \$20 filing fee at the time the Request for Appeal is filed to the Clerk of Court.

2-3-7. Costs.

The costs of an appeal rest on the appealing party unless the lower court's decision was the result of the judge's conflict of interest as determined by the Appeals Court; then the opposing party is responsible for the costs of appeal.

2-3-8. Satisfaction of Judgment.

All judgments and orders of the Appeals Court shall be enforceable through and by the trial court. In compliance with and satisfaction of the judgment or order, the trial court clerk shall notify the Appeals Court judge.

2-3-9. Posting of Bond and Stays.

The appealing party shall post bond in the amount of any monetary judgment at the time the appeal is filed. If the judgment is not a monetary amount, the bond shall be \$50. Stays upon the decision of the trial court may be issued by the Appeals Court judges if warranted and requested.

2-3-10. Waiver of Fees.

The Appeals Court may not waive the filing fee or reduce the amount of the bond.

2-3-11. Extension of Time Limits.

The Appeals Court, for good cause, may extend any time limits set in this section.

Chapter 4. FULL APPEALS

2-4-1. Who Hears the Appeal.

A full appeal is heard by the three-member panel.

2-4-2. What May be Appealed.

Any final decision of the Northern Cheyenne Court or Juvenile Court may be appealed unless the right of appeal is limited by the Northern Cheyenne Code or ordinances.

2-4-3. Standards on Full Appeal.

The Appeals Court may decide not to hear an appeal in a civil case if the Request is frivolous or the information in the Request is clearly false, as determined by the Appeals Court.

When an appeal is heard, the Appeals Court may affirm, modify, reverse, or remand the lower court's decision. There can be a modification or reversal only where there were no facts to support the decision or there was a misapplication of the law.

2-4-4. When Oral Arguments Heard.

In a civil case, any two members of the Appeals Court may request oral arguments. In a criminal case, the defendant may also request oral arguments. Oral arguments will be scheduled within ten days of a request.

2-4-5. No Majority on the Decision.

If no majority is reached on a decision, then the lower court's decision is upheld.

2-4-6. Written Decision.

The Appeals Court's decision shall be in writing and shall contain the facts and issues of the case, the rules of law relied on, the reasoning of the court, and the decision.

2-4-7. Time Limits.

The written decision in a civil case shall be issued within fifteen days of the later of: the date the last brief is due or of oral arguments. In a criminal case, the time limit shall be five days.

Chapter 5. IMMEDIATE APPEALS

2-5-1. Who Hears Immediate Appeals.

The Attorney member of the Appeals Court shall hear immediate appeals. If, for any reason, he is not available, an alternate judge shall be selected.

2-5-2. What May Be Appealed.

A party may request an immediate appeal in the following circumstances:

- a. injunctions: court order prohibiting or allowing a particular action.
- b. mandamus: court order to a lower court, corporation, or tribal official to perform a particular act as part of his official duties or to restore to a party rights and privileges of which he has been illegally deprived.
- c. interlocutory: court order deciding some point before the end of a suit that is not a final decision of the controversy.
- d. habeas corpus: court order to produce the detained person and the reason for his detention and to do whatever the court considers appropriate.

2-5-3. Time Limits.

The request for an immediate appeal must be made to the Clerk of the Appeals Court at the time the Request for Appeal is made. The hearing shall be held as soon as possible but no later than ten days from the date of request. The appeals judge hearing the issue will respond, in writing, within three days of the request.

2-5-4. Standards on Appeal.

The judge on an immediate appeal may affirm, modify, reverse, or remand the lower court's order. The order may be modified or reversed only if there was no evidence to support the order.

2-5-5. Notice of Appeal.

The appealing party must notify the opposing parties of the request for an immediate appeal at or prior to the time notice is filed with the clerk or the appeal will not be heard.

2-5-6. Submission of Information by Parties.

When the appeal requested is an immediate appeal, both parties shall submit their reasons for having the order reversed or affirmed or modified as the judge requests. Information not submitted by the parties will not be considered by the judge in reaching a decision.

2-5-7. Written Decision.

The judge's decision on an immediate appeal shall be written, stating the type of order appealed, the facts, the rules of law applied, the reasoning and the decision.

2-5-8. Full Appeal Not Precluded.

Use of the immediate appeal under the above listed circumstances does not preclude a full appeal of the final decision.



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:

TRIBAL OPERATIONS

July 6, 1988

Mr. Robert Bailey, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Bailey:

Attached is the original of Northern Cheyenne Tribal Ordinance No. 27(88) enacted by the Council on June 21, 1988 and received in this office on July 1, 1988.

Ordinance No. 27(88) - amends Title II, Appellate Code of the existing Northern Cheyenne Reservation Law and Order Code.

I have reviewed and approve this Ordinance.

A copy of the Ordinance is being forwarded to the Billings Area Office.

Sincerely,


Superintendent

Attachments

NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 27 (88)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL amending Title II Appellate Code of the Law and Order Code of the Northern Cheyenne Reservation.

WHEREAS, updating needs to be undertaken occasionally by the Tribal Council as situations change on the Northern Cheyenne Reservation, and

WHEREAS, The Appellate Code at this time needs modification so it can function, as intended, for the smooth administration of Justice on the Northern Cheyenne Reservation

SO BE IT ORDAINED that the Northern Cheyenne Tribal Council hereby modifies Title II - Appellate Code - of the Law and Order Code of the Northern Cheyenne Reservation as follows:

TITLE II - APPELLATE CODE

CHAPTER 1. GENERAL SECTION

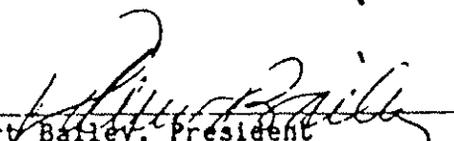
2-1-1 Composition of the Appeals Court

The existing section is repealed and replaced with the following section
"The Appeals Court shall consist of three judges - one shall be a professional Montana Attorney and the other two shall be respected tribal members with legal backgrounds."

2-1-2 Selection Procedure.

The existing section is repealed and replaced with the following section.
"Appellate Judges shall be appointed by the President of the Tribal Council and concurred in by the Tribal Council. Once a judge is concurred by the Tribal Council and Judge is authorized to preside over Appellate matters."

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council with 8 votes for passage and adoption, 0 votes against passage and adoption and with 1 abstention on this 21st day of June, 1988.

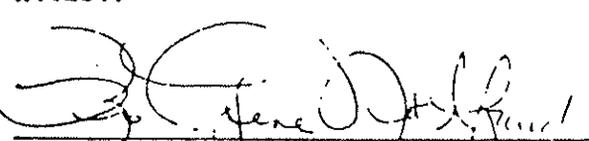

Robert Bailey, President
Northern Cheyenne Tribal Council

JUN - 6 1988

APPROVED: _____


SUPERINTENDENT

ATTEST:


RoGene Not Afraid, Secretary
Northern Cheyenne Tribal Council



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:
TRIBAL OPERATIONS

J. 7 1389

Mr. Edwin Dahle, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Dahle:

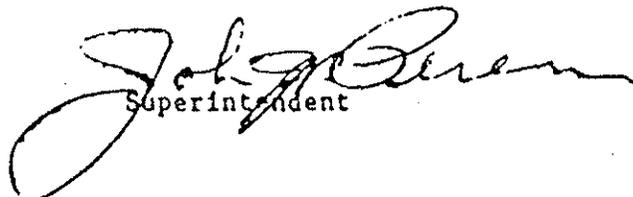
Attached is the original of Northern Cheyenne Tribal Ordinance No. 22 (89) enacted by the Northern Cheyenne Tribal Council on May 22, 1989 and received in this office on June 1, 1989.

Ordinance No. 22(89) - amends Chapter I of Title II - Appellate Code of the Northern Cheyenne Reservation Law and Order Code.

I have reviewed this Ordinance and I am approving it as submitted.

A copy of this Ordinance is being forwarded to the Billings Area Tribal Operations Branch of review.

Sincerely,


Superintendent

Attachment

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE INDIAN RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 22 (89)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL AMENDING CHAPTER 1 OF TITLE II - APPELLATE CODE - OF THE NORTHERN CHEYENNE RESERVATION LAW AND ORDER CODE.

WHEREAS, by ordinance 26 (87) in July of 1987 the Tribal Council adopted a new, revised Law and Order Code for the Northern Cheyenne Reservation; and

WHEREAS, as time passes the Tribal Council recognizes that the various titles must occasionally be amended; and

WHEREAS, Title II - Appellate Code - is now needing modifications as follows:

SO BE IT ORDAINED that Chapter 1 of title II, Appellate Code, of the Northern Cheyenne Reservation Codes, is amended as follows:

Present law for 2-1-1 as set forth in ordinance 27 (88) is amended to read as follows:

2-1-1: Composition of the Appellate Court

The Appeals Court shall consist of a one Judge appellate panel. The Appeals Court Judge shall be a licensed professional Montana Attorney at Law.

Present law for 2-1-2 as set forth in ordinance 27 (88) is amended to read as follows:

2-1-2: Selection Procedure

An appellate judge is to be appointed by the President of the Tribal Council and then concurred in by the Tribal Council itself. Once concurred in by the Tribal Council the Judge may preside over appellate matters. A Tribal Council resolution shall be passed by the Tribal Council which reflects this appointment.

The Present 2-1-3 language in Term of Office is amended by the following:

2-1-3: Term of Office

The Appellate Judge shall serve for a two-year term.

Present 2-1-4 language in Compensation is amended by the following:

2-1-4: Compensation

The Appellate Judge shall be compensated at an hourly rate of pay which prevails in this area.

The present 2-1-5 language is to remain exactly as written, except a subsection (6) is to be added:

(6) Representing any client in the Northern Cheyenne Court System.

The present 2-1-6 language in Procedure for Removal shall remain the same except wherever the Law and Justice Commission is referred to in 2-1-6. The wording Northern Cheyenne Tribal Council President shall be substituted for Law and Justice Commission.

The present 2-1-7 in Conflict of Interest is amended to the following:

2-1-7: Conflict of Interest

No judge shall hear or decide an appeal if that judge: (1) is related in the first degree to the appellate or appellee; or (2) would benefit personally from his decision; or (3) would be in a position where his impartial judgement maybe affected.

If a party believes the appellate judge has a conflict of interest, the party can file affidavit of prejudice with the appellate judge, stating what the conflict is, with five days of the filing of the notice of appeal. If the appellate judge agrees with the affidavit of prejudice and the judge agrees that he has a conflict of interest, he shall disqualify himself from that appeal. The Tribal Council President can then appoint an alternate judge to hear that appeal. Whatever judge the Tribal Council President then appoints cannot be disqualified on that appeal

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council with 10 votes for passage and adoption and 2 against passage and adoption and 1 abstention on this 22nd day of May, 1989.

ATTEST:

Edwin Dahle
Edwin Dahle, President
Northern Cheyenne Tribal Council

Vernon Sooktis
Vernon Sooktis, Secretary
Northern Cheyenne Tribal Council

JUN 7 1989
APPROVED:
John J. P... ..
Superintendent

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

RESOLUTION 189 (92)

A RESOLUTION OF THE NORTHERN CHEYENNE TRIBAL COUNCIL CREATING THE STAFF POSITION OF A NORTHERN CHEYENNE RESERVATION COURT ADMINISTRATOR FOR FY 1993 AND ORDERING NOTICES OF JOB ADVERTISEMENTS FOR THE JUDGES TO BE SET FORTH.

WHEREAS, recent reviews of the Northern Cheyenne Court System by professional consultants indicate that the processing and scheduling of the various activities within the Court system are creating many of the problems, bottlenecks and frustrations that are evident in the present court system; and,

WHEREAS, the Tribal Council still believes a Chief Judge, as the supervisor of all judicial personnel, is needed in the system, but the scheduling requires an employee who does nothing but administer and see that the court system is functioning smoothly; and,

WHEREAS, present Tribal law, as found in Ordinance No. 24 (90) requires that the Tribe give notice to the existing judges that their terms are expiring and the Tribal Council hereby declares that in mid-August a period of thirty days prior to a new Tribal Council being sworn in, the Tribal Personnel Officer and Tribal Council President shall notify, in writing, all existing Tribal judges that their term will expire in sixty (60) days after such notice is sent out. Advertising, interviews and other personnel selection procedures will be conducted and implemented to provide a transition period for the judicial department of the Northern Cheyenne Tribe; now,

THEREFORE BE IT RESOLVED that the Northern Cheyenne Tribal Council hereby creates the position of a Court System Administrator for FY 1993 and ordering a sixty day notice, to be sent thirty days before the 1992-1994 council is sworn in, to the existing judges informing them of the expiration of their terms and authorizing the advertisement of the judge positions.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 10 votes for passage and adoption and 1 vote against passage and adoption with 1 abstention this 21st day of July, 1992.

Edwin Dahle
Edwin Dahle, President
Northern Cheyenne Tribal Council

ATTEST:

Norma Wolfchief
Norma Wolfchief, Secretary
Northern Cheyenne Tribal Council

AUG 27 1990

Cly

Mr. Edwin Dahle, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Dahle:

Attached is the original of Northern Cheyenne Tribal Ordinance No. 24(90) enacted by the Council on August 9, 1990 and received in this office on August 17, 1990.

Ordinance No. 24(90) - provides for the administration of justice by establishing a written code of conduct for the judicial system of the Tribal Court system of the Northern Cheyenne Tribe and for other purposes.

For the selection of tribal judges, this ordinance would take precedence over the Northern Cheyenne Tribe's personnel manual. After approval, it should be submitted to the Billings Area Contracting Office to become a part of the contract.

I approve Ordinance No. 24(90) as enacted under the authority of Article IV, Section 1(i) of the Northern Cheyenne Tribal Constitution and By-laws.

We have retained sufficient copies for our files and submission to the Billings Area Office for review in accordance with your Tribal Constitution and By-laws.

Sincerely,

Kenneth W. Davis

Superintendent

Attachment

cc: chrono 2
 ordinance file
 BAO, Tribal Operations/Code 102
 NCT, Tribal Court ✓
 NCT, Attorney
 NCT, Secretary
 NCT, Research Dept. - MRW
GAWATERS/lmonebear 08/27/90

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 24 (90)

AN ORDINANCE OF THE TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE PROVIDING FOR THE ADMINISTRATION OF JUSTICE BY ESTABLISHING A WRITTEN CODE OF CONDUCT FOR THE JUDICIAL SYSTEM OF THE TRIBAL COURT SYSTEM OF THE NORTHERN CHEYENNE TRIBE AND FOR OTHER PURPOSES.

WHEREAS, the Amended Constitution of the Northern Cheyenne Tribe under Article 4, Section 1 (i) empowers the Tribal Council of the Northern Cheyenne Tribe to provide for the maintenance of law and order and the administration of justice by establishing a reservation court of law and defining its duties and powers.

WHEREAS, the Tribal Council of the Northern Cheyenne Tribe determined the need to improve upon the written laws of the Tribe through the adoption of revised codes in July of 1987.

WHEREAS, the Tribal Council of the Northern Cheyenne Tribe now determines that the dispensing of law and justice within the exterior boundaries of the Northern Cheyenne Indian Reservation needs continuous improvement with which to better serve the tribal membership and residents.

WHEREAS, the Tribal Council of the Northern Cheyenne Tribe believes that in order to establish an honorable judicial system to serve the public, it must be free of conflicts to preserve its integrity in dispensing law and justice and further believes that in the best interest of the Tribe a code of ethical conduct for all judges needs to be established in support of the judiciary system as established by the Tribal Council.

BE IT ORDAINED by the Tribal Council of the Northern Cheyenne Tribe it hereby establishes the adoption of the American Bar Association (ABA) Code of Judicial Conduct to govern the professional conduct of all judiciary judges serving the court system of the Northern Cheyenne Tribe immediately becoming effective at its adoption and approval.

BE IT FURTHER ORDAINED by the Tribal Council of the Northern Cheyenne Tribe that upon the submission of a written sworn complaint to the governing body of the Northern Cheyenne Tribe against a judge while performing judicial service under the Tribal Court system of the Northern Cheyenne Tribe for violation(s) against the Code of Judicial Conduct, the accused shall be suspended for no less than ten (10) working days without pay. Immediately upon the submission of the complaint and pursuant to the personnel policies as established by the governing body, an investigation shall be undertaken by the Tribal Administration and a detailed written report on the findings of the investigation shall be submitted within five (5) working days to the members of the governing body

of the Northern Cheyenne Tribe and a hearing shall be scheduled by the Tribal Administration to convene a special meeting of the Tribal Council for a hearing on the matter within ten (10) working days excluding weekends and holidays. Upon conviction of the accused, he/she shall be removed immediately and the position advertised by the Tribal Administration based on qualifications as may be established by the governing body.

BE IT FURTHER ORDAINED by the Tribal Council of the Northern Cheyenne Tribe that it hereby establishes a term of office for all judges including the lower court judicial system and the appellate court system to be no less and or in excess of four (4) years. The four year term will begin in 1992. The provisions of this action in regard to vacancies for Judge positions will occur during September, 1990. Within sixty (60) days prior to the end of the term of office for all judges, written notice shall be served upon the judge(s) notifying him/her of the expiration of the term of office and the position(s) advertised by the Tribal President for no less than and in excess of thirty (30) days. The Tribal President shall review all applications and perform interviews of applicants pursuant to qualifications as may be established by the governing body. Pursuant to the advise and consent provisions of the By-Laws of the Amended Constitution of the Northern Cheyenne Tribe shall submit the names of three (3) top qualifying candidates to the Tribal Council for final selection. If and when a vacancy occurs due to resignation, incapacitation for medical reasons, removal other than the expiration of term of office, retirement and or for any reason causing the vacancy, the provisions set forth above in filling the position(s) of the court judges shall apply.

BE IT FURTHER ORDAINED by the Tribal Council of the Northern Cheyenne Tribe that in the interest of justice and fairness in the judicial system, any amendments, changes and or to rescind portions or in whole the provisions of this ordinance shall require 2/3rds affirmative vote of the Tribal Council.

BE IT FINALLY ORDAINED the establishment of the professional code of conduct governing the judiciary judge(s) shall be made a part of the law and order revised codes of 1987 be identified as Title X.

PASSED, ADOPTED AND APPROVED by the Tribal Council of the Northern Cheyenne Tribe by 10 votes for passage and adoption and 3 votes against passage and adoption this 9th day of August, 1990.

ATTEST:

Edwin Dahle
Edwin Dahle, President
Northern Cheyenne Tribal Council

Norma Wolfchief
Norma Wolfchief, Secretary
Northern Cheyenne Tribal Council

APPROVED:

Kenneth W. Davis
Superintendent

AUG 27 1990

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

RESOLUTION NO. 141 (92)

A RESOLUTION OF THE NORTHERN CHEYENNE TRIBAL COUNCIL APPOINTING JOHN ST. CLAIRE AS A NORTHERN CHEYENNE COURT SYSTEM JUVENILE JUDGE UNTIL SEPTEMBER 1, 1992.

WHEREAS, pursuant to Ordinance No. 24 (90) only the Northern Cheyenne Tribal Council can hire the judges for the Northern Cheyenne Court System; and,

WHEREAS, certain juvenile cases are not now be processed in a timely manner in the Northern Cheyenne Reservation Court System and the existing Northern Cheyenne Reservation Court System judges have been disqualified from hearing certain juvenile cases; and,

WHEREAS, the result is that the Court System needs a temporary Juvenile Judge to assist in alleviating the backlog of juvenile cases; and,

WHEREAS, the Northern Cheyenne Social Services Department has earmarked BIA funding which can be utilized to pay for a temporary Juvenile Judge; and,

WHEREAS, the Tribal Council was presented with three qualified interested individuals and after a thorough discussion decided upon offering the temporary judge position to John St. Claire, effectively immediately and ending on September 1, 1992; now,

THEREFORE BE IT RESOLVED that the Northern Cheyenne Tribal Council hereby appoints Mr. John St. Claire as a Northern Cheyenne Court System Juvenile Judge until September 1, 1992.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 12 votes for passage and adoption and no vote against passage and adoption this 19th day of May, 1992.

Edwin Dahle

Edwin Dahle, President
Northern Cheyenne Tribal Council

ATTEST:

Norma Wolfchief
Norma Wolfchief, Secretary
Northern Cheyenne Tribal Council

NOTED *JUN - 8 1992*
Kenneth W. Davis
SUPERINTENDENT

TITLE III

JUVENILE CODE

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TITLE III

JUVENILE CODE

Chapter 1. GENERAL SECTION

3-1-1. Purposes and Construction.

The Juvenile Code shall be interpreted and construed to fulfill the following purposes:

- A. To provide for the welfare, care and protection of the Northern Cheyenne Tribe;
- B. To preserve the unity of the family, preferably by separating the child from the parents only when necessary;
- C. To discourage delinquent acts and to protect the community's interest by providing supervision, care and rehabilitation;
- D. To ensure that off-reservation courts will be willing to return tribal children to the reservation by establishing a Juvenile Code; and
- E. To preserve and utilize Northern Cheyenne traditional approaches and remedies whenever appropriate and in the best interest of the child.

3-1-2. Definitions

The following definitions shall apply to all sections of this chapter.

- A. Abandon - When a parent or other person responsible for a child's welfare (1) leaves the child under circumstances that make reasonable the belief that the parent or other person does not intend to resume care of the child in the future or (2) willfully surrenders physical custody and there is no indication of a willingness to assume parental role(s) for a period exceeding two (2) years.
- B. Abused or Neglected Child - A child whose normal physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent(s) or other person responsible for his welfare and includes, but is not limited to, all definitions of abuse contained in this Code and circumstances concerning basic needs such as food, clothing, shelter, medical attention, adequate hygiene, education, emotional and moral training.
- C. Adjudication - A Court proceeding in which facts supporting the allegations in a petition are determined.

D. Adult - Any person subject to the jurisdiction of the Northern Cheyenne Tribe who is eighteen (18) years of age or older.

E. Child -

1. A person under eighteen (18) years of age;
2. A person eighteen (18) years of age or older when proceedings are commenced in Northern Cheyenne Tribal Court prior to his eighteenth (18th) birthday;
3. A person eighteen (18) years of age or older who is under the continuing jurisdiction of the court, as a result of a proceeding under this Chapter.

F. Child Custody Proceeding - Any voluntary or involuntary informal or formal Court action not including divorce actions, that may result in the temporary or permanent removal of the child from his or her parent, guardian, or custodian.

G. Child in Need of Care - A child who:

1. Has no parent(s), guardian, or custodian available and willing to care for him;
2. Has suffered or is likely to suffer a physical injury, inflicted upon him by other than accidental means, which causes or creates a substantial risk of death, disfigurement, or impairment of bodily functions;
3. Has not been provided with adequate food, clothing, shelter, medical care, education, or supervision by his parent(s), guardian, or custodian necessary for his health and welfare;
4. Has been sexually abused;
5. Has committed delinquent acts as a result of parental pressure, guidance, or approval; or
6. Has been emotionally abused or neglected.

H. Child in Need of Intervention - A child that has engaged in non-criminal, offensive conduct which may have included, but is not limited to, the following types of conduct:

1. Habitual truancy;
2. Ingesting or inhaling alcoholic beverages, narcotics or any other mind-altering substances;

3. Breaking curfew;
 4. Habitual runaway;
 5. Conduct beyond the control of the person responsible for the child;
 6. Habitual subjection to serious physical or psychological injury to himself or to others;
 7. Seriously endangering the health or well-being of himself or others.
- I. Court - The Northern Cheyenne Juvenile Court when exercising jurisdiction under this Code unless another court is clearly intended.
 - J. Court Judge - Any duly appointed or elected judge of the Northern Cheyenne Court when exercising jurisdiction under this Code.
 - K. Custodian - A person other than a parent or guardian, to whom legal custody of the child has been given who has the same responsibilities and authority as a guardian except as expressly limited in a custody decree.
 - L. Delinquent Child - A child who has committed an act that violates the Northern Cheyenne Code and/or would be a crime if committed by an adult, or is a verified fugitive from another jurisdiction.
 - M. Dependent Child - A child lacking an adult person responsible for providing the physical, medical, emotional, educational, or supervisory needs of the child, when such lack is likely to result in serious harm to the child as determined by appropriate Northern Cheyenne Social Services personnel, appropriate county welfare department, or other expert appointed by the Court.
 - N. Detention - The placement of a minor in a physically restrictive facility.
 - O. Detention Facility - Any public or private residential facility which:
 1. Includes construction fixtures and administrative policies and procedures designed to physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility; and
 2. Is used primarily for the temporary placement of any juvenile who is accused of having committed an offense;

or any other individual accused of having committed a criminal offense.

3. Secure detention may consist of a locked room within a nonsecure private or public residential facility if such a facility is available.
- P. Diversion - A course of remedial action taken in matters arising under this Title that is designed to avoid formal Court action and is in the best interests of the child involved.
- Q. Domicile - The place considered to be the child's home.
- R. Emergency Removal - The temporary removal of a child from his custodian, guardian, or parent(s) which is reasonably believed necessary to prevent serious and imminent physical or psychological harm to the child and such removal lasts only so long as the conditions for the removal continue to exist.
- S. Emotionally Abused Child - An abused child suffering injury to his psychological functioning as determined by appropriate Northern Cheyenne Social Services personnel, appropriate county welfare department, or other expert appointed by the Court.
- T. Extended Family - Includes any person 18 years of age or older who is related by blood or marriage to the child, or any other person considered to be an extended family member of the child under the customs of the Northern Cheyenne Tribe or a person determined to be most able to look after the best interests of the child.
- U. Guardian - A person other than the child's parent who has the duty and authority to make important decisions in matters having a permanent effect on the life and development of the child, and is concerned about his general welfare. Except as limited by the court, these duties and responsibilities are those that would ordinarily be exercised by the natural or adoptive parent if no guardian had been appointed.
- V. Guardian Ad Litem - An adult appointed by the Court to represent the best interests of a child in any proceeding to which the child may be a party or the outcome of which affects the child's interests.
- W. ICWA - The Indian Child Welfare Act of 1978, P.L. 95-608.
- X. Indian Custodian - An adult tribal member to whom temporary physical care, custody, and control has been transferred by the parent of such child.
- Y. Least Restrictive Alternative - This term directs the Court to

select the least drastic method of achieving its goal; the restrictions placed on the child must be reasonably related to the Court's objectives and must be the least restrictive way of achieving that objective.

- Z. Nutritionally Abused Child - A child subjected to inadequate or non-nutritional foods as determined by appropriate Northern Cheyenne Social Services personnel, appropriate county welfare department, or other expert appointed by the Court.
- AA. Parent - Includes a biological or adoptive parent but does not include persons whose parental rights have been terminated, nor does it include the unwed father whose paternity has not been acknowledged or established in the community.
- BB. Probation - A legal status created by the Court whereby the physical custody of the child is unchanged and the child's freedom of movement is not legally restricted but may be subject to minimal, necessary and certain restrictive conditions by the Court for a limited period of time. The conditions of probation shall be specified by the Court.
- CC. Residence - The place where the child is presently living and will continue to live for an indefinite period of time.
- DD. Residual Parental Rights and Duties - Those rights and duties remaining with the parent(s) after legal custody or guardianship, or both have been vested in another person or agency including, but not limited to, the duty to financially support the child, the right to consent to adoption, the right to decide the child's religious affiliation, and the right to reasonable visitations unless restricted by the Court. Where no guardian has been appointed, residual parental rights and duties shall also include the right to consent to marriage, to enlistment in the Armed Forces, and to consent to major medical, surgical or psychiatric treatment.
- EE. Sexually Abused Child - An abused child subjected to obscene or sexual activities.
- FF. Shelter Care - The temporary care of children in physically unrestricting facilities pending court disposition.

3-1-3. Duty to Report Abuse and Neglect.

- A. Basis of Reports - Persons who have a reasonable cause to suspect that a child has been abused or neglected shall serve the Northern Cheyenne Tribes by reporting the abuse or neglect to the Director of the Northern Cheyenne Social Services, or the appropriate county welfare department.
- B. Professionals and officials required to report are:

1. Physicians, residents, interns, or members of a hospital's staff engaged in the admission, examination, care, or treatment of persons;
 2. Nurses, osteopaths, chiropractors, podiatrists, medical examiners, coroners, dentists, optometrists, or any other health or mental health professional;
 3. Religious healers;
 4. School teachers, other school officials, and employees who work during regular school hours;
 5. Social workers, operators or employees of any registered or licensed day-care or substitute care facility, or any other operator or employee of a child-care facility;
 6. Foster care, residential, or institutional workers; or
 7. Peace officers or other law enforcement officials; or
 8. Attorneys with the express consent of their clients.
- C. No person listed in subsection (B) may refuse to make a report as required in this section on the grounds of a physician-patient or similar privilege if the person came into possession of such information as a result of his treatment of the child.
- D. Other Persons - Any person within the exterior boundaries of the Northern Cheyenne Reservation has a duty to report known or suspected instances of child abuse or neglect. Those persons reporting may remain anonymous except when the court determines the report was made in bad faith.
- E. Immunity from Liability - All persons or agencies reporting, in good faith, known or suspected instances of abuse or neglect shall be immune from civil liability and criminal prosecution.
- F. Upon determination by the Court, any person who maliciously uses this reporting procedure may be held in contempt of court and may be subject to appropriate penalties, and/or civil liability as malicious reports shall be deemed bad faith reports under subsection (D).
- G. Penalty for Not Reporting - Any person, official, or institution required to report known or suspected child abuse or neglect or required to perform any other act, who knowingly fails to do so, or who prevents another person from doing so may be civilly liable for the damages caused by such failure or prevention.

3-1-4. Proceedings as Civil in Nature.

- A. Proceedings in juvenile cases shall be regarded as civil proceedings with the Court exercising certain equitable powers. Any disposition under this Code shall not be deemed a conviction of a crime, shall not impose any civil disabilities ordinarily resulting from conviction, nor operate to disqualify any child in any application or appointment to a program or position.
- B. The fact that the proceedings are of a civil nature shall not be interpreted to deprive the child of his rights to counsel at his own expense, to confront accusers, to refuse to incriminate himself, to cross-examine witnesses, and the right to trial by jury.
- C. The disposition of a juvenile matter and evidence given in a hearing in the Court shall not be admissible as evidence against the child in any case or proceeding in other than juvenile proceedings of the Northern Cheyenne Court in order to avoid any stigma that interferes with the child overcoming his problems and becoming a viable adult member of the Tribe.
- D. Juvenile cases under this Code shall be handled separately from the adult cases in the Northern Cheyenne Court.

3-1-5. Due Process of Law.

Due process of law shall be guaranteed at all formal and informal proceedings under this title.

3-1-6. Computation of Time Limits.

The following time periods shall be excluded in computing the time for any proceeding under this Code:

- A. The period of delay resulting from other proceedings concerning the child.
- B. The period of delay resulting from a continuance granted at the request, or with the consent, of the child, child's parent(s), his counsel, or attorney.
- C. The period of delay resulting from the absence or unavailability of the child.
- D. Saturdays, Sundays and legal holidays when the original time limitation is less than seven (7) days.

3-1-7. Notice.

All parties to a formal or informal hearing shall be notified in writing by

an officer of the Court, by a properly drafted and delivered summons of the hearing, and such notice shall be given within a reasonable time before the scheduled hearing, but not less than seventy-two (72) hours before the hearing.

3-1-8. Representation.

The parties shall be informed of their right to representation at their own expense. An appropriate officer or individual shall be available to represent the child. Where the child is not represented the proceedings shall be continued until such representation is obtained.

3-1-9. Evidence and Burdens of Proof.

All findings shall be based upon relevant evidence. Findings shall be supported by clear and convincing evidence. Determinations of delinquency and terminations of parental rights shall be supported by proof beyond a reasonable doubt.

3-1-10. Confidentiality.

- A. Formal and informal hearings both shall be conducted in closed and private chambers except when the child requests an open hearing.
- B. Names of children involved in proceedings under this title shall not be published.
- C. A record of all informal and formal proceedings shall be made and preserved with the Court. All Court records and all law enforcement records and files concerning children under this title, including social, medical and psychological reports shall be kept confidential. These records shall not be open for inspection but except upon Court Order and then only to the following persons or agencies:
 1. The child;
 2. The child's representative;
 3. The child's parent, guardian, or custodian and their representatives;
 4. The officers of the court; and
 5. Any other person having a legitimate interest in the case and in performance of their duties, as determined by the Court.

3-1-11. Expungement.

When a child who has been the subject of any proceeding before the

Court attains the age of eighteen (18) the Court shall order the destruction of both the Court records and the law enforcement records, except those records dealing with adoptions and parental matters.

Chapter 2. DELINQUENT CHILDREN, CHILDREN IN NEED OF INTERVENTION, AND CHILDREN IN NEED OF CARE

3-2-1. Custody.

- A. A child may be taken into custody by an officer when the officer has a reasonable belief that the child is delinquent or is in need of intervention.
- B. A child shall be taken into custody by a law enforcement officer, a representative of Northern Cheyenne Social Services, or an appropriate welfare official in any case where they have reason to believe the child is in danger of serious and imminent physical or emotional harm.

3-2-2. Custodial Procedure.

The child's parent(s), guardian or custodian shall be notified of the child's custody as soon as possible. The child shall be released to the custody of the parent(s), guardian or custodian unless:

- A. In a delinquency proceeding, such release is impossible;
- B. In a child in need of care proceeding, it is reasonably believed that continued custodial care is necessary because the parent(s), guardian or custodian is unable or unwilling to provide supervision or care, or the child would be placed in danger of serious and imminent harm.

3-2-3. Custodial and Shelter Care Placements.

Whenever a child is taken into custody and not immediately released to his or her parents, guardian, or custodian, the child shall be placed in the least restrictive custodial environment and may be placed as follows:

- A. If the child is taken into custody for committing a delinquent act or is alleged to be in need of intervention, he or she shall be placed in a nonsecure residential shelter on the Reservation. In the following situations, the child may be detained in a secure facility:
 - 1. The alleged offense is a Class A offense;
 - 2. The child is a verified fugitive from another jurisdiction;
 - 3. The child is on conditional release in connection with another delinquency proceeding; or

4. The child has a demonstrable recent record of willful failures to appear at Court proceedings.

B. If the child is alleged to be in need of care, he or she may be placed:

1. With a responsible member of the child's extended family; or
2. With a foster family residing on the Reservation approved by the Tribe; or
3. With a responsible adult residing on the Reservation; or
4. In a shelter care facility on the Reservation which has been approved by the Tribe and designed to care and supervise such children in need of care, and which meets applicable federal guidelines as determined by the Director of Social Services.

3-2-4. Prohibited Custodial Placements.

- A. Children who are taken into custody for committing a delinquent act who are detained in a secure facility shall not be detained or confined in any institution in which they have sight or sound contact with adult persons incarcerated because such adults have been convicted of a crime or are awaiting trial on criminal charges.
- B. Children taken into custody for committing a delinquent act and eligible for secured detention may be held temporarily in an adult jail or lock-up only where necessary for administrative purposes of identification, processing, transfer to another jurisdiction, transfer to Court officials or transfer to juvenile shelter or detention facilities. Any such detention of children in an adult jail or lock-up shall be limited to the absolute minimum time necessary to complete the administrative purpose, not to exceed six (6) hours, and children shall be separated from having any sight or sound contact with adult offenders.
- C. A child alleged to be in need of care shall not be placed in any adult jail, adult lock-up or any other facility used for the detention of adult offenders. Nor shall the child be placed in any facility used for the detention of delinquent children or children in need of intervention, unless separate facilities are not available. Where placement in the same facility with such juveniles is necessary the child in need of care shall be kept in rooms separate from and not readily accessible to rooms used for the detention of delinquent children or children in need of intervention.

3-2-5. Complaint.

Within two (2) days of taking the child into custody, a complaint shall be filed, stating the reasons that the child should remain in custody.

In child in need of care proceedings, the prosecutor shall take the course of action that is in the best interest of the child. Such action may be, instead of the above, to refer the child, the parent, guardian or custodian to appropriate Social Service agencies and release the child to the custody of the parent, guardian or custodian.

3-2-6. Initial Hearing.

The court shall determine, within 72 hours of the child being taken into custody, whether further custodial care of the child is necessary pending further action on the matter. If the court determines that further custodial care is not necessary, the child shall be released to his or her parents, guardians, or custodians.

3-2-7. Investigation and Informal Conference.

Where the Court has made a preliminary finding that further custodial care of the child is necessary, the Court shall order the designated officials of the Northern Cheyenne Tribe to conduct a preliminary investigation into the matter.

The prosecutor, investigating official, social services representative, parent(s) of the child, and child may hold an informal conference to discuss alternatives to the filing of a petition if the judge determines that:

- A. The admitted facts indicate the child is delinquent, in need of intervention or in need of care;
- B. An informal adjustment would be in the child's best interest; and
- C. The child and the child's parents, guardian, or custodian consent to an informal adjustment with the knowledge that the consent is voluntary.

3-2-8. Disposition Permitted at Informal Conference.

- A. The following dispositions are permissible at the informal conference hearing. All dispositions must be voluntarily agreed to by all parties to the hearing.
 1. Release the child to parent, guardian or adult custodian with no further action;
 2. Release the child to parent, guardian or adult custodian and refer them to appropriate community-based service agencies;

3. Place the child in a Tribally-approved foster home on the Reservation or other home on the Reservation, approved by the Court; or
 4. Place the child with a community-based agency responsible for the care of such children.
- B. In an informal adjustment hearing in a proceeding regarding delinquency or child in need of intervention the following dispositions are permissible, in addition to those in (A) above:
1. Place the child on probation;
 2. Order terms of supervision designed to rehabilitate the child related to the offense, which regulate the child's activities and are within the child's ability to perform;
 3. Accept an offer of restitution if the child makes it voluntarily and restitution is practicable;
 4. Any traditional remedy when appropriate; or
 5. Any combination of the above.
- C. In an informal hearing in a proceeding regarding a child in need of care, the following dispositions are permissible, in addition to those listed in (A) above:
1. Placing the child with a responsible member of the extended family; or
 2. Any combination of the above.
- D. If any person waives a right guaranteed to them by this title, such waiver must be knowing and voluntary and shall be written in the record and signed by the waiving person.

3-2-9. Time Limitation on Informal Disposition.

No informal adjustment disposition period shall exceed six (6) months.

3-2-10. Record.

- A. The prosecutor or other designated official shall see to it that a written record of the informal adjustment conference is made at the time of the hearing and that the record contains the following information:
1. The name, address and birthdate of the child;

2. The names and addresses of all persons present at the hearing;
 3. The date and purpose of the hearing;
 4. The admitted facts indicating the child is delinquent or in need of intervention or in need of care;
 5. All persons' voluntary consents to the hearing;
 6. The dispositions agreed to; and
 7. The signatures of all persons present at the hearing.
- B. Any informal adjustment disposition agreed to must be signed by a Judge and incorporated in an order from the Northern Cheyenne Court.

3-2-11. Proceeding on a Formal Petition.

The prosecutor shall file a petition on behalf of the Northern Cheyenne Tribe charging the child delinquent or in need of intervention when efforts at diversion have been unsuccessful, or alleging the child is abused, neglected or dependent when efforts at diversion have been unsuccessful and formal court action is in the best interests of the child.

3-2-12. Formal Petition Requirements.

The petition shall be specific and shall include the following information:

- A. The basis of the Court's jurisdiction;
- B. The name, address and birthdate of the child;
- C. The present custodial status of the child;
- D. The names and addresses of the child's parent(s), guardian, or custodian and any other relevant persons;
- E. In a delinquency or child in need of intervention proceeding, the offense(s) charged against the child, or in a child in need of care proceeding, the charges being filed under this title;
- F. The facts and circumstances surrounding the offense(s) or charge(s); and
- G. What efforts if any have been made to divert the child from the Court system.

3-2-13. Summons.

A. Within 72 hours of filing of a petition, an officer of the Court shall serve a summons by hand delivery if possible or by certified mail return receipt requested, on

1. The child;
2. The child's representative if appropriate;
3. The parent, guardian, or custodian, and
4. Any other person as the Court directs.

B. The summons shall:

1. Direct the person to whom it is addressed to appear at a scheduled hearing;
2. Give notice of the date, time and place of the scheduled hearing, and the date shall be no longer than 72 hours from service of the summons;
3. Have attached a copy of the petition;
4. Notify the parties of their right to have independent representation at all stages of the proceedings; and
5. Advise the child of his or her right to have representation.

3-2-14. Records and Investigations.

The Court may subpoena the records of Social Service agencies, the Juvenile Department, Health Services and other persons or agencies that possess records relevant to the child's case and are records kept by such agency in the ordinary course of its business. Parties to the hearing may request the Court to subpoena such relevant records on their behalf if by obtaining such records the rights of the child would not be violated.

3-2-15. Time Limitations for Hearing.

The date of the adjudicatory hearing shall be set by the Court and such date shall be within a reasonable time from the filing of the petition, but no later than sixty 60 days. An unreasonable length of time between the filing of the petition and date of the scheduled hearing shall result in the permanent dismissal of the matter.

3-2-16. Adjudicatory Hearing.

A. In a delinquency or child in need of intervention proceeding, the adjudicatory hearing shall be held solely to determine the

guilt or innocence of the child. At minimum, all due process rights as provided in this Title shall apply. Waivers of such rights must be knowing and voluntary and shall be in writing and signed by both the child and his parent(s), guardian or other representative.

- B. In a child in need of care proceeding, the adjudicatory hearing shall be conducted solely to determine whether or not the child is abused, dependent or neglected. The hearing shall be conducted in closed and private chambers. All due process rights provided in this Title shall apply. Waivers of any rights must be in writing and signed by the person waiving such rights.

3-2-17. Dispositional Hearing.

A dispositional hearing shall be conducted as soon as practicable after the conclusion of the adjudicatory hearing. Adequate time between the hearings, not to exceed 15 working days, shall be allowed to permit the Court to consider the dispositional alternatives that are in the best interests of the child.

3-2-18. Rights of the Parties to the Dispositional Hearing.

All those rights provided at the adjudicatory hearing shall be provided at the dispositional hearing. If the dispositional hearing is scheduled for a separate proceeding at a later date than the adjudicatory hearing, the notice and time limitations of this Title shall apply.

3-2-19. Dispositions Permissible.

The Court may order any of the dispositional alternatives permissible under 3-2-7. In addition, where the child has been found delinquent the child may be committed to a secure juvenile detention facility. In addition, where the child has been found in need of care, the Court may order that permanent termination of parental rights proceedings be initiated. The Court shall pursue a course of action that:

- A. Is the least restrictive alternative;
- B. Is designed to rehabilitate the child;
- C. Will maintain the child's ties to the community; and
- D. Is consistent with the interests and safety of the Tribe.

3-2-20. Dispositional Orders

The Court shall set forth the disposition in an order which contains specific time limitations and conditions on the disposition.

- A. In a delinquency or child in need of intervention proceeding,

no order shall be in effect longer than six (6) months or after the child reaches the age of 18 years.

- B. In a child in need of care proceeding, no order shall continue after the child reaches the age of 18 years. All orders are to be reviewed at the discretion of the Court, provided however that all orders must be reviewed at least once every six (6) months. Whenever a child is placed temporarily off the Reservation, the Court shall require the party receiving custody of the child to sign an agreement that the child will be returned to the Reservation upon written order of the Court.

3-2-21. Modification of Orders.

Dispositional orders may be reviewed by the Court at its discretion. Orders may be modified upon a showing of a substantial change of circumstances and when it is in the best interest of the child. The Court shall conduct a hearing in accordance with the due process procedures of this Chapter when a modification involves either a change of custody or an extension on the time the order is to be in effect.

Chapter 3. VOLUNTARY AND INVOLUNTARY TERMINATION OF PARENTAL RIGHTS

3-3-1. Purpose.

The purpose of this section is to provide procedures for the permanent severance of the parent-child relationship. The procedures provided here demonstrate a recognition of the severe consequences of termination. The cancellation of all legal ties between parent and child is viewed as such an extreme measure that the law should insure that all legal and cultural rights of the parent and the child are protected. One measure intended to insure this protection is the separation of the termination proceedings from the adjudication of the child in need of care proceedings and the separation of the termination proceedings from the adoption proceedings.

3-3-2. Initiating Termination Proceedings.

The Court may conduct a hearing to permanently terminate the parental rights of the parent(s) to the child only if it has found:

- A. In a separate, prior adjudicatory hearing, upon proof beyond a reasonable doubt, that the particular parent has abused the child, neglected the child, or left the child dependent, and termination would be in the best interest of the child; or
- B. That the parent(s) voluntarily give written consent before the Court to permanent termination of their parental rights provided however that the Court certifies that it has advised the parent(s) of the seriousness and finality of termination and the parent(s) understood such advice.

3-3-3. Petition.

A proceeding to terminate parental rights may be instituted by the filing of a petition by the prosecutor on behalf of the Tribe, or by the parent(s) of the child.

3-3-4. Petition Requirements.

The petition shall comply with the requirements set out in 3-3-18 of this Title.

3-3-5. Summons Requirements.

The summons shall comply with the requirements set out in 3-2-12 of this Title.

3-3-6. Pre-Termination Investigation.

Prior to the date of the scheduled termination hearing, the Court shall order an investigation to be conducted by an official(s) designated by the President of the Council. Relevant records of Social Service Agencies, Health Service Agencies and from other appropriate persons or agencies, provided such records are kept in the course of the ordinary business of such agency or person, and provided that the use of such records would not result in a violation of the child's rights, may be obtained for the investigation.

3-3-7. Pre-Termination Report.

The official(s) designated shall prepare and present a written report to the Court at least ten (10) days before the termination of parental rights hearing. The report shall contain the opinions of all professionals and others consulted along with recommendation to the Court.

3-3-8. Termination Hearing.

- A. The Court shall conduct a termination hearing within 30 days of receipt of a petition to terminate. The hearing shall be conducted for the purpose of determining whether permanently terminating parental rights is in the best interest of the child and if so found, where the child should be placed upon termination. The Court shall hear evidence and the parties shall have the right to introduce evidence on the matter of proper disposition. The hearing shall be conducted in closed and private chambers.
- B. The Court shall conduct the hearing for the purpose of determining whether parental rights should be terminated based upon a showing of:
 1. Abandonment of the child;

2. Willful and repeated physical injuries which cause or create a substantial risk of death;
3. Willful and repeated acts of sexual abuse; or
4. Relinquishment of parental rights acknowledged before the Court.

C. The Court shall enter a written judgment setting forth the findings, decision, and disposition.

3-3-9. Dispositions Permitted at Termination Hearing.

Appropriate dispositions provided in 3-3-6 and 3-3-15 of this Title shall apply at the Termination Hearing. In addition, the Court may permanently terminate parental rights, and order the initiation of adoption proceedings, provided however, that the Court has found by clear and convincing proof that termination is in the best interest of the child.

3-3-10. Relinquishment of Parental Rights
(Voluntary Termination of Parental Rights).

Parental rights may be relinquished (voluntarily terminated) in accordance with 3-3-2(B), if signed by the parent(s) in the presence and with the approval of the Court. Relinquishment shall not be accepted or acknowledged by the Court prior to ten (10) days after the birth of the child. An interpreter shall be provided if the Court deems it necessary to insure the parent(s)' understanding of the seriousness and finality of the termination.

3-3-11. Record.

- A. A record of all hearings and reports made under this Code shall be preserved.
- B. All Court records shall be confidential and shall not be open to inspection to any but those acting on behalf of the best interests of the child as determined by the Court.

3-3-12. Child's Rights.

The termination of parental rights shall not adversely affect the child's rights, privileges and interests as an Indian, nor as a member of the Northern Cheyenne Tribe, including rights of inheritance. Nor shall it affect the child's enrollment status with the Tribe.

Chapter 5. CHILD CUSTODY REFERRALS UNDER THE INDIAN CHILD WELFARE ACT

3-4-1. Purpose.

The purpose of this section is to provide the procedures for implementing the Indian Child Welfare Act of 1978 that will protect the best interests of Northern Cheyenne children and their families involved in custody proceedings. Where Northern Cheyenne children are involved in custody proceedings off the Reservation, an informed and careful decision as to whether the Tribe should petition for a transfer of jurisdiction back to the Reservation is necessary to protect both the child and the Tribe. It is intended that the Tribe will investigate cases referred to it and will petition for transfer when it is in the best interest of the child to do so. The procedures found in this chapter are aimed at producing a thoughtful and wise decision in the matter of transfers, one that is in the best interest of the child and will insure the stability and security of the Northern Cheyenne Tribe.

3-4-2. Authorized Representative of the Tribe.

The Director, Northern Cheyenne Social Services for the Tribe shall be the sole representative of the Tribe for:

- A. Receiving notification of referrals to the Tribe under the ICWA;
- B. Initiating the filing of petitions for the transfer of jurisdiction to the Tribe; and
- C. For providing an intervenor in other Courts where jurisdiction is not transferred to the Tribe.

3-4-3. Receipt of Referral.

- A. The Director, Northern Cheyenne Social Services shall be bound to honor referrals that are sent to him provided in the ICWA. Upon receiving notification of the referral, the Northern Cheyenne Social Services shall make a record of all the following information on the referral:
 - 1. The source of the referral;
 - 2. The names and addresses of the child and the parent, guardian or custodian;
 - 3. The date of the referral; and
 - 4. The date of the scheduled proceedings in the outside Court.
- B. The Director, Northern Cheyenne Social Services shall

immediately make a written request by registered mail, return receipt requested to the referring Court for the twenty (20) day extension to prepare the case for a transfer decision if such additional time is necessary.

3-4-4. Investigation of Referral.

- A. Immediately upon receipt of the referral the Director of the Northern Cheyenne Social Services shall conduct a thorough investigation into the matter, and shall perform the following duties:
1. Contact tribal enrollment and other appropriate sources to determine the child's membership status with the Tribe;
 2. Investigate and determine whether the child custody referral is one properly referred to the Tribe under the ICWA;
 3. Contact the parent(s), guardian or custodian of the child by registered mail, return receipt requested and notify them of the fact of the referral to the Tribe and the possibility the Tribe will transfer the case to its jurisdiction;
 4. Contact relevant social, medical, legal and other such sources to obtain necessary information on the child's case;
 5. Prepare a case file on the child;
 6. Make a decision as to whether transfer, intervention or taking no action on the case would be in the best interest of the child. This decision should be made with the advice and assistance of two (2) responsible and knowledgeable Tribal members, appointed by the Tribal Council, and the court official designated by the tribal council;
 7. Notify the parent, guardian or custodian, the prosecutor and the Reservation Court of the decision. Notification to the parent, guardian or custodian shall be by registered mail, return receipt requested;
 8. Where the decision is made to transfer the case to the Reservation Court, the Court shall have the authority to veto this decision and decline jurisdiction. Absent the Court's notice, within 3 days, to decline jurisdiction, the Director, Northern Cheyenne Social Services shall file a petition with the referring Court for the transfer of jurisdiction;

9. If the Director, Northern Cheyenne Social Services obtains a decision not to petition for transfer, he shall also notify the parent(s), guardian or custodian and the referring Court of the decision by registered mail, return receipt requested. The Director, Northern Cheyenne Social Services shall also notify them as to whether or not the Tribe will provide an intervenor in the proceedings in the referring Court.
- B. The Director of the Northern Cheyenne Social Services shall complete the above duties within 10 days from receiving the notice of referral, unless he requests the referring Court, in writing by registered mail, for the 20-day extension as provided in the ICWA.
- C. For purposes of the required investigation the Director, Northern Cheyenne Social Services shall request the referring Court to provide all reports and other documents filed with the referring Court concerning the child custody action, as provided in the ICWA.

3-4-5. Tribal Appearance.

- A. The Northern Cheyenne Tribe shall file a formal notice of appearance in every instance that it receives notice of a proceeding under the ICWA. In so doing the Tribe intends to assure its receipt of notice of any further hearings involving a particular child and preserves the right to intervene subsequent to an initial hearing.
- B. When the Tribe receives notice under the ICWA of the temporary removal of a child by any welfare officer in an effort to reunify a family, the tribe will file a formal appearance in accordance with subsection A:
 1. Stating its intent to intervene if the family reconciliation does not occur within ninety (90) days;
 2. Stating the Tribe's desire to receive notice of any subsequent hearing concerning the child;
 3. Stating the intent of the Northern Cheyenne Tribe to issue its own Court Order concerning placement of children of the Northern Cheyenne Tribe; and
 4. Citing the portions of the Northern Cheyenne Code which preserve the due process rights of interested parties in its own Court.
- C. When the Tribe receives notice under the ICWA of the temporary removal of a child for any reason, the Tribe shall

file a formal notice of appearance containing the information set out in subsection (B) with modification of the time limit in (B)(1) which is appropriate to the circumstances of a particular child.

- D. When the Tribe receives notice under the ICWA of the possibility of permanent placement of a child for any reason the Tribe shall file a formal appearance containing the information in subsection (B), deleting the time limit statement in (B)(1) and asserting the right to notice of any change in the placement of the child and requiring a report of the child's residence, school attendance, health condition and other appropriate information as to the child's well being every two (2) years commencing from the date of placement.

3-4-6. Proceeding After Transfer.

Where jurisdiction is properly transferred to the Reservation Court, the procedures set forth in the provisions on children in need of care, or children in need of intervention, shall be followed, whichever is appropriate under the circumstances. In no event shall delinquency proceedings be pursued.

3-4-7. Records.

- A. The Director of the Northern Cheyenne Social Services will make and preserve records of all referrals received and document compliance with all applicable provisions of this Chapter.
- B. These records shall be confidential and shall not be open to inspection except upon an order of the Northern Cheyenne Court.

Chapter 6. **ADOPTIONS**

3-5-1. Who May be Adopted.

- A. Any person who is within the jurisdiction of the Northern Cheyenne Court may be adopted under this Code.
- B. When a petition has been filed for the adoption of an adult the court may waive the inapplicable procedures under this Code.

3-5-2. Petition Requirements.

Any adult person who wishes to adopt, may file the petition for adoption with the Court in a form prescribed by the Court. It shall be verified under oath before a Judge, by the adoptive parent or parents and shall contain:

- A. The full name, residence, sex of the child and documentary

proof of the date and place of the birth of the child to be adopted;

- B. The full name, residence, sex and occupation of the adoptive parent or parents and documentary proof of their marital status, if appropriate and of their Indian affiliation, if any;
- C. Proof of a court order terminating the parent-child relationship with respect to each living parent of the child;
- D. Proof of parental consent where the adoption is by the voluntary consent of the child's parent(s). Such consent shall not be valid unless executed in writing and recorded before a judge of a court of competent jurisdiction and accompanied by the presiding Judge's certificate that the terms and consequences of the consent were fully explained in detail and fully understood by the parent;
- E. An agreement by the adopting parents that it is their desire that the relationship of parent and child be established between them and the child; and
- F. A full description and statement of value of all property owned or possessed by the child.

3-5-3. Consents to Adoption.

- A. Form of Consent: Consents to adoptions where required by this Chapter shall be executed in writing and recorded before a judge of a court of competent jurisdiction, and cannot be given until ten (10) days after birth.
- B. Consent by a Child Aged 12 or Older: The adoption of a child twelve (12) years or older, shall not be granted without the child's consent given in Court, unless the Court finds that his consent is being withheld arbitrarily and capriciously.
- C. Filing of Consents: Written consents shall be attached to the adoption petition. A consent by a guardian of the child shall be accompanied by evidence satisfactory to the Court establishing the guardian's authority to consent to adoption of the child.
- D. Withdrawal of Consent Prior to Entry of Decree: No consent to adoption shall be withdrawn unless authorized by order of the Court after notice and opportunity to be heard is given to the petitioner in the adoption proceedings, and to the person seeking to withdraw consent. The Court shall not grant permission to withdraw consent unless it finds that the best interests of the child will be served by such withdrawal.
- E. Withdrawal of Consent After Order of Adoption: After the

entry of a final decree of adoption the parent or child may withdraw consent thereto only upon the grounds that consent was obtained by fraud or duress and may petition the Court to vacate such decree and return the child to the parent(s), guardian or custodian. No adoption which has been effective for at least one (1) year may be invalidated under these provisions.

3-5-4. Investigation and Report.

Within five (5) days after the filing of a petition for adoption, the Court shall request the assistance of the appropriate tribal personnel to investigate and report in writing to the Court within thirty (30) days as to the child's family history, the suitability of the child for adoption, the reasons for the adoption, the financial ability, moral and physical fitness, and the general background of the adoptive home and of the adoptive parent or parents, and to make recommendations on the proposed adoption.

In the case of an adoption by persons not residing within this Court's jurisdiction, the Court shall request the assistance of the appropriate social services personnel in the jurisdiction which is the home of the prospective adoptive parents, for the above information.

3-5-5. Hearing on Adoption.

- A. Within five (5) days after the written report required by 3-5-4 is filed, the Court shall fix a time for a hearing on the petition for the adoption. The adoptive parent or parents and adoptive child shall appear personally at the hearing. All other persons whose consent is necessary to the adoption shall be duly notified and shall appear for the purpose of the adoption, unless prior consent has been obtained.
- B. The Judge shall examine all persons appearing separately and, if satisfied as to the following may enter a final decree of adoption, or may place the child in the legal custody of the petitioners for a period not to exceed six (6) months prior to entering a final decree of adoption:
 1. The suitability of the child for adoption;
 2. The financial ability of the adoptive parents;
 3. The moral and physical fitness and responsibility of the adoptive parents; and
 4. That the best interest of the child will be promoted by the adoption.
- C. If the Court is satisfied that the adoption will not be in the best interests of the child, the petition shall be denied and the

guardian instructed to arrange suitable care for the child, and the Court may request agencies authorized to provide such services to assist in the placement and the care of the child.

3-5-6. Report and Final Decree of Adoption.

- A. If the Court does not enter a final decree of adoption at the time of the hearing for adoption, but places the child in the legal custody of the petitioners, within six (6) months after the child has been in the custody of the petitioner, the Court shall request a supplementary written report under the same procedures in 3-5-4, as to the welfare of the child, the current situation and conditions of the adoptive home and the adoptive parents. If the Court is satisfied that the interests of the child are best served by the proposed adoption, a final decree of adoption may be entered. No final order shall be entered by the Court unless it appears to the Court that the adoption is in the best interests of the child.
- B. In any case where the Court finds that the best interests of the child will not be served by the adoption, a guardian of the child shall be appointed and suitable arrangements for the care of the child shall be made and the Court may request tribal agencies or federal agencies or other agencies authorized to provide such services to assist in the placement and care of the child.
- C. Legal custody for purposes of this code means, subject to any limitations contained in the court order, a relationship embodying the following rights and duties:
 1. The right to physical custody of the child;
 2. The right and duty to protect, train and discipline the child;
 3. The duty to provide the child with food, clothing, shelter, education, and ordinary medical care;
 4. The right to decide where and with whom the child will live; and
 5. The right in an emergency to authorize surgery or other extraordinary care.

3-5-7. Adoption Records.

All records, reports, proceedings, and orders in adoption cases are confidential and permanent records of the Court, and shall not be available for release to or inspection by the public. Information contained in such records may be released upon petition to the Court by the adopted person after reaching legal majority, or upon order of the

Court upon good and sufficient cause shown.

3-5-8. Contents of Adoption Order.

- A. The final order of adoption shall include such facts as are necessary to establish that the child is eligible and suitable for adoption, and that the adoptive home and parents are adequate and capable of the proper care of the child, as shown by the investigation reports and the findings of the Court upon the evidence adduced at the hearings.
- B. Within five (5) days after the final decree of adoption has been entered by the Court, the Clerk of Court shall mail the information required in subsection (C) and a certified copy of the final adoption decree to the appropriate officials of the Northern Cheyenne Tribe, the Bureau of Indian Affairs, as regulations require, and the appropriate agency of the State of Montana.
- C. The information filed by the Clerk of Court should advise that the adoption has taken place, giving the full name, sex, birthdate, and names of natural parents and full names of adoptive parent(s) so that a new record of birth in the new name and with the name of the adopting parents is recorded.

3-5-9. Name and Legal Status of Adopted Child.

Minor children adopted by order of Court shall assume the surname of the persons by whom they are adopted, unless the Court orders otherwise, and shall be entitled to the same rights of person and property as children or heirs of the person adopting them.

3-5-10. Child's Rights.

Nothing in this Section shall be construed to indicate that the child involved in these proceedings will terminate any of his rights and/or privileges as an enrolled Indian, including rights of inheritance.

Chapter 7. GUARDIANSHIP OF CHILDREN

3-6-1. Guardianship.

- A. A guardian may be appointed for any child who is within the jurisdiction of the Northern Cheyenne Court.
- B. Any adult enrolled member of the Northern Cheyenne Tribe is eligible to be appointed guardian of a child.
- C. The spouse of an adult enrolled member of the Northern Cheyenne Tribe is eligible to be appointed guardian of the natural child of that spouse.

3-6-2. Petition.

- A. Upon the filing of a petition by an interested party, the Court shall determine whether petitioner(s) is fit to serve as guardian of the person and/or property of the child named in the petition.
- B. The petition shall contain the following information:
 - 1. The petitioner(s) full name, age, address, and relationship, if any, to the child; and
 - 2. The name, date, and place of birth of the child; and
 - 3. The name and address of the child's custodian; and
 - 4. The names and addresses of all interested parties, including the child's natural parents.

3-6-3. Social Study.

- A. Upon the filing of a petition for guardianship, the court may order that a social study be made of the petitioner(s), and his or her home, by the prosecutor, a social services representative, or any other suitable person chosen by the Court.
- B. The social study shall consider all facts related to the petitioner(s)' fitness to be appointed guardian of the child, and shall include, but not be limited to, the following factors concerning the petitioner(s) and the members of his or her immediate family with whom he or she lives:
 - 1. General background of the Petitioner(s)' home;
 - 2. Moral fitness;
 - 3. Religious and tribal background;
 - 4. Financial condition;
 - 5. Mental and physical health conditions;
 - 6. Any other facts which the Court finds are relevant to the fitness of the petitioner(s) to serve as guardian of the child.
- C. The Court shall order that a written report of the results of the social study be submitted to the Court within thirty (30) days of the original order.

3-6-4. Notice of Hearing.

- A. After a petition for appointment of a guardian has been filed, the Court shall set a time and place for a hearing.
- B. Notice of the hearing shall be given to:
 - 1. Petitioner(s);
 - 2. The child's custodian, if any;
 - 3. The person who has prepared a social study under section 3-6-3, if the Court has ordered that a study be made;
 - 4. The natural parents of the child; and
 - 5. All relatives and interested parties named in the petition in accordance with section 3-6-2 (B)(4).
- C. Notice shall be given to the natural parents of the child by registered mail. All other persons shall be notified by mail.
- D. All persons notified shall be required to answer in accordance with the Northern Cheyenne Civil Procedure Code, or by personal appearance at the hearing. Failure to answer may be deemed a waiver of any interest in the proceedings.

3-6-5. Hearing on the Petition.

- A. Attendance:
 - 1. The petitioner(s), the child for whom a guardian is to be appointed, and the natural parents of the child, shall attend the hearing, unless the court orders otherwise;
 - 2. The person who has prepared a social study under section 3-6-3, if the Court has ordered that a study be made, shall attend the hearing;
 - 3. The Court may require the presence of any other person as it finds necessary.
- B. Testimony:
 - 1. The hearing shall be as informal as due process and fairness permit;
 - 2. The Court shall examine all persons in attendance for the purpose of determining the necessity of the appointment of a guardian for the child, and the fitness and responsibility of the petitioner(s) to serve as guardian of the child.

3-6-6. Letters of Guardianship--Security.

- A. If, after the hearing and consideration of all evidence and social studies, the Court determines that the requirements of this chapter have been met, and that appointment of petitioner(s) as guardian of the child is in the best interest of the child, the Court shall appoint Petitioner(s) guardian of the child.
- B. Security. The Court may order the person appointed guardian to provide security in an amount sufficient to cover any loss or damage which may be caused by improper administration of the child's property by the guardian.
- C. The person appointed guardian shall take an oath to discharge faithfully the duties of his or her office.
- D. After the person appointed guardian has qualified by furnishing any security required of him or her by the Court, by taking the oath, and by fulfilling any other special conditions imposed by the Court, the Court shall issue to him or her letters of guardianship. These letters, issued in the name of the Court and signed by the Court shall be evidence of the guardian's authority to act on behalf of the minor.
- E. The order of appointment of a guardian is to be in effect for the time limit set by the Court, but no order shall continue after the child reaches the age of eighteen (18) years.
- F. The order of appointment of a guardian is to be reviewed at the Court's discretion, but at least every year.

3-6-7. Modification or Termination of Order of Appointment of Guardian.

- A. A modification hearing shall be held in the manner provided for by this section for a hearing on a guardianship petition.
- B. The Court may modify or terminate an order of appointment of guardian upon motion of any interested party.
- C. An order of appointment may be modified or terminated upon a showing that it is no longer appropriate.
- D. Guardianship shall be terminated:
 - 1. Upon the death of the guardian;
 - 2. Upon the conviction of the guardian of a felony under the laws of the United States or any state or territory thereof;

3. Upon a civil commitment of the guardian;
4. Upon a showing that the guardian is unfit to exercise authority over the person of the child, and/or unfit to act in his or her fiduciary capacity on behalf of the child; or
5. Upon the child's eighteenth (18th) birthday.

3-6-8. Guardianship of the Person.

A person named guardian of the child's person shall have physical custody of the child and shall render to the child the same care a natural parent would, including, but not limited to rearing, feeding, clothing, housing, and educating the child in his or her custody.

3-6-9. Guardianship of Property.

A person named guardian of the child's property shall assume possession of the child's property, personal and real, administer said property as profitably as possible, and preserve and maintain said property until the child reaches the age of eighteen (18). The guardian may not alienate or encumber by mortgage the child's interest in real property, nor may he lease, alienate, or encumber any mineral interests the child owns without the approval of the Court. The guardian shall enforce all obligations in favor of the child and shall represent the child in all civil matters. The guardian shall act at all times as a prudent administrator, and shall be personally responsible for all damages resulting from his failure to so act.

3-6-10. Extraordinary Actions.

- A. The guardian shall file a petition setting forth any action affecting the child's interest he proposes with recommendations and reasons.
- B. If the Court finds that the proposed action is in the best interests of the child and if no other party objects within a reasonable time, the Court may enter an order approving the action without additional formality.
- C. If the Court is not persuaded by the petition that the proposed action is in the best interests of the child, the Court may appoint a lawyer or representative to oppose the guardian on behalf of the child.
- D. The Court shall render judgment after a hearing in the matter.

3-6-11. Funds of the Child.

- A. If the child is a member of the Northern Cheyenne Tribe, the Court shall order the appropriate official of the Northern Cheyenne Tribe to retain custody and control of funds in the

child's individual account and to disburse funds from the account to the guardian in a manner and amount to be determined by the Court.

- B. The Court may require that the guardian as a condition to issuance of Letters of Guardianship, set up special bank or investment accounts, in the name of the child, whether or not he or she is an enrolled member of the Northern Cheyenne Tribe.

3-6-12. Final Accounting.

- A. Upon termination of the guardianship, the guardian, or his heirs shall account for all real and personal property of the child received by the guardian at the beginning of the guardianship, received by the guardian during the course of the guardianship, and in the possession of the guardian at the termination of the guardianship.
- B. The accounting shall show the origin of any revenue, the disposition of any assets, and the purpose of all disbursements.
- C. The final accounting shall be presented to the Court in the form of a petition that shall include a list of all interested parties.
- D. Any interested parties, including the child, may oppose the final accounting by answering the guardian's petition in accordance with the Northern Cheyenne Civil Procedures Code.
- E. The Court shall render judgment accepting the final accounting, when it is convinced of the correctness of the accounting.
- F. A judgment of the Court accepting the final accounting does not relieve the guardian of responsibility or liability for breach of fiduciary duty to the child.

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 23 (90)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL INCLUDING A
POLICY STATEMENT UNDER CHAPTER 3 OF THE JUVENILE CODE.

THEREFORE BE IT ORDAINED by the Northern Cheyenne Tribal Council
that the following policy statement is to be added to the
Juvenile Code section of the Law & Order Code, under
chapter 3: "It is hereby declared by the governing body
of the Tribe that any minor child duly enrolled be and
hereby under the jurisdiction and protection of the
Northern Cheyenne Tribe."

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal
Council by 14 votes for passage and adoption and no votes
against passage and adoption this 9th day of August,
1990.

Edwin Dahle

Edwin Dahle, President
Northern Cheyenne Tribal Council

ATTEST:

Norma Wolfchief
Norma Wolfchief, Secretary
Northern Cheyenne Tribal Council

APPROVED: AUG 27 1990

Kenneth W. Davis
Superintendent

TITLE IV
NORTHERN CHEYENNE RESERVATION COURT
RULES OF CIVIL PROCEDURE AND CIVIL CODE

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NORTHERN CHEYENNE
RULES OF CIVIL PROCEDURE AND CIVIL CODE

A. RULES OF CIVIL PROCEDURE

I. GENERAL PROVISIONS

Rule 1: Scope of the Rules.

A. Scope.

Except when different rules prescribed in this Code specifically apply, these rules shall govern the procedures of the Northern Cheyenne Courts, in all actions, suits and proceedings of a civil nature.

B. Construction.

These rules shall be liberally construed to secure a just, speedy, and inexpensive determination of every action.

C. One Form of Action.

There shall be one form of action known, except in criminal cases, as a "civil action."

Rule 2: Civil Contempt

A. Acts or Failures to Act Which Constitute Contempt of Court.

Any person may be charged with Contempt of Court for any of the following reasons:

1. Disorderly, contemptuous or insolent behavior in presence and view of the Court that interrupts proceedings or impairs respect of the Court's authority;
2. Breach of peace, noise, or other disturbance interrupting proceedings;
3. Willful disobedience or resistance to any process of the Court or order issued by the Court;
4. Misbehavior in office or other willful neglect or violation of duty of an attorney or lay counselor, elected, or hired to perform a judicial or ministerial service;
5. Acting as an officer, spokesman or other official of the Court without authority;
6. Publication of false or grossly inaccurate report of Court proceedings;
7. Requesting a jury trial and failing to appear on the date the jury trial is scheduled; or
8. Any other interference with the process, proceeding, or

dignity of the Court or Judge of the Court while performing official duties.

B. Procedures in Contempt

1. A direct contempt is one committed in the presence of the Court or so near as to be summarily adjudged and punished.
2. Any other contempt shall be determined at a hearing by the Court in which the person accused of contempt is given notice and an opportunity to be heard.
3. There will be no jury trials in contempt hearings.

C. Penalty

A judge may issue any order necessary to allow the person to purge himself of contempt and may impose a sentence of up to five (5) days imprisonment and/or a fine of up to \$500.00 plus costs, as determined by the Court.

II. COMMENCEMENT OF ACTION AND PRELIMINARY MATTERS

Rule 3: Commencement of Action - Service of Process.

A. Commencement of Action.

A civil action is commenced by filing a complaint and serving a copy of such on the defendant(s) as provided herein. The Court shall have jurisdiction from such time as both the complaint is filed and properly served upon the defendant and a return of service is filed with the Clerk.

B. Service of Process.

Service of process shall consist of delivering to the party served a copy of the complaint along with a summons, which advises the defendant that he is required to answer the complaint within 20 days or a default judgment will be entered against him.

1. The summons shall be signed by a Judge or the Clerk, be under the seal of the Court, contain the names of the parties, be directed to the defendant and state the name and address of the plaintiff or his attorney or representative in the action.
2. The return of service shall be endorsed with the name of the person serving and the date, time, and place of service shall be filed with the Clerk.
3. Service may be made on a party by delivering the summons and complaint to the party himself or upon some person of suitable age and discretion over 14 years old at the party's home or principal place of business, or an

- officer, managing agent, or partner of a person.
4. If the party cannot be found within the exterior boundaries of the Northern Cheyenne Reservation, service may be had by certified mail with delivery restricted to the party to be served.
 5. Service by publication may be made upon order of the Court for good cause shown by publishing the contents of the summons in a local newspaper of general circulation at least once a week for four weeks and by leaving an extra copy of the complaint or paper with the Court for the party.
 6. Service may be made by any law enforcement officer or other person, not a party, 18 years of age or older.
 7. Service upon a person otherwise subject to the jurisdiction of the Northern Cheyenne Judicial System may be made anywhere in the United States; otherwise, service shall be made within the exterior boundaries of the Northern Cheyenne Reservation.
 8. If a person refuses to accept service, service shall be deemed performed if the person is informed of the purpose of the service and offered copies of the papers served.
 9. All papers required to be filed shall be served as under this rule or, except for the complaint, may be served on the counselor or attorney of a party. Service of all papers except the complaint may be made by mail, first class postage, prepaid and properly addressed.
 10. Enforcement of service of process judgments, warrants and any other exercise of civil authority of County or State, shall first be brought before the Northern Cheyenne Court for review. If justice so warrants, the Court shall order the Northern Cheyenne Police to implement such proceedings.
 11. Service upon a state shall be upon the Secretary of State.
 12. Service upon any branch or agency of the federal government shall be upon the Secretary of State or the head of the agency.

Rule 4: Time

A. Computation.

In computing any period of time set forth herein, the day on which the period is to commence shall not be counted and the last day of the period shall be counted; provided, however, that any time period under 7 days will not include intermediate Saturdays, Sundays, or legal holidays in the period and any period which would otherwise end on a Saturday, Sunday, or legal holiday will be deemed to end on the next day which is not a Saturday, Sunday, or legal holiday.

B. Enlargement.

The Court for good cause shown may enlarge the prescribed period of time within which any required act may be done.

C. Notice of Motions.

Written motions and notice of hearing thereon other than ones which may be heard ex parte, shall be served not later than 5 days prior to the time specified for hearing.

D. Service by Mail.

Whenever service is accomplished by mail, three days shall be added to the prescribed period of time, but such addition shall not cause Saturdays, Sundays, or legal holidays to be counted in the time period if they would not otherwise have been counted.

Rule 5: Pleadings, Motions, Orders.

A. Pleadings.

There shall be a complaint and an answer. Responsive pleadings may be allowed whenever there is a cross-claim or counter-claim. The court may grant additional leave to plead in the interest of narrowing and defining issues or as justice may require.

B. Motions and Orders.

1. Motions. An application to the Court for an order shall be by motion and shall be in writing, unless made orally during a hearing or trial, and shall set forth the relief or order sought and the grounds therefor stated, with particularity. A motion and notice of motion shall be set forth together.
2. Orders. An order includes every direction of the Court whether included in a judgment or not.
3. Hearings on Motions and Orders. A motion or hearing on an order shall automatically continue if the Judge before whom it was to be heard is unable to hear it on the day specified and no other Judge is available to hear it.

Rule 6: General Rules of Pleading.

A. Claims for Relief.

A pleading which sets forth a claim for relief shall contain:

1. A short, plain statement of the grounds upon which the Court's jurisdiction depends, unless the Court already has jurisdiction over the matter;

2. A short, plain statement of the claim showing that the pleader is entitled to relief; and
3. A demand for judgment for the relief to which the pleader considers himself entitled. Such claim for relief can be in the alternative or for several types of relief.

B. Defense.

A party shall answer a complaint in simple terms, stating his defense to each claim and shall admit or deny each claim. If the party does not know the veracity of a claim he shall so state and that statement shall have the effect of a denial.

C. General Contents of Claims and Defenses.

Claims and defenses shall be simple, concise and direct.

D. Affirmative Defenses.

Matters constituting an affirmative defense or avoidance shall be affirmatively set forth. When a party has mistakenly designated a defense as a counterclaim or vice versa, the Court may treat the pleading as if it had been properly designated if justice so requires. Examples of affirmative defenses include but are not limited to: assumption of the risk, contributory negligence, discharge in bankruptcy, fraud, illegality, payment of debt and completion of contract.

E. Construction of Pleadings.

All pleadings shall be construed so as to do substantial justice.

Rule 7: Form of Pleadings.

A. Caption.

Every pleading shall contain a caption heading: the name of the Court, the title of the action, the Court file number (if known) and a designation as to what kind of pleading it is. All pleadings shall contain the names of the parties except the name of the first party on each side may be used on all pleadings except the complaint.

B. Paragraphs.

All claims or defenses shall be set forth in separate numbered paragraphs each of which is limited, as nearly as possible, to a single circumstance. Claims or defenses founded upon separate transactions or occurrences should be set forth in separate counts or defenses.

C. Paper Used in Pleading.

Insofar as is possible, pleadings and other papers filed in any action shall be typed double spaced, except for matters customarily single spaced, contain at least a 2 inch top margin and 1 inch left side margin, and contain the Court file number on the first page.

Rule 8: Defenses and Objections.

A. When Presented.

A defendant or a party against whom a claim has been made for affirmative relief shall have 20 days from the date of service upon him to answer or respond to the claim.

B. Motions.

Any motions to dismiss or to make the opposing parties' pleadings more definite shall be made within five days of receiving the opposing parties' pleadings and prior to answering a claim. An answer will not be due until ten days after the claimant has complied with the Court's disposition of the motion, or if the Court denies the motion, upon the expiration of the original twenty days from date of service.

Rule 9: Counterclaim or Cross-claim.

A. Counterclaim.

A party against whom a claim is made may assert in his answer any claims he has against the party claiming against him and both claims will be resolved at trial.

B. Cross-claim.

A party against whom a claim is made may assert any claim he has against a co-party and have such claims resolved at trial.

C. Third Party Claim.

A party against whom a claim is made may complain against a third party who is or may be liable for payment or performance of the claim of the opposing party and have such complaint resolved at trial.

Rule 10: Amendment of Pleadings.

A. Amendment Before Trial.

A party may amend his pleadings once before the opposing

party has replied or if no reply is required, not less than 20 days before the case is scheduled for trial. The opposing party may respond, if appropriate, and the trial date be delayed if necessary. Other amendments shall be allowed only upon motion and order of the Court.

B. At Trial.

When issues or evidence not raised in the pleadings are heard at the trial, the judgment may conform to such issues or evidence without the necessity of amending the pleadings.

Rule 11: Parties.

A. Real Party in Interest.

Every action shall be pursued in the name of the real party in interest, except a personal representative or other person in a fiduciary position can sue in his own name without joining the party for whose benefit the action is maintained.

B. Guardian Ad Litem.

When an infant, or insane, or incompetent person who has not had a general guardian appointed is a party, the Court shall appoint a guardian ad litem to represent such person in the suit or action.

C. Joinder of Claims.

A party asserting a claim to relief as an original claim, counterclaim, cross-claim, or third-party claim, may join as many claims as he has against an opposing party or co-party.

D. Joinder of Parties.

To the greatest extent possible all persons or parties interested in a particular action may be joined in the action, but failure to join a party over whom the Court has no jurisdiction will not require dismissal of the action unless it would be impossible to reach a just result without such party; otherwise, the failure to join a party may be taken into account to assure that justice is done.

Rule 12: Intervention.

A person may intervene and be treated in all respects as a party to an action in cases in which property in which he has an interest may be affected or a question of law or fact common to a claim of his may be litigated.

Rule 13: Substitution of Parties.

If a party dies or becomes incompetent or transfers his interest or separates from some official capacity, a substitute party may be joined or substituted as justice requires.

Rule 14: Discovery.

- A. A party may submit written interrogatories to any other party who shall answer them in writing, under oath, within 25 days of receipt of such.

B. Deposition.

A party may take the oral deposition of an adverse party or non-party witness under oath after providing not less than 10 days notice, specifying the time and place where such will occur.

C. Production, Entry, or Inspection.

A party may request another party to produce any documents or things in his custody or possession for inspection or copying or request permission to enter and inspect property reasonably related to the case, and the opposing party shall within 25 days reply as to whether or not such will be allowed and, if not, why not.

D. Scope of Discovery.

Parties may obtain discovery regarding any matter, not privileged, which is relevant to the pending action, whether or not such would be admissible at trial, if such appears reasonably calculated to lead to the discovery of admissible evidence; except that discovery may not be had of the work product of a party's counselor or attorney.

E. Protective Order.

A party against whom discovery is sought may move the Court for a protective order to prevent undue annoyance, harrassment, embarrassment, oppression or undue burden or expense, and the Court may order that the discovery cease or proceed only upon specified conditions.

F. Failure to Make Discovery.

If a party fails to respond or appear for discovery as provided in this rule, the opposing party may move for an order to compel the defaulting party to perform and the Court may award costs to the non-defaulting party. If a party fails to perform after being ordered to do so by the Court, the Court may, upon motion, order that a certain fact, claim, or defense

be deemed established or strike part of a claim or defense, or dismiss or render a judgment by default against the non-complying party.

G. Use of Discovery.

Answers to interrogatories and depositions may be used in a motion, hearing or at trial to impeach or contradict the testimony of the person discovered, or by an adverse party for any purpose.

- H. If a witness is unavailable to testify because of incompetence, absence from the jurisdiction by a distance greater than 100 miles unless it appears that such absence was procured by the person offering the deposition, illness, death, or imprisonment, a sworn deposition may be offered in lieu of testimony of the witness who gave the deposition.

Rule 15: Pre-Trial Conference

A. Purpose

A pre-trial conference shall be held at least ten days prior to trial in order to determine the points of law and facts agreed upon by the parties and to determine the remaining issues to be resolved at trial.

B. Who Attends

The Plaintiff(s) and defendant(s) or their counsel if they have one are required to attend. Failure to appear at a scheduled pre-trial conference may result in a charge of contempt of Court. Other persons may attend with the advance consent of the Judge conducting the pre-trial conference only if their presence will further the purpose stated above.

C. Conduct of Conference

No record or transcript of the conference shall be made except for the Order and Memorandum of Pre-Trial Conference. No statements made at the Conference by any person shall be used at trial except for voluntary agreements reached between the parties on points of law and facts as recorded in the Order and Memorandum of Pre-Trial Conference. The judge may also set a trial date and set deadlines for motions to be filed and argued, for depositions and discovery to be completed and for delivering a list of witnesses to be subpoenaed.

D. Disposition by Order and Memorandum of Pre-Trial Conference

The Order and Memorandum of Pre-Trial Conference shall include:

1. Trial date.
2. Whether or not a jury will be called.
3. List of witnesses to be subpoenaed.
4. Agreements and orders regarding depositions, discovery and motions.
5. Agreements regarding points of law and facts.
6. Remaining issues to be resolved at trial.

This Order shall supercede pleadings for the purpose of framing issues for trial.

III. TRIAL

Rule 16: Jury Trials.

A. When Allowed.

A party may request a trial by jury in all civil actions involving a claim or claims exceeding \$500 except domestic relations cases, cases involving adoptions, probate, minors, incompetence, hearings on court orders, contempt, or cases in the Appeals Court. The request for jury trial shall be filed, along with a fee of \$10.00, no less than 25 days prior to the scheduled date of trial.

B. Issues Triable.

Unless the requesting party specifies otherwise, all factual issues properly triable by a jury shall be decided by the jury at trial. A party requesting a jury trial may specify only those issues he wants tried to the jury, and any other party may specify, not less than 5 days before the date scheduled for trial, any other issues he wishes to be so tried. Once any or all issues of a case have been requested for a jury trial, such request may not be withdrawn without the consent of all of the parties.

C. Designation by Judge.

1. A Judge may, upon his own motion, order the trial by a jury of any or all of the factual issues of a case regardless of whether or not the parties have requested such.
2. A Judge may, upon motion of any party or upon his own motion, find that some or all of the issues designated for jury trial are not properly triable to a jury, and order

- that no jury trial be held on such issues.
3. A Judge may hear and decide an issue or issues without a jury if either party to an issue fails to appear at trial, regardless of any request made for a jury trial on such issues.

Rule 17: Assigning Cases for Trial.

A. Assignment of Judge and Date.

Either the Court Administrator or the Clerk of Court shall determine which Judge shall hear a case. The Judge shall assign a trial date for the earliest reasonable time.

B. Postponement.

Upon motion of a party and the showing of good cause, the Court may in its discretion postpone a trial or proceeding upon such terms as it deems just, including the payment of any costs occasioned by such postponement.

Rule 18: Dismissal of Actions.

A. Voluntary Dismissal.

Prior to the responsive pleading of a party against whom a claim has been made or motion to dismiss or for summary judgment on such claim, the party making the claim may file a notice of dismissal and his claim shall be deemed dismissed without prejudice. In all other circumstances a party may move the Court to dismiss his own claim and the Court shall do so either with or without prejudice as is just and proper given the stage of the proceedings. However, if a cross-claim or counterclaim has been filed against the moving party, the Judge shall dismiss the claim only with the consent of the adverse party or only if it appears that the other party can pursue his claim independently without undue additional hardship.

B. Involuntary Dismissal.

A party against whom a claim has been made may move the Court to dismiss the claim of the adverse party upon any of the following grounds:

1. Failure of the adverse party to pursue prosecution of his claim;
2. Failure of the adverse party to comply substantially with these rules;
3. Failure of the adverse party to comply with an order of

- the Court that affects the party's case;
4. At the close of the presentation of the other party's evidence and without prejudicing his own right to present evidence, failure of the opposing party to establish a right to relief based on the facts and law presented; or
 5. Whenever dismissal appears proper based upon a failure to prove a claim, such dismissal shall be deemed an adjudication of the merits of the issue dismissed--unless

the Court shall, for good cause shown, order otherwise. The Court may postpone ruling on a motion to dismiss for failure to establish a right to any relief until the close of all the evidence.

- C. The Court may order a party moving to dismiss his own claim to pay the cost of the adverse party if the proceeding has progressed beyond the pleading stage, and may order payment of cost in other circumstances where such is deemed appropriate.

Rule 19: Consolidation: Separate Trials.

A. Consolidation.

The Court may, upon motion of any party or its own motion, order some or all of the issues of separate actions tried together when there is a common issue of fact or law relating the actions or if such will tend to avoid unnecessary cost or delay.

B. Separate Trials.

The Court may, to avoid prejudice or in furtherance of convenience, order a separate trial of a claim or issue.

Rule 20: Evidence.

A. Form and Admissibility.

At all hearings and trials, the testimony of witnesses shall be taken orally under oath, unless otherwise provided in these rules. All evidence admissible under the Northern Cheyenne Rules of Evidence shall be admissible.

B. Examination and Cross Examination.

1. A party may use leading questions against an adverse party or hostile witness or whenever such appears reasonably necessary to elicit testimony from witnesses of tender years or poor ability to communicate.
2. A party may call any person to be a witness and examine any witness so called on any matter relevant to the

action. A party may impeach his own witness.

3. Cross examination shall be limited to the general scope of direct examination, provided, however, that full examination of all witnesses may be allowed on cross examination to assure complete development of all relevant facts.

C. Physical Evidence.

Written documents and other physical evidence shall be received upon being identified, authenticated, and a showing of relevance to the action.

D. Official Documents.

Official documents or an official law, record or copy thereof may be admitted into evidence upon the testimony of an official having custody or official knowledge thereof or without such testimony if the document or record or copy thereof is accompanied by an affidavit identifying such thing and stating that it is a true and correct representation of what it purports to be.

E. Record of Excluded Evidence.

In an action tried to a jury, excluded evidence may, upon request, be included in the record for purposes of appeal and excluded oral testimony shall be put into evidence by means of an offer of proof made out of the hearing of the jury. In an action tried only to the Court, the Judge may receive such excluded testimony into the record.

Rule 21: Subpoenas.

A. Issuance.

Subpoenas for attendance of witnesses or production of documents or things shall be issued and served as provided elsewhere in this Code.

B. Failure to Appear.

A person who has been properly served with a subpoena and fails to appear or produce may be deemed in contempt of Court and/or the Court may order his arrest for the offense of Failure to Obey a Lawful Order of the Court.

C. Subpoena Unnecessary.

A person present in Court, or before a judicial officer, may be required to testify in the same manner as if he were in

attendance upon a subpoena.

Rule 22: Jurors.

A. Number of Jurors: Alternate.

There shall be six jurors chosen to hear a case plus the Court may allow one additional juror to be chosen as an alternate juror. In the event that an alternate juror is chosen, he shall be treated as a regular juror in all respects unless dismissed by direction of the Court prior to the jury's deliberations.

B. Examination of Jurors.

The Court shall permit the parties or their attorneys to conduct the examination of prospective jurors and may itself examine the jurors.

C. Challenges.

- (1) A challenge is an objection made to a potential trial juror. Either party may challenge jurors but where there are several parties on either side, they must join in a challenge before it can be made.
- (2) Challenges to jurors are either peremptory or for cause. Each party or side shall be entitled to three peremptory challenges.
- (3) Challenges for cause shall be made against a potential juror on the grounds that he is not entitled or qualified to be a juror, he is familiar with the case or has formed an opinion regarding the case, or if for any other reason it appears likely or reasonably possible that a juror will not be able to render a fair, impartial verdict. The Judge may take evidence relative to a challenge for cause and shall in any event render a decision thereon.

D. Eligibility for Jury Duty.

Each year the Court Administrator or his designee shall randomly choose a list containing the names and addresses of at least 50 but not more than 75 eligible jurors. Any resident of the Northern Cheyenne Reservation between the ages of 18 and 70 who has not been convicted within one year of a felony or misdemeanor under this Code shall be eligible to be a juror. Judges, police officers, and other officers and employees of the Court shall not be eligible to be jurors while thus employed.

E. Trial Juries.

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

The selection from the list of eligible jurors shall be by lot or some means of random, impartial selection.

F. Power to Excuse Jurors.

The Judge assigned to hear a case shall have the power to excuse a person subpoenaed to appear as a juror on account of sickness, disability, extreme hardship or other good cause shown upon the request to be excused by the persons subpoenaed.

G. Compensation of Jurors.

Each juror who is called and reports for jury duty or who serves on a jury shall be entitled to receive such fees for daily services and/or mileage, if any, as established by the Rules of Court.

H. Discharge of Juror.

If, after the proceedings begin and before a verdict is reached, a juror becomes unable or disqualified to perform his duty, the alternate juror shall take his place; if there is no alternate juror, the parties may agree to complete the action with the other jurors. If no agreement can be reached, the Judge shall order a temporary delay in trial for such time as is necessary to impanel a new jury.

I. View of Jury.

The Court may, for good cause shown, allow the jury to view the property or place of occurrence of a disputed or otherwise relevant event.

J. Separation of the Jury.

Any time prior to their verdict when the jurors are allowed to leave the courtroom, the Judge shall admonish them not to converse with or listen to any other person on the subject of the trial and further admonish them not to form or express an opinion on the case until the case is submitted to the jury for their decision.

K. Deliberation.

Once the case is submitted to it, the jury shall retire to deliberate in private under the charge of an officer of the Court who will refrain from communicating with them except to inquire whether they have reached a verdict, and he shall prevent others from improperly communicating with the jury.

L. Things Taken by Jury.

The jury may take with them when deliberating any of the following:

1. The Court's instructions;
2. Papers or things received in evidence as exhibits;
3. Notes taken by the jurors themselves, but not notes taken by a non-juror.

M. Additional Instructions.

If after the jury retires there is some question on an instruction or other point of law or disagreement regarding the testimony, the jury may request additional instructions from the Court, such to be given on the record after notice to the parties or their counsel.

N. No Verdict.

If the jury is discharged before rendering its verdict or for any reason prevented from giving a verdict, the action shall be retried.

O. Declaration of the Verdict.

When all or at least five of the six jury members agree on a verdict, they shall so inform the officer who shall notify the Court. The jury shall be conducted into the courtroom and the clerk shall call the jury roll; the verdict shall be given in writing to the Clerk and then read by the Clerk to the Court; inquiry shall be made by the Court to the jury foreman as to whether such is their verdict. Either party may have the jury polled individually to determine if such is, in fact, their verdict. If insufficient jurors agree with the verdict, the jury shall be sent out again to reconsider; otherwise, the verdict is complete and the jury shall be dismissed. If the verdict is read or recorded incorrectly by the clerk or foreman, the jury shall retire to correct the verdict.

Rule 23: Special Verdicts and Interrogatories.

The Court may require the jury to return its verdict in the form of specific findings on specified issues or may require the jury to return a general verdict accompanied by answers to questions related to the issues under consideration.

Rule 24: Instructions to the Jury: Arguments.

A. Instructions.

At the close of the evidence or at such earlier time as the

Court may direct, any party may file written requested instructions for the Court to give to the jury. The Court shall inform the parties or their counsel of the instructions it intends to give and hear objections and rule on them out of hearing of the jury.

B. Arguments.

Final arguments for the parties shall be made after the jury has been instructed. The Court shall not comment on the evidence of the case.

Rule 25: Motions for Directed Verdict and for Judgment Notwithstanding the Verdict.

Motion For a Directed Verdict.

A party who has made a motion for a directed verdict which has been denied or not granted, may within 10 days after entry of judgment move to have the verdict and any judgment entered thereon set aside and entered according to his motion for directed verdict; or if there has been no verdict, the party may so move within 10 days after the jury has been discharged. A motion for a new trial may be made in the alternative. The Court shall enter judgment or make any orders consistent with his decision on the motions.

Rule 26: Findings by the Court.

In cases tried without a jury, except in cases where a party defaults, fails to appear or otherwise waives his right to a hearing, findings of fact and conclusions of law shall be made by the Court in support of all final judgments. Upon its own motion or the motion of any party within 10 days of the entry of judgment, findings may be amended or added to and the judgment may be amended accordingly.

IV. POST-TRIAL

Rule 27: Judgment: Cost.

A. Definition.

A judgment includes any final order from which an appeal is available and no special form of judgment is required.

B. Judgment on Multiple Claims.

When more than one claim for relief is presented in an action, however designated, a final judgment may be entered on less than all of such claims only upon the Court's specific finding that such is justified. Absent such a finding, an order or decision will not terminate the action as to any of the claims until all claims are finally decided, nor will the appeal period

commence to run.

C. Demand for Judgment.

1. Generally. Except in the case of a default judgment, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if such relief is not demanded in the pleadings. It may be given for or against one or more of several claimants; and it may, if justice so requires, determine the ultimate rights of the parties on each side as between or among themselves.
2. Judgment by Default. A judgment by default shall not be different in kind, or exceed in amount, that specifically prayed for in the claim for relief.

D. Cost.

Unless the Court shall otherwise direct, the Court shall allow necessary costs and disbursements to the prevailing party or parties as a matter of course. Such prevailing party shall file with the Court a verified memorandum of his costs and necessary disbursements within five days of the entry of judgment and serve a copy of such on the opposing party, and if such are not objected to within 10 days, they shall be deemed to be a part of and included in the judgment rendered. The court of appeals may award costs in a like manner.

E. Attorney's Fees.

The Court shall not award attorney's fees in a case unless such have been specifically provided for by contract or agreement made by the parties to the dispute, or unless it reasonably appears that the case has been prosecuted for purposes of harassment only, or that there was no reasonable expectation of success on the part of the affirmatively claiming party. In any action, except by the tribe, against the bond of any officer or employee, if judgment shall be against the plaintiff the Court shall award a reasonable attorney's fee against such plaintiff and in favor of the defendant or defendants.

Rule 28: Default.

A. Entry of Default.

When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, his default may be entered by the Clerk and judgment by default granted.

B. Judgment by Default.

Judgment by default may be entered by the Clerk if a party's claim against the opposing party is for a sum of money which is or can by computation be made certain, and if the opposing party has been personally served on the reservation. Otherwise, judgment by default can be entered only by the Court upon receipt of whatever evidence the Court deems necessary to establish the claim. No judgment by default shall be entered against the Northern Cheyenne Tribe.

C. Setting Aside Default.

The Court may, for good cause shown, set aside either an entry of default or a default judgment, if the good cause is presented to the Court within thirty (30) days after the entry of default is granted.

Rule 29: Summary Judgment.

Any time within twenty (20) days after commencement of an action, any party may move the Court for summary judgment as to any or all of the issues presented in the case and such shall be granted by the Court if it appears that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Such motions, which shall be served not less than 10 days prior to the hearing on said motion, may be supported by affidavits, discovery, or memoranda, all of which must be made available to opposing parties at least two days prior to the hearing.

Rule 30: Entry of Judgment.

A. Judgment.

Judgment upon verdict of jury shall be signed by the Clerk and filed. All other judgments shall be signed by the Judge and filed with the Clerk.

B. Effectiveness: Recordation.

A judgment is complete and shall be deemed entered for all purposes when it is signed and filed as provided herein. The Clerk shall immediately make a notation of the judgment in the register of actions and the judgment docket.

C. Death of a Party.

If a party dies after a verdict or decision has been reached upon any issue of fact before judgment, a judgment may nevertheless be entered thereon.

D. Satisfaction of Judgment.

A judgment may be satisfied, in whole or in part, as to any or all of the judgment debtors by the owner thereof or his attorney of record executing under oath and filing an acknowledgment of satisfaction specifying the amount paid and whether such is a full or partial satisfaction. A Judge may order the entry of satisfaction upon proof of payment and failure of the judgment creditor to file a satisfaction. The Clerk shall file all satisfactions of judgment and note the amount thereof in the register of actions and the judgment docket.

E. Effect of Satisfaction: Limitation.

A judgment satisfied in whole, with such act being entered in the judgment docket, shall cease to operate as such. A partial satisfied judgment or unsatisfied judgment shall continue in effect for eight years. An action to renew the judgment remaining unsatisfied may be maintained any time prior to the expiration of eight years and will extend the period of limitations for one additional eight year period.

Rule 31: New Trials: Amendments of Judgment.

A. Grounds: Time.

Any party may petition for a new trial on any or all of the issues presented by serving a motion not later than 10 days after the entry of judgment, for any of the following grounds:

1. Error or irregularity which prevented any party from receiving a fair trial;
2. Misconduct of the jury or jury members;
3. Accident or surprise, or newly discovered evidence which ordinary prudence could not have guarded against or produced at the trial;
4. Damages so excessive or inadequate that they appear to have been given under influence of passion or prejudice;
5. Insufficiency of the evidence to justify the verdict or other decision, or that it is contrary to the law; or
6. Error in law.

B. Harmless Error.

A new trial shall not be granted on the basis of error or irregularity which was harmless in that it did not affect substantial justice.

C. Support for Motion.

Parties may include memoranda or affidavits in support of their

motions to which reply memoranda and affidavits shall be allowed if desired.

D. Court Initiative.

The Court may, on its own initiative, not later than 10 days after entry of judgment, order a new trial on any grounds assertable by a party to the action, and shall specify the reasons for so ordering.

E. Motion to Alter or Amend Judgment.

A motion to alter or amend a judgment shall be served not later than 10 days after entry of the judgment.

Rule 32: Relief from Judgment or Order.

A. Clerical Mistakes.

Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the Court at any time by its own initiative or on the motion of any party and after such notice as the Court may direct; mistakes may be corrected before an appeal is docketed in the court of appeals, and thereafter while the appeal is pending with leave of the court of appeals.

B. Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.

On motion and upon such terms as are just, the Court may, in the furtherance of justice, relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 31 (A); (3) fraud, misrepresentation or other misconduct of an adverse party; (4) when, for any cause, the summons in an action has not been personally served upon the defendant and the defendant has failed to appear in said action; (5) the judgment is void; (6) the judgment has been satisfied, released, or discharged, or a determination in equity that the judgment should have prospective application; or (7) any other reason justifying relief from the operation of the judgment. This rule does not limit the power of a Court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the Court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by independent action.

Rule 33: Harmless Error.

No error in either the admission or the exclusion of evidence, and no error or defect in any ruling or order or in anything done or omitted by the Court or by any of the parties, is grounds for granting a new trial or otherwise disturbing a judgment or order, unless refusal to take such action appears to the Court inconsistent with substantial justice. The Court at every stage of the proceeding shall disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

Rule 34: Stay of the Proceeding to Enforce a Judgment.

A. Stay Upon Entry of Judgment.

Proceedings to enforce a judgment may issue immediately upon the entry of the judgment, unless the Court at its discretion and on such conditions for the security of the adverse party as are proper, otherwise directs.

B. Stay on Motion for New Trial or for Judgment.

In its discretion and on such conditions for the security of the adverse party as are proper, the Court may stay any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment, or a motion for relief from a judgment order, or a motion for judgment in accordance with a motion for a directed verdict, or a motion for amendment to the findings of fact or for additional findings.

C. Injunction Pending Appeal.

When an appeal is taken from an interlocutory or final judgment granting, dissolving or denying an injunction, the Court in its discretion may suspend, modify, restore, or grant a temporary injunction during the pendency of the appeal upon such conditions as it considers proper for the security of the rights of parties.

D. Stay Upon Appeal.

When an appeal is taken the appellant may obtain a stay by giving bond in an amount set by the Court, unless such a stay is otherwise prohibited by law or these rules. The bond may be given within 10 days after the time of filing the notice of appeal. The stay is effective when the bond is approved and received by the Court.

E. Stay in Favor of the Tribe, or Agency Thereof.

When an appeal is taken by the Tribe, or an officer or agency

of the Tribe, and the operation or enforcement of the judgment is stayed, no bond, obligation, or other security shall be required from the appellant.

F. Power of the Court of Appeals Not Limited.

The provisions in this rule do not limit any power of a court of appeals or a Judge or Justice thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

G. Stay of Judgment Upon Multiple Claims.

When a Court has ordered a final judgment on some but not all of the claims presented in the action under the conditions stated in Rule 27 (B), the Court may stay enforcement of that judgment until the entering of a subsequent judgment or judgments and may prescribe such conditions as are necessary to secure the benefit thereof to the party in whose favor the judgment is entered.

H. Waiver of Undertaking.

In all cases, the parties may, by written stipulation, waive the requirements of this rule with respect to the filing of a bond or undertaking. In all cases where an undertaking is required by these rules a deposit in Court in the amount of such undertaking, or such lesser amount as the Court may order, is equivalent to the filing of the undertaking.

Rule 35: Injunctions.

A. Preliminary Injunction Notice.

No preliminary injunction shall be issued without notice to the adverse party.

B. Temporary Restraining Order: Notice: Rehearing: Duration.

No temporary restraining order shall be granted without notice to the adverse party unless it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable damage will result to the applicant before notice can be served and a hearing had thereon. Every temporary restraining order granted without notice shall be endorsed with the date and hour of issuance; and shall be filed forthwith in the Clerk's office and entered of record; shall define the injury and state why it is irreparable and why the order was granted without notice; and shall expire by its terms

within such time after entry, not to exceed 15 days, as the Court fixes, unless within the time so fixed the order, for good cause shown, is extended for like period, or unless the party against whom the order is directed consents that it may be extended for a longer period. Under no circumstances shall the Court allow more than one extension of a temporary restraining order.

The reasons for the extension shall be entered on record. In case a temporary restraining order is granted without notice, the motion for a preliminary injunction shall be set down for hearing at the earliest possible time and takes precedence over all matters except older matter of the same character; and when the motion comes on for a hearing the party who obtained the temporary restraining order shall proceed with the application for a preliminary injunction and, if he does not do so, the Court shall dissolve the temporary restraining order. On 2 days notice to the party, as the Court may prescribe, the adverse party may appear and move its dissolution or modification and in that event the Court shall proceed to hear and determine such motion as expeditiously as the ends of justice require.

C. Security.

Except as otherwise provided by law, no restraining order or preliminary injunction shall issue except upon giving of security by the applicant, in such sum as the Court deems proper, for the payment of such costs and damages as may be incurred or suffered by any party who is found to have been wrongfully enjoined or restrained. No such security shall be required of the United States, the Northern Cheyenne Tribe, or of an officer, or agency, of either; nor shall it be required of a married person in a suit against the other party to the marriage.

A surety upon a bond or undertaking pursuant to this title submits himself to the jurisdiction of the Court and irrevocably appoints the Clerk of Court as his agent upon whom any papers affecting his liability on the bond or undertaking may be served. His liability may be enforced on motion as the Court prescribes and may be served on the Clerk of Court who shall forthwith mail copies to the persons giving the security if their addresses are known.

D. Form and Scope of Injunction or Restraining Order; Service.

Every order granting an injunction and every restraining order shall be specific in terms; shall describe in reasonable detail, and not by reference to the complaint or other document, the act or acts sought to be restrained; and is binding only upon the parties to the action, their officers, agents, servants,

employees, and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

E. Grounds for Injunction.

An injunction may be granted:

1. When it appears by the pleadings on file that a party is entitled to the relief demanded, and such relief, or any part thereof, consists in enjoining the commission or continuance of some act complained of, either for a limited period or perpetually;
2. When it appears from the pleadings or by affidavit that the commission or continuance of some act during the litigation would produce great or irreparable injury to the party seeking injunctive relief;
3. When it appears during the litigation that either party is doing, or threatens, or is procuring or suffering to be done, some act in the violation of the rights of another party respecting the subject matter of the action, and tending to render the judgment ineffectual;
4. In all other cases where an injunction would be proper in equity.

Rule 36: Extraordinary Writs.

A. Grounds for Relief.

Where no other plain, speedy, and adequate remedy exists, relief may be obtained by obtaining an extraordinary writ which may be granted for any one of the following grounds:

1. Where any person usurps, intrudes into, or unlawfully holds or exercises a public office or does or permits to be done any act which by law works a forfeiture of his office;
2. Where an inferior tribunal, board or officer exercising judicial functions has exceeded its jurisdiction or abused its discretion;
3. Where the relief sought is to compel any inferior tribunal, board or person to perform an act which the law specifically enjoins as a duty resulting from an office, trust or station or to compel the admission of a party to the use and enjoyment of a right or office to which he is entitled and from which he is unlawfully excluded by such inferior tribunal, board or person; or
4. Where the relief sought is to arrest the proceedings of any tribunal, board or person, whether exercising functions judicial or ministerial, when such proceedings are without or in excess of the jurisdiction of such tribunal, board or person.

B. Habeas Corpus.

Appropriate relief by habeas corpus proceedings shall be granted whenever it appears to the Court that any person is unjustly imprisoned or otherwise restrained of his liberty. Upon the filing of the complaint the Court shall, unless it appears from such complaint or the showing of the plaintiff that he is not entitled to any relief, issue a writ directed to the defendant commanding him to bring the person alleged to be restrained before the Court at a time and place therein specified, at which time the Court shall proceed in a summary manner to hear the matter and render judgment accordingly. If the writ is not issued, the Court shall state its reason therefor in writing and file the same with the complaint, and shall deliver a copy thereof to the plaintiff. If the defendant cannot be found, or if he does not have such person in custody, the writ (and any other process issued) may be served upon any one having such person in custody, in the manner and with the same effect as if he had been made defendant in the action.

The defendant shall appear at the proper time and place with the person designated or show good cause for not doing so and must answer the complaint within the time allowed. The answer must state plainly and unequivocally whether he then has, or at any time has had the person designated under his control and restraint, and if so, the cause thereof. If such person has been transferred, the defendant must state the fact, and to whom, and when, the transfer was made, and the reason or authority therefor. The writ shall not be disobeyed for any defect of form or misdescription of the person restrained or defendant, if enough is stated to show the meaning and intent thereof.

The person restrained may waive his right to be present at the hearing, in which case the writ shall be modified accordingly. Pending a determination of the matter the Court may place such person in the custody of such individual or individuals as may be deemed proper.

C. Habeas Corpus: Decision.

In each case, the Court, upon determining the case, shall enter specific findings of fact and conclusions of law and judgment, in writing, and the same shall be made a part of the record in the case. If the Court finds in favor of the complainant, it shall enter an appropriate order with respect to judgment or sentence in the former proceedings and such further orders with respect to rearraignment, retrial, custody, bail, or discharge as the Court may deem just and proper in the case.

Rule 37: Execution of Judgments.

A. Time.

After entry of a judgment against a party or after final resolution of an appeal for which a stay of judgment had been ordered, the judgment creditor may petition the Court for a writ of execution to enforce his judgment. If five years have passed since a judgment was entered, and no writ of execution has been issued, the Court may issue a writ of execution only if just and sufficient reasons are given for failure to obtain a writ in the previous five years.

B. Property Subject to Writ of Execution.

All wages, money, goods, chattels, or other property, both real and personal are subject to a Writ of Execution under this Rule. All property not exempt under Section (C) of this rule as well as all property seized and held under attachment in an action are subject to execution. Only property belonging to the judgment debtor is subject to execution.

C. Exemptions.

The following property is exempt from execution, except as otherwise specifically provided when selected and reserved by the judgment debtor or his agent at the time of the levy, or as soon after levy and before sale as the existence of the levy becomes known to him:

1. The income of the judgment debtor, regardless of when it became payable, for work performed during the preceding 30 days, or otherwise earned or inured to his benefit within the 30-day period; the 30-day period shall be reckoned back from the date of the levy, but the exemption may not exceed \$350 if he is the head of a family, and the amount of \$200 if he is not the head of a family; the amount of the exemption shall be computed after deductions and payments, required by law or court order, so as to assure the judgment debtor the receipt of the first \$350 per month if he is the head of a family or \$200 if he is not the head of a family, when it appears by the debtor's affidavit or otherwise that the income is necessary for his use or for the use of his family which is supported in whole or in part by his income;
2. Books, pictures, and musical instruments belonging to the judgment debtor not to exceed \$300 in value;
3. Necessary wearing apparel belonging to the judgment debtor for the use of himself or his family; watches or jewelry not to exceed \$200 in value;
4. The tools, implements, apparatus, motor vehicles, books, office furniture, business files, animals, laboratory, and

- any other article necessary to enable any person to carry on the trade, occupation, or profession by which that person habitually earns his living to the value of \$2,500, including sufficient quantity of food to support the animals, if any, for six months;
5. The following property belonging to the judgment debtor and in actual use or kept for use by and for his family: animals, household goods, furniture, and utensils to the value of \$1,200, including food sufficient to support the animals, if any, for six months, and provisions actually provided for family use and necessary for the support of that person and family for six months;
 6. All property of a public or municipal corporation;
 7. No article of property mentioned in this section is exempt from execution issued on a judgment recovered for its price, and, in the event the article of property has been sold or exchanged for other property, the proceeds of the sale or the article for which it was exchanged is not exempt from execution.

D. Procedure for Identification.

After petitioning the Court for a writ of execution, the judgment creditor shall, if possible, identify property of the judgment debtor of value to satisfy the judgment. Such identification shall be made in a sworn affidavit, and shall not include exempt property.

The Court shall then order the judgment debtor to appear and identify under oath all of his exempt and non-exempt property, or at least property subject to the action. If a judgment debtor claims certain property is exempt, he must provide information to support his claim. Failure of the judgment debtor to appear and provide information shall be deemed a contempt of Court, and unless other interested parties (e.g., spouse, children, parents) come forward with information, no property of the judgment debtor will be held as exempt from execution. The judgment debtor must appear before the Court within five working days of the order to appear, unless the Court is given good reasons for his failure to appear.

The Court may issue a writ of execution solely upon the affidavit of the judgment creditor, if some evidence is present to show that the property in fact belongs to the judgment debtor.

E. Substance of Writs.

Writs of execution may be against the property of the judgment debtor, another against his person, and a third for the delivery of the possession of real or personal property, including damages for withholding the property. Upon determination of

what property is available for execution, the Court shall issue the necessary writ(s) and order the Northern Cheyenne Police Department to carry out the orders in the writ; specifically, to seize as much non-exempt property belonging to the judgment debtor as reasonably appears necessary to pay the judgment amount. All writs shall direct the Police Department to proceed substantially as follows:

1. If the writ is against the property of the judgment debtor, it shall require the Northern Cheyenne Police to seize as much personal property as necessary to satisfy the debt. If inadequate personal property is available the Court may inform the B.I.A. and/or Tribal officials of the debtor's debt, and require forfeiture of all non-exempt wages and/or money on account for the debtor, and/or judgment money, and/or per capita payments from the Tribe. Such liens on non-exempt property may extend only to interests belonging to the judgment debtor, and may be placed in the name of the debtor with the specific agency forfeiting funds for as long a time as is necessary to satisfy the debt owed. All forfeited money shall be turned over to the Court Clerk for payment to the judgment creditor.

Real property in the name of the judgment debtor may be seized also if it appears the judgment will not be satisfied from other resources within one year.

If personal or real property is seized, the Court shall assign a minimum reasonable value to the property for the purposes of beginning bidding at an auction sale. Notice of an auction sale shall be published in a locally read newspaper at least (3) times in three weeks, and shall be posted in three conspicuous public places on the reservation for at least three weeks before the sale. The auction sale of seized property shall be conducted by the Northern Cheyenne Police Department. If the minimum price or more is not offered, property shall be held and notice of another sale shall be given. The Court shall re-evaluate the minimum reasonable value.

All money received at auction sales shall be turned over to the Court Clerk for payment to the judgment creditor. The Court Clerk shall keep records of all money received, and after a judgment is satisfied, any money remaining will be returned to the judgment debtor. Strict records must be kept to avoid sale of property unnecessarily. The person conducting the sale shall give all purchasers a certificate of sale, and shall file a report with the Court, reciting the details of all sales.

2. If the writ is against real or personal property in the hands of the judgment debtor's personal representatives,

heirs, devisees, legatees, tenants, or trustees, it shall require forfeiture of the property for sale as set out in section one (1) above. If consent of the judgment debtor is determined to be necessary for release of property, real or personal, the writ shall order the judgment debtor to transfer all property as needed. Refusal of such order shall be deemed contempt of court, and all necessary action may be taken to enforce the order.

3. If the writ is against the person of an absconding judgment debtor, it shall require the Northern Cheyenne Police to arrest the debtor and commit him to jail until he pays the judgment, with interest, or is discharged according to law. If the writ is against the person of any judgment debtor and the application for the writ is made under oath, upon probable cause, and describing the things to be seized as in a warrant, the officer may search and seize valuables from that debtor.
4. If the writ is for the delivery of the possession of real or personal property, it shall require the Northern Cheyenne Police to deliver the possession of the property, describing it, to the party entitled to it, and may at the same time require the Northern Cheyenne Police to satisfy any costs, charges, damages, rents, or profits recovered by that judgment out of the personal property of the person against whom it was rendered, and the value of the property for which the judgment was recovered to be specified in the writ, if a delivery cannot be had; and, if sufficient personal property cannot be found, then out of the real property as provided in (1) of this section.
5. All writs must identify the judgment debtor, the amount of the judgment owed, the right of the debtor to exempt certain property, and the right of the debtor to appeal the judgment if he/she has not already done so. The Court may also affix interest at 8% of amounts still owing, and provide for writs of execution to collect such interest.
6. When garnishing wages as set out in section one (1) above, employers must pay non-exempt wages to the Court Clerk each month up to the amount of the judgment, or be held in contempt of court. Avoidance of this duty shall be allowed only if good reasons are shown.

In addition to the exemptions set out in Section (C) of this rule, taxes and other legitimate withholdings may be withheld prior to payment pursuant a Court ordered writ of execution.

Writs of execution shall be enforceable against all individuals working on the reservation, including Tribal and U.S. Government employees. All writs issued for the garnishment of wages shall continue as liens against subsequent earnings until a judgment is satisfied, or until the employment relationship involved is terminated.

F. Redemption from Sale.

At any time within six (6) months after the sale under this Rule, the judgment debtor may redeem his property, personal or real, from the purchaser thereof or from any subsequent successors in interest, by paying the amount such purchaser or successor paid for the property plus eight (8) percent interest, plus any expense actually incurred by the purchaser, such as taxes and insurance, to maintain the property.

G. Judgment Debtor's Property Owned with Another.

1. If an individual judgment debtor owns property jointly with another, a judgment creditor may obtain a writ of execution and force a sale of the debtor's interest, provided the property is not exempt under this Rule. An individual who jointly owns property with a judgment debtor shall have the right to meet the highest bid at an auction sale, and thereby obtain the judgment debtor's interest.
2. A partner's right in specific partnership property is exempt except on a claim against the partnership. If partnership property is attached for a partnership debt the partners or any of them or the representatives of a deceased partner may not claim an exemption for that property under this rule.

Rule 38: Appeal.

A. Court of Appeals.

All appeals provided for by this code or ordinances shall be heard by the Northern Cheyenne Court of Appeals.

B. Right to Appeal.

Any party who is aggrieved by any final order, commitment or judgment of the lower trial court may appeal in the manner prescribed by this Rule.

C. Bond on Appeal.

At the time of filing the Notice of Appeal, the appellant shall also file cash or a bond in an amount set by the lower trial court sufficient to guarantee performance of the judgment if such performance is stayed on appeal plus, in any event, an amount sufficient to guarantee payment of such costs or interest as the court of appeals may award.

D. Stay Pending Appeal.

In any case in which an appeal is perfected as required by this

Rule, the appellant may petition the lower trial court for an order staying the order, commitment or judgment rendered conditioned upon execution of a bond to guarantee performance of the judgment, order or commitment. A stay shall be granted in all cases in which it is requested unless manifest injustice would result therefrom.

E. Clerk.

The Clerk of the trial court shall also serve as the Clerk of the Northern Cheyenne Court of Appeals. The Clerk shall prepare, certify and file with the Northern Cheyenne Court of Appeals all papers comprising the record of the case appealed. A separate docket shall be maintained for the Northern Cheyenne Court of Appeals in which shall be recorded each stage of the proceeding on each case appealed.

F. Judge.

Any party to an appeal may move that the Judge who heard the proceedings from which the appeal arose be removed from hearing the appeal. Such motion shall be granted upon a showing of good cause, such as prejudice, personal interest or relationship or other circumstances and facts that could substantially affect an impartial hearing.

B. CIVIL CODE

I. GENERAL PROVISIONS

4-1-1 State of Montana Requests for Authority on the Northern Cheyenne Reservation

Before the Northern Cheyenne Reservation Judicial System shall honor any County of Montana, State of Montana, or any other jurisdiction's service of process, arrest, extradition, judgment, execution upon a judgment, or order, the Northern Cheyenne Reservation Judicial System shall set a hearing to determine the validity of any of the above-requested exercises of authority. After such a hearing, the Northern Cheyenne Reservation Judicial System shall, in writing, either deny or authorize the request. If authorized by the Northern Cheyenne Judicial System the Northern Cheyenne Reservation Police Department shall serve the process, make the arrest requested, process the extradition, execute the judgement, and help to enforce the various orders.

4-1-2 Trespass by Non-Indian

Before any non-Indian trespasses or travels over, upon or across Northern Cheyenne Tribal land, he shall obtain, in person at Lame Deer, Montana, a Trespass Permit from the Northern Cheyenne Tribal Court.

Failure to obtain such a permit shall lead to such individual's arrest and detainment until the offender can be turned over to the appropriate Federal authorities for prosecution and punishment according to Federal Law and/or excluded from the reservation.

II. EXPULSION AND EXCLUSION OF NON-MEMBERS FROM THE NORTHERN CHEYENNE INDIAN RESERVATION

4-2-1 Who May be Excluded

Any non-member of the Northern Cheyenne Tribe, except persons authorized by federal law to be present on Tribal land and owners of non-trust land on the Reservation, may be excluded from the Northern Cheyenne Reservation.

4-2-2 Grounds for Exclusion

Non-members may be excluded for commission of one or more of the following acts within the Northern Cheyenne Reservation:

- A. Violation of any Northern Cheyenne Tribal Council ordinance.
- B. Unauthorized prospecting, measuring or studying of the Northern Cheyenne Reservation.
- C. Entering an area of the Northern Cheyenne Reservation in violation of any order of the Northern Cheyenne Tribal Council designating such area as closed because of a fire hazard or for any other reason.
- D. Use, possession, or sale of any drug, narcotic drug or controlled substance as defined by the state Uniform Controlled Substances Act.
- E. Defrauding any enrolled member of just compensation for his labor or service of any nature done at the request of the non-member.
- F. Any act causing physical loss or damage of any nature to tribal property or property of any enrolled member.

4-2-3 Notice of Proposed Exclusion

A judge of the Northern Cheyenne Court shall cause notice to be served personally or by registered mail upon any non-member whenever the Reservation Prosecutor petitions the Court for exclusion of the non-member. The notice shall state the reason for the proposed exclusion and shall name a time and place where the non-member may appear before the Northern Cheyenne Court to show cause why he should not be excluded from the Northern Cheyenne Reservation. The hearing shall be not less than ten (10) days after service of the notice or mailing of the

notice, whichever is later, provided that if the judge shall have reasonable cause to believe an emergency exists, and the notice so states, the hearing may be held after twenty-four hours from the time of service or mailing, whichever is later.

4-2-4 Hearing on Exclusion Before Northern Cheyenne Court

After notice to the non-member proposed for exclusion, the Northern Cheyenne Court shall hold a hearing to decide whether the non-member shall be excluded from the Northern Cheyenne Reservation. The non-member shall be given an opportunity to present his defense at such hearing and may be represented by counsel. After the hearing, or after the time set for the hearing, if after notice the non-member does not appear, the Northern Cheyenne Court may order him excluded from the Northern Cheyenne Reservation, or may permit him to remain upon the Reservation on such conditions as the Northern Cheyenne Court sees fit to impose. All orders of exclusion shall remain in force until revoked by the Northern Cheyenne Court unless the order specifically provides otherwise.

4-2-5 Appellate Proceedings

Appeals from any exclusion shall be with the Northern Cheyenne Reservation Appeals Court.

4-2-6 Proceedings for Enforcement of Orders of Exclusion

If any non-member ordered excluded by the Northern Cheyenne Court does not promptly obey the order, the judge shall refer the case to the Northern Cheyenne Reservation police, who shall promptly escort the person excluded to the nearest Reservation boundary.

4-2-7 Physical Removal

In cases involving immediate danger to life, health, morals, or property and where any delay would result in irreparable damage, a judge of the Northern Cheyenne Court may order any Northern Cheyenne law enforcement officers to remove a non-member and any property of such non-member from the Northern Cheyenne Reservation, either before or after the non-member has been ordered excluded by the Northern Cheyenne Court as provided in 4-2-4. The officer executing the order shall use only so much force as is necessary to effect the removal. If service of the notice provided for in 4-2-3 has not already been made on the non-member, the judge shall cause the officer to serve the notice upon the non-member at the time of removal, or he shall cause the notice to be served as soon after removal as possible.

In all cases where the non-member has not already been ordered excluded by the Northern Cheyenne Court, the judge shall notify the non-member of a place on the Reservation boundary where he may re-enter in the company of a Northern Cheyenne law enforcement officer for the purpose of attending the hearing before the Northern Cheyenne Court. The order

shall command the officer to accompany the non-member while he is on the Reservation coming to and leaving his hearing.

4-2-8 Separability

If any provision of sections 4-1-1 through 4-2-7, or their application to any person or circumstances is held invalid, the remainder of these sections, or the application of the provision to other persons or circumstances is not affected.



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS .

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:
TRIBAL OPERATIONS

JAN 19 1988

Mr. Robert Bailey, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Bailey:

Attached is the original of Northern Cheyenne Tribal Ordinance No. 10(88) enacted by the Northern Cheyenne Tribe on January 4, 1988.

Ordinance No. 10(88) adopts a Commitment Ordinance for the Northern Cheyenne Reservation. This is to be added to the existing Northern Cheyenne Reservation Code under Title IV, Part B, Sub-Part I, General Provisions as 4-1-3 Commitments.

I have reviewed and approve this Ordinance.

A copy of this Ordinance is being forwarded to Billings Area Tribal Operations Branch for review.

Sincerely,

Superintendent

Attachment

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE INDIAN RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 10 (88)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL APPROVING AND ADOPTING A COMMITMENT ORDINANCE FOR THE NORTHERN CHEYENNE RESERVATION

WHEREAS: presently the Northern Cheyenne Reservation does not have as substantive law any means to commit individuals to institutions for mental, alcohol, or drug problems, and

WHEREAS: as a result of this lack, the Northern Cheyenne Reservation must go to the surrounding counties for commitments, and

WHEREAS: recently the Indian Health Service negotiated an agreement with the State of Montana whereby IHS will pay the State for expenses incurred by the State when tribal people are committed, and

WHEREAS: the Tribal Council, therefore, to take advantage of the Indian Health Service-State agreement, should enact our own commitment law for the Northern Cheyenne Reservation.

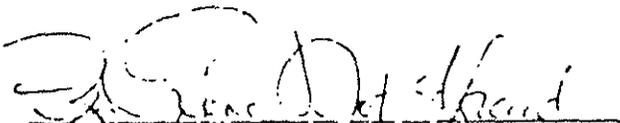
SO BE IT ORDAINED by the Northern Cheyenne Tribal Council that the attached ordinance is hereby accepted and adopted by the Northern Cheyenne Tribal Council, to be effective March 1, 1988.

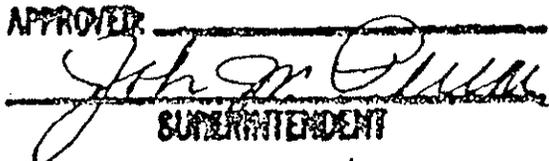
BE IT FURTHER ORDAINED that this ordinance will be added to the Northern Cheyenne Reservation Code under Title IV (Northern Cheyenne Rules of Civil Procedure and Civil Code), Part B Civil Code, sub-part I. General Provisions as 4-1-3 Commitments.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 8 votes for passage and adoption and 0 votes against passage and adoption this 4th day of January, 1988.


Robert Wiley, President
Northern Cheyenne Tribal Council

ATTEST:


Robert Wiley, Secretary
Northern Cheyenne Tribal Council

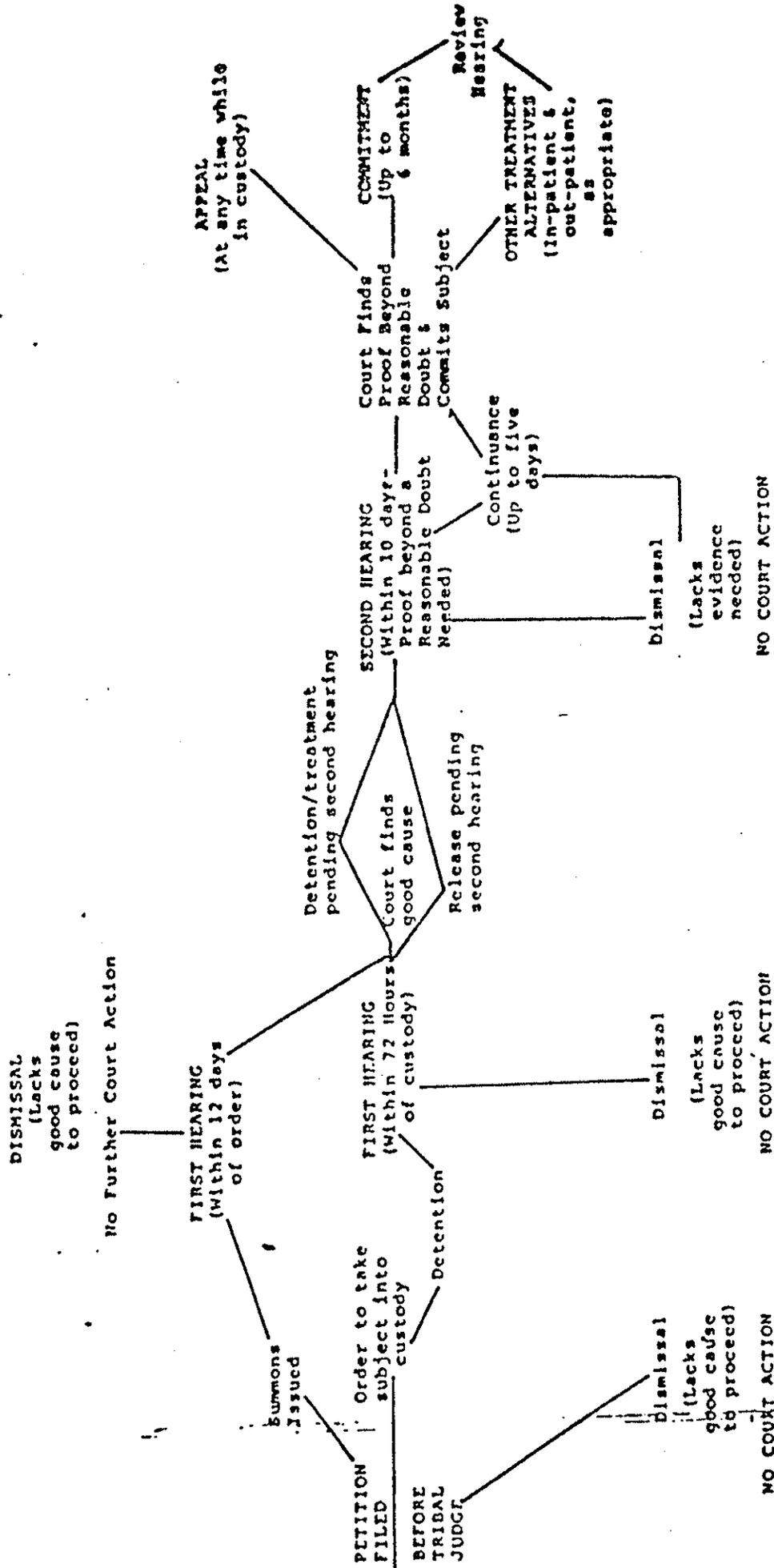
APPROVED: 
SUPERINTENDENT

4-1-3 COMMITMENTS

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COMMITMENT-----Alcohol and/or Drug Dependency



I. ALCOHOL/CHEMICAL DEPENDENCY COMMITMENT

1.1. STATEMENT OF POLICY

It is the policy of the Northern Cheyenne Tribal Council to recognize chemical dependency as a severe social problem, daily affecting the lives of numerous Tribal members. The Northern Cheyenne Tribal Council (hereinafter "Tribal Council") hereby officially recognizes that Alcoholism, as well as developed dependencies on other drugs and chemicals are progressive diseases which can eventually lead to the death of the afflicted individual. Further, such diseases are a key factor in the majority of crimes on the Reservation, as well as being a major factor in many domestic problems on the Reservation. It is the stated goal of the Tribal Council to seek recognition and solution of the problem throughout the Reservation, and by this Ordinance to provide a means to intervene in the lives of those individuals suffering from these dependencies.

1.2 DEFINITIONS

(1) Alcoholic. A person who has a history of chronic, excessive consumption of alcoholic beverages and as a result of such, loses powers of self-control, judgement or discretion in caring for fundamental personal needs, or the ability to conduct social relations. A rebuttable presumption shall be created that an individual is an alcoholic in any proceeding if any of the following exists:

(A) Such person has previously been adjudicated as needing treatment, and substantial evidence exists that such individual has returned to regular consumption of alcohol.

(B) Substantial evidence exists that an individual has been consuming alcohol, without break, for three (3) days or more.

(C) Substantial evidence exists to demonstrate that an individual, during the course of consuming alcohol, has suffered a "blackout", or fails to remember a period of time during which he/she was intoxicated but otherwise coherent.

(D) Such person has been convicted of two or more crimes, during which he/she was under the influence of alcohol, as can be evidenced by the submission of a signed affidavit by the investigating officer in such case and/or the fact that being under the influence of alcohol was an element of the offense.

(E) Such person has been diagnosed as such by competent medical personnel, after observation that he/she exhibits the following pattern of pathological alcohol use: need for daily use of alcohol for adequate functioning; inability to cut down or stop drinking; repeated efforts to control or reduce excess drinking by "going on the wagon" (periods of temporary abstinence) or restricting drinking to certain times of the day; binges (remaining intoxicated throughout the day for at least two-days); occasional consumption of a fifth of spirits (or its equivalent in wine or beer); amnesic periods for events

occurring while intoxicated (blackouts); continuation of drinking despite a serious physical disorder that the individual knows is exacerbated by alcohol use; drinking of non-beverage alcohol (e.g. Lysol, vanilla extract, etc.), with one or more of said symptoms coinciding with social or occupational functioning impairment due to alcohol use, such as violence while intoxicated, absence from work, loss of job, legal difficulties (e.g. arrest for intoxicated behavior, traffic accidents while intoxicated), arguments or difficulties with family or friends because of excessive alcohol use, with an overall duration of disturbance within said areas of at least one (1) month.

(2) Chemically Dependent Person. A person who has a history of chronic excessive use of drugs or chemicals, and as a result of such drug or chemical use, regularly and for significant periods of time, loses powers of self-control, judgement or discretion in caring for fundamental personal needs or the ability to conduct social relations. Such definition may be applied to a person who is believed to be suffering from a combined dependency on alcohol and any other drug.

1.3 STANDARDS FOR COMMITMENT

An individual, subject to the jurisdiction of the Northern Cheyenne Tribal Court, believed to be an Alcoholic and/or a Chemically Dependent Person, may be committed to a Detoxification Center or other appropriate treatment facility, as appears necessary, when an appropriate verified petition is filed in the Reservation Court, alleging that such person is an Alcoholic and/or a Chemically Dependent Person. In addition to such allegation, the following must be set forth in the petition:

- (1) The name, address and current location of the subject of the petition, to the best of Petitioner's knowledge;
- (2) The name, address and next-of-kin of the subject of the petition;
- (3) If different from No. 2, the name, address and relationship to the subject, of the Petitioner;
- (4) Facts alleged in support of the petition to demonstrate that the subject falls within the definition of an Alcoholic or a Chemically Dependent Person, as is defined in this Ordinance;
- (5) Facts alleged in support of the petition to demonstrate that the subject has threatened, attempted, or inflicted physical harm on him/herself or another and unless committed is likely to inflict physical harm on him/herself or another OR is incapacitated by alcohol;
- (6) Facts showing that the subject has refused to subject him/herself to a medical examination and/or chemical evaluation within the immediately preceding ten (10) days to determine the effect of the alleged alcohol and/or chemical dependency, OR attach a signed statement, dated within ten (10) days of the date of the petition, from a licensed physician or licensed chemical dependency counselor, setting forth facts in support of the petition. All such statements from licensed

physicians or counselors must be either notarized by a Notary Public or Clerk of Court, or such individual must have previously taken an oath before the court to serve as an officer of the court in such capacity.

(7) Identify the appropriate treatment and/or facility to properly deal with the problem of the subject; and

(8) Verification of the truth of such facts by Petitioner.

1.4 WHO MAY FILE PETITION.

Anyone with sufficient knowledge of an individual's circumstances to properly allege the facts required to be set forth in the petition by this code may file a petition naming an individual, provided, such person has at least some first-hand knowledge of the subject of a petition.

1.5 COURT PROCEEDINGS.

(1) All petitions provided for herein shall be signed in front of a Reservation Judge, and shall be considered civil proceedings with no record of jail time served, even if a subject is held in a jail facility, for lack of a sufficiently secure facility.

(2) All court proceedings provided for herein shall be recorded by a court reporter, or an appropriate audio and/or video device.

(3) All treatment placements ordered by the court shall be made to the least restrictive environment then available to properly treat the condition of the subject then before the court. All orders directing treatment shall direct that if during the course of ordered treatment, an appropriate less restrictive placement opportunity becomes available, that the court shall be informed of such, and if possible, the subject transferred to such program.

(4) Proceedings Initiated Ex Parte.

(A) Upon the filing of an appropriate verified petition, if the court finds the danger to the health and safety of the subject of such petition, or another, to be substantial, he/she may make such finding in writing, direct law enforcement officials to take the subject to appear before the court and show cause why such detention should not be continued.

(B) Upon being taken into custody, said subject shall be served with a copy of the petition, a statement of his/her rights, and a copy of the order to take him/her into custody.

(C) If possible, said subject shall be immediately brought before a judge of the Reservation Court and given an opportunity to challenge the petition. In no even shall a subject be in custody longer than 72 hours before being given an opportunity to appear before a judge and challenge the proceeding.

(D) When taken into custody, a subject shall be held in a facility with sufficient security to properly restrain him/her from leaving while providing for the medical needs of such individual. Such facility shall be the least restrictive environment available, which will ensure his/her continued presence. A jail facility shall be used only as a last alternative, when other facilities are full, and/or insufficient to maintain a defendant's continued presence.

(E) If a petition has been filed without the attachment of a statement from a licensed physician or counselor, the court shall make every effort to have the subject evaluated and/or examined by such, before the initial hearing provided for above; provided, that such efforts shall not toll the requirement to conduct a show cause hearing within 72 hours of taking a subject into custody. If not effected prior to such hearing, an evaluation from a licensed physician or counselor shall be ordered and submitted prior to the court conducting the second hearing provided for herein.

(F) At the initial show cause hearing provided for herein, the subject shall have an opportunity to challenge the allegations set forth in the petition. Petitioner(s) shall be present, and if possible the licensed physician and/or chemical dependency counselor who has examined or evaluated the subject shall be present also. Should the subject be physically unable to appear, the court, upon entering a finding of such in open court, may postpone said hearing until such time as he/she can be present; provided, orders to take such individual into custody shall continue until such hearing. Such continuance shall not extend beyond the second hearing provided for in this code, and may be consolidated with the second hearing, if such becomes necessary, as long as the court formally reviews the evidence before it at a properly noticed hearing.

(G) If after an initial show cause hearing the presiding judge finds that there is good cause to maintain the subject in treatment, he may order that such person be maintained in treatment for up to ten (10) days. Within said ten (10) days, a second hearing shall be scheduled for the court to formally review the evidence to determine whether further treatment is necessary and whether to adjudge an individual as in need of such. At the second hearing, the standard of proof necessary to support a finding that further court-ordered treatment is necessary shall be proof beyond a reasonable doubt.

(H) Upon entering a finding that further court-ordered treatment is necessary after the second hearing, a subject may be ordered to treatment for a period not to exceed six (6) months. Such an order must be supported by evidence and/or reports to the court from a licensed, qualified chemical dependency counselor and/or a physician, that such is necessary and proper to treat the condition of the subject.

(I) Should the court find that the record lacks sufficient evidence to meet the proof beyond a reasonable doubt standard, it may either dismiss the action, or if it is reasonably believed that such proof exists and a continuance would effect the presentation of such evidence, may continue the hearing for a period no longer than five (5) days. The subject of the petition shall be released during such continuance, unless the court is convinced that said subject will not return for further proceedings or will be a danger to him/herself or others.

(5) Proceedings Initiated After Notice.

(A) If the court, after reviewing a filed verified petition, determines that the issuance of an ex parte order taking the subject into custody is inappropriate, a summons may be issued demanding the presence of the subject at a hearing, or if it is found that good cause is lacking, the petition may be dismissed. Failure to appear or otherwise respond after the receipt of a summons may be treated as contempt of court.

(B) When a summons is deemed appropriate, it shall direct the subject to appear at a show cause hearing to be set within twelve (12) days of the filing of the petition, to determine whether further action is necessary. A copy of the petition, along with a statement of the subject's rights shall accompany the summons, and be personally served thereon by a police officer or authorized process server, or if such cannot be effected, by certified mail.

(C) At the initial show cause hearing, provided for herein, the subject shall have an opportunity to challenge the allegations set forth in the petition. Petitioner(s) shall be present, and if possible the licensed physician and/or chemical dependency counselor who has examined or evaluated the subject shall be present also. Should the subject be physically unable to appear, the court, upon entering a finding of such in open court, may postpone said hearing until such time as he/she can be present; provided, orders to take such individual into custody, if any, shall continue until such hearing. Such continuance shall not extend beyond the second hearing, provided for in this code, and may be consolidated with the second hearing, if such becomes necessary, as long as the court formally reviews the evidence before it at a properly noticed hearing.

(D) If after an initial show cause hearing the presiding judge finds that there is good cause to maintain the subject in treatment, he may order that such person be maintained in treatment for up to ten (10) days. Within said ten (10) days, a second hearing shall be scheduled for the court to formally review the evidence to determine whether further treatment is necessary and whether to adjudge an individual as in need of such. At the second hearing, the standard of proof necessary to support a finding that further court-ordered treatment is necessary shall be proof beyond a reasonable doubt.

(E) Upon entering a finding that further court-ordered treatment is necessary after the second hearing, a subject may be ordered to treatment for a period not to exceed six (6) months. Such an order must be supported by evidence and/or reports to the court from a licensed, qualified chemical dependency counselor and/or a physician that such is necessary and proper to treat the condition of the subject. The court may order treatment beyond the six (6) month period, provided that the standard of proof required at the second hearing is met at each subsequent hearing, and hearings on such individual are held at least every six (6) months.

(F) Should the court find that the record lacks sufficient evidence to meet the proof beyond a reasonable doubt standard, it may either dismiss the action, or if it is reasonably believed that such proof exists and a continuance would effect the presentation of such evidence, may continue the hearing for a period no longer than five (5) days. The

subject of the petition shall be released during such continuance, unless the court is convinced that said subject will not return for further proceedings or is a danger to him/herself or others.

(6) The time limits provided for herein after the initial show cause hearing may be specifically waived in writing by the subject of a petition, or his/her authorized representative.

(7) Voluntary Proceedings. An individual may voluntarily submit him/herself to treatment hereunder by either voluntarily enrolling in an appropriate treatment facility, or if desiring to so attend under court order, may petition the court pursuant the terms hereof, invoking the procedures set forth above.

(8) In addition to other rights reserved to a subject, such individual may move the court to hold additional hearings or to postpone hearings as such may be necessary to prepare and/or present relevant evidence on their condition.

1.6 EMERGENCY COMMITMENT.

(1) If the petitioning process described above is not reasonably available, a licensed physician or peace officer may detain an individual who appears to be intoxicated or incapacitated by the use of any drug and appears to be a danger to him/herself or the public. Such individual shall be held in the least restrictive environment necessary to protect him/her and/or the public. If the only alternative available is jail, said person shall be held only until said person is no longer creating a risk to him/herself or others or an appropriate court order for detention is obtained, whichever exists first. If detained under this procedure, an individual shall be immediately informed of the reasons for such detention, and immediately provided a copy of his rights under this ordinance.

(2) When such an individual is detained, the initiating physician or peace officer shall cause a petition, as is set forth above, to be filed with the Tribal Court on the next regular court day, unless such individual is released prior thereto. Such physician or peace officer, in either event, shall file a written report describing their action, with the Tribal Court, the next regular court day following the detention of an individual. The court shall keep a file on such individual, to monitor possible evidence of significant problems.

(3) A physician or peace officer, acting within the scope of the authority set forth herein, shall not be personally liable for his/her actions.

1.7 PROCEDURAL RIGHTS.

(1) The subject of a petition under this Title shall be guaranteed the following rights in addition to and in recognition of rights guaranteed by applicable federal and reservation law.

(A) The right to reasonable advance notice of hearing, except as specifically provided for herein.

(B) The right to be present at all hearings, and to offer relevant arguments, evidence and witnesses concerning legal and factual allegations.

(C) The right to question witnesses during hearings.

(D) The right to be represented by a responsible person and/or a legal representative at his/her own expense.

(E) The right to remain silent.

(F) The right to have the evidence presented against him/her judicially reviewed to be sufficient to meet the general rules of evidence applicable in civil matters and as set forth in this code.

(G) The right to review and copy relevant documents on file with the court concerning the pending case.

(H) The right to be examined by another professional person of his/her choice, at their own expense, or as such can be arranged within budgetary limitations.

(I) The right to appeal final orders of the court.

(J) The right to refuse medication within twenty-four (24) hours preceeding hearings, unless a professional person determines that said subject will harm him/herself, others or property.

(K) The right to be informed of these rights before or immediately after being detained.

1.8 SEVERABILITY

Should any section, paragraph, sentence, clause or phrase of this chapter be found to be unlawful or otherwise invalid for any reason, the remainder hereof shall not be affected thereby.

1.9 RIGHT OF APPEAL

The subject of an action provided for hereunder shall have the right to appeal as provided for in the general rules of civil and appellate procedure of the Tribal Ordinance; provided, such an individual shall have the further right to pursue an appeal from a final order of commitment at any time while remaining in custody.

COMMITMENT-----Seriously Mentally Ill

DISHISSAL
(Lacks
good cause
to proceed)

No Further Court Action

FIRST HEARING
(within 7 days
of order)

Summons
Issued

PETITION
FILED
BEFORE
TRIBAL
JUDGE

Order to take
subject into
custody.

Detention

FIRST HEARING
(within 72 hours
of custody)

Dishissal
(Lacks
good cause
to proceed)

NO COURT ACTION

Detention/treatment
pending second hearing

Court finds
good cause

Release pending
second hearing

SECOND HEARING
(within 10 days-
Clear and
Convincing
evidence
needed)

Continuance
(up to five
days)

Dismissal

(Lacks
evidence
needed)

NO COURT ACTION

Court finds
Clear and
Convincing
evidence &
Commits Subject

APPEAL
(At any time while
in custody)

COMMITMENT
(up to
6 months)

OTHER TREATMENT
ALTERNATIVES
(in-patient &
out-patient,
as
appropriate)

Review
Hearing

II. MENTAL COMMITMENT

2.1 STATEMENT OF POLICY

It is the policy of the Northern Cheyenne Tribal Council to recognize mental illness and mental health problems as significant concerns adversely affecting the lives of those suffering from such, as well as numerous members of their family and community. In addressing such problems, it is herein recognized that procedures are needed to effectively, humanely provide treatment alternatives to such individuals, while protecting rights to due process, equal protection and freedom. In construing the provisions of this process, the court shall carefully weigh the public's right to be safe and free from inappropriate conduct, with the individual rights as guaranteed in the Indian Civil Rights Act and other applicable federal and tribal laws.

2.2 DEFINITIONS

(1) "Friend of Respondent". Such an individual is a competent person, appointed by the court, who is at least somewhat familiar with the subject of a petition, has no potential conflict of interests in looking out for the interests of the subject, and is willing and able to assume responsibility for advising and communicating with the subject. Such person, when appointed by the court, shall not be civilly liable for any actions taken or omitted in the performance of such service, provided they act in good faith within the scope of their appointment.

(2) "Professional Person" means a medical doctor, licensed mental health professional or other individual licensed by a responsible agency to evaluate the mental condition of individuals.

(3) "Seriously Mentally Ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or which has deprived the person afflicted of the ability to protect his life or health.

2.3 STANDARDS FOR COMMITMENT

An individual, subject to the jurisdiction of the Northern Cheyenne Reservation Court, believed to be seriously mentally ill, may be committed to an appropriate treatment facility as appears necessary, when an appropriate verified petition is filed in the Northern Cheyenne Reservation Court, alleging that such person is seriously mentally ill. In addition to such allegation, the following must be set forth in the petition:

(1) The name, address and current location of the subject of the petition, to the best of Petitioner's knowledge;

(2) The name, address and next-of-kin of the subject of the petition;

(3) If different from No. 2, the name, address and relationship to the subject, of the Petitioner;

(4) Facts alleged in support of the petition to demonstrate that

the subject falls within the definition of a seriously mentally ill person, as is defined in this Ordinance.

(5) Facts alleged in support of the petition to demonstrate that the subject has threatened, attempted, or inflicted physical harm on him/herself or another or said condition has deprived the person of the ability to protect his/her life and health, and unless committed is likely to inflict physical harm on him/herself or another;

(6) Facts showing that the subject has refused to subject him/herself to a medical examination and/or psychological evaluation within the immediately preceding ten (10) days to determine the effect of the alleged serious mental illness, OR attach a signed statement, dated within ten (10) days of the date of the petition, from a Professional Person setting forth facts in support of the petition. All such statements from Professional Persons must be either notarized by a Notary Public or Clerk of Court, or such individual must have previously taken an oath before the court to serve as an officer of the court in such capacity.

(7) Identify the appropriate treatment and/or facility to properly deal with the problem of the subject; and

(8) Verification of the truth of such facts by Petitioner.

2.4 WHO MAY FILE PETITION.

Anyone with sufficient knowledge of an individual's circumstances to properly allege the facts required to be set forth in the petition by this ordinance may file a petition naming an individual, provided, such person has at least some first-hand knowledge of the subject of a petition. The Tribal Prosecutor shall provide assistance, as necessary, in the preparation of such petitions, and in the presentation of evidence to the court at required hearings.

2.5 COURT PROCEEDINGS.

(1) All petitions provided for herein shall be signed in front of a Reservation Judge, and shall be considered civil proceedings with no record of jail time served, even if a subject is held in a jail facility, for lack of a sufficiently secure facility.

(2) All court proceedings provided for herein shall be recorded by a court reporter, or an appropriate audio and/or video device.

(3) All treatment placements ordered by the court shall be made to the least restrictive environment then available to properly treat the condition of the subject then before the court. All orders directing treatment shall direct that if during the course of ordered treatment, an appropriate, less restrictive placement opportunity becomes available, that the court shall be informed of such, and if possible, the subject transferred to such program

(4) Proceedings Initiated Ex Parte.

(A) Upon the filing of an appropriate verified petition, if the court finds the danger to the health and safety of the subject of such petition, or another, to be substantial, he/she may make such finding in writing, direct law enforcement officials to take the subject of a petition into custody, and set forth a time for said subject to appear before the court and show cause why such detention should not be continued.

(B) Upon being taken into custody, said subject shall be served with a copy of the petition, a statement of his/her rights, and a copy of the order to take him/her into custody.

(C) If possible, said subject shall be immediately brought before a judge of the Tribal Court and given an opportunity to challenge the petition. In no event shall a subject be in custody longer than 72 hours before being given an opportunity to appear before a judge and challenge the proceeding.

(D) When taken into custody, a subject shall be held in a facility with sufficient security to properly restrain him/her from leaving, while providing for the medical needs of such individual. Such facility shall be the least restrictive environment available, which will ensure his/her continued presence. A jail facility shall be used only as a last alternative when other facilities are full, and/or insufficient to maintain a defendant's continued presence.

(E) If a petition has been filed without the attachment of a statement from a Professional Person, the court shall make every effort to have the subject evaluated and/or examined by such, before the initial hearing provided for above; provided, that such efforts shall not toll the requirement to conduct a show cause hearing within 72 hours of taking a subject into custody. If not effected prior to such hearing, an evaluation from a Professional Person shall be ordered and submitted prior to the court conducting the second hearing provided for herein.

(F) At the initial show cause hearing, provided for herein, the subject shall have an opportunity to challenge the allegations set forth in the petition. The court shall locate and appoint a "Friend of Respondent", who will assist, without remuneration unless such is available, the subject of a petition in challenging or contradicting the allegations of a petition. The subject of a petition may, in addition to the Friend of Respondent appointed by the court, secure, at his/her own expense, the services of a legal representative. Petitioner(s) shall be present, and if possible the Professional Person who has examined or evaluated the subject shall be present also. Should the subject be physically unable to appear, the court, upon entering a finding of such in open court, may postpone said hearing until such time as he/she can be present; provided, orders to take such individual into custody shall continue until such hearing. Such continuance shall not extend beyond the second hearing provided for in this ordinance, and may be consolidated with the second hearing, if such becomes necessary, as long as the court formally reviews the evidence before it at a properly noticed hearing.

(G) If after an initial show cause hearing the presiding judge finds that there is good cause to detain the subject in treatment/evaluation, he may order that such person be detained in treatment/evaluation for up to ten (10) calendar days. Within said ten (10) days, a second hearing shall be scheduled for the court to formally review the evidence to determine whether further treatment is necessary and whether to adjudge an individual as in need of such. At the second hearing, a finding that evidence in support of a finding that an individual is seriously mentally ill shall be supported by evidence meeting a "clear and convincing" standard of proof.

(H) Upon entering a finding that further court-ordered treatment is necessary after the second hearing, a subject may be ordered to treatment for a period not to exceed six (6) months. Such an order must be supported by evidence and/or reports to the court from a Professional Person that such is necessary and proper to treat the condition of the subject.

(I) Should the court find that the record lacks sufficient evidence to meet the clear and convincing evidence standard, it may either dismiss the action, or if it is reasonably believed that such proof exists and a continuance would effect the presentation of such evidence, may continue the hearing for a period no longer than five (5) days. The subject of the petition shall be released during such continuance, unless the court is convinced that said subject will not return for further proceedings or will be a danger to him/herself or others.

(5) Proceedings Initiated After Notice.

(A) If the court, after reviewing a filed verified petition, determines that the issuance of an ex parte order taking the subject into custody is inappropriate, may issue a summons demanding the presence of the subject at a hearing, or if it is found that good cause is lacking, the petition may be dismissed. Failure to appear or otherwise respond after the receipt of a summons may be treated as contempt of court.

(B) When a summons is deemed appropriate, it shall direct the subject to appear at a show cause hearing to be set within seven (7) days of the filing of the petition, to determine whether further action is necessary. A copy of the petition, along with a statement of the subject's rights shall accompany the summons, and be personally served thereon by a police officer or authorized process server, or if such cannot be effected, by certified mail.

(C) At the initial show cause hearing, provided for herein, the subject shall have an opportunity to challenge the allegations set forth in the petition. The court shall locate and appoint a "Friend of Respondent", who will assist, without remuneration unless such is available, the subject of a petition in challenging or contradicting the allegations of a petition. The subject of a petition may, in addition to the Friend of Respondent appointed by the court, secure, at his/her own expense, the services of a legal representative.

TITLE V

RULES OF CRIMINAL PROCEDURE CODE

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RULES OF CRIMINAL PROCEDURE CODE

I. SCOPE, PURPOSE AND CONSTRUCTION

Rule 1: Scope, Purpose and Construction.

- A. These rules shall govern the procedure in the Northern Cheyenne Reservation Court for all cases involving criminal proceedings.
- B. These rules are intended to provide for a fair trial and the just determination of every criminal proceeding before the Court. All rules shall be interpreted to provide simplicity and fairness in application, while eliminating unjustifiable expense and delay.
- C. Federal and State rules may be used as guidelines, where appropriate.
- D. The Northern Cheyenne Tribal Council hereby authorizes the Bureau of Indian Affairs the authority to use and enforce this Criminal Procedure Code.

II. PROCEEDINGS BEFORE TRIAL

Rule 2: Commencement of Criminal Proceedings.

A. Complaint.

Criminal proceedings shall be commenced by the prosecutor filing a written complaint with the Court. A complaint is the written statement of the essential facts constituting the offense charged. No complaint shall be accepted for filing unless it satisfies the requirements of Rule 2(B). However minor omissions or errors in the complaint will not be grounds for dismissal of the case unless significant prejudice against the defendant is shown.

B. Contents of the Complaint.

- 1. Affidavit(s) or sworn statement(s) made by a complaining witness stating the name of the person accused, if known, or a description of the accused, adequate for identification and the time, place and description of the actions leading to the complaint.
- 2. The name(s) and code designation(s) of the offenses complained of. If the facts show more than one offense took place, each offense shall be stated separately. Offenses may be charged using the language of the Code.

identified with reasonable certainty, state the offense charged, and be signed by the Judge.

2. Use of Arrest Warrant. A Reservation law enforcement officer shall use the warrant to take the defendant into custody. The officer shall have the warrant in his possession at the time of arrest, but if this is not possible, arrests can be made, as long as the defendant is informed of the charge(s) against him, and as soon as possible receives a copy of the warrant.
3. Jurisdiction Limits. A warrant for arrest will be valid only within the jurisdiction of the Reservation Court, unless it is used in conformance with the extradition procedures set forth in this Code.
4. Time of Arrest. If the offense charged is a Class A or B offense, the arrest may be made at any time of the day or night; if it is a Class C offense, the arrest pursuant to a warrant cannot be made between the hours of 9:00 p.m. and 8:00 a.m. unless such is specifically authorized by the issuing Judge.

Rule 4: Extradition

- A. A warrant of arrest issued by any other jurisdiction for any person found within the exterior boundaries of the Northern Cheyenne Reservation shall be presented to a Northern Cheyenne Judge prior to the person being taken into custody.

If the judge, after reviewing the date, charge, and identity of the person named is satisfied as to the warrant's validity, then he shall also issue an arrest warrant. The person named will then be taken into custody by the Northern Cheyenne law enforcement officials and with the assistance of the other authorities involved, if requested, and held at Northern Cheyenne jail pending a removal hearing.

- B. As soon as possible a removal hearing will be held. If the judge determines that the person in custody and before the court is the same person charged in the warrant and that there is probable cause that such person committed the offense charged in the warrant, a removal order shall be issued and the person promptly turned over to the custody of the appropriate authorities.
- C. The person arrested may execute a waiver of removal hearing after being informed of all his rights including a right to such hearing. If the waiver is executed, the person shall be promptly turned over to the custody of the appropriate authorities.

3. Where possible, inform the person of the reason(s) for the arrest;
 4. Where possible, show the warrant for arrest if such exists; and
 5. Inform the arrested person of his right to remain silent, his right to have counsel present during questioning, and that anything he says could be used against him at trial.
- B. When arresting or attempting to arrest an individual, all Reservation Police officers may:
1. Use reasonable force and use all necessary means to effect the arrest of a person who either flees or forcibly resists after being informed of the officer's identity and his intent to arrest.
 2. Search the person along with areas within his immediate reach, removing and putting into evidence all contraband or weapons discovered.
 3. When in fresh pursuit, continue in such fresh pursuit and arrest upon apprehension of the person pursued, even if apprehension occurs outside the territorial boundaries of the Northern Cheyenne Reservation. All persons so arrested may be returned to the Northern Cheyenne Reservation by the arresting officer if the arrest occurs in the State of Montana. Otherwise, the arrested person will be turned over to local police officials pending extradition proceedings.

Rule 7: Search and Seizure. Warrant.

A. Authority.

A search warrant authorized under this rule may be issued by a Judge on request of a Reservation Police officer, or the Reservation prosecutor.

B. Issuance and Contents.

1. Requests for a search warrant must be accompanied by a signed, notarized affidavit(s) or an oral statement made under oath from someone, to be transcribed and signed by the maker, setting forth information showing that probable cause exists to believe that stolen property, property which constitutes evidence of the commission of a crime, or property the possession of which constitutes a crime is in the possession of a named individual or located on specifically described premises.

Rule 9: Arraignment.

A. Appearance Before the Court.

Every person arrested and in custody shall be arraigned at the next regularly scheduled session of the Court, or within 72 hours, whichever occurs first. All others will appear before the Court as arranged. The Court may, in its discretion, provide for temporary commitment of persons who, for reasons beyond their control, are unable to appear in Court at the scheduled session or within the 72 hour period.

B. Procedure at Arraignment.

Arraignments shall be conducted in open Court, and shall include:

1. Reading the complaint to the accused, and providing him with a copy of the complaint if he has not received one.
2. Explaining to the defendant the substance of the charges and the language of the law establishing the offense and fixing the penalty.
3. If the defendant is a non-Indian, the Court shall explain his right to assert a lack of personal jurisdiction of the Court over the defendant in a criminal action. If the defendant affirmatively elects to waive personal jurisdiction, the action shall proceed as if the defendant were an Indian. If the non-Indian defendant does not affirmatively waive the lack of personal jurisdiction, the action shall become a civil action to exclude the defendant from the Reservation. The prosecutor shall prosecute such civil action in the name of the Northern Cheyenne Reservation and the action shall be conducted pursuant to the number of this Title. The defendant may assert or waive lack of jurisdiction at any time prior to the start of trial.
4. Advising the defendant of his right to counsel at his expense, and the right to have counsel present before entering a plea or making any statement.
5. Asking the defendant to plead guilty or not guilty to the charges.
6. If the defendant pleads guilty, the Judge must address the defendant personally as set forth in Rule 11, to determine if the plea is made voluntarily and with understanding. If satisfied with the defendant's responses, the Judge may then sentence the defendant. In the Court's discretion, a future date may be set for sentencing. The defendant will be eligible for bail if a future date is set for

- d. That he has a right to compel witnesses to testify, to be confronted by the witnesses against him, and to cross-examine witnesses against him;
 - e. That he has a right to testify or to not testify since he has a right not to be compelled to incriminate himself; and
 - f. That if he pleads guilty, there will not be a trial, and in effect, he has waived his right to a trial, and further that any statement he makes either to the Judge or anyone else concerning the offense charged, can be used against him in that proceeding or in any future prosecution.
2. If a defendant pleads guilty and the Judge considers the plea to be made involuntarily and/or without full understanding of the charge, the Judge shall reject the plea of guilty, and enter a plea of not guilty for the defendant.
3. Plea Agreement Procedure.
- a. The Reservation Prosecutor and counsel for defendant or the defendant may engage in discussions in an attempt to reach an agreement that, upon entering a plea of guilty to a charged offense or to a lesser or related offense, or to assisting in the apprehension of other criminals, the Northern Cheyenne Reservation will do any of the following:
 - (1) Move for dismissal of other charges or all charges;
 - (2) Make a recommendation, or agree not to oppose the defendant's request, for a particular sentence, with the understanding that such recommendation or request shall not be binding on the Judge; or
 - (3) Agree that a specific sentence is the appropriate disposition of the case.
 - b. The Judge shall not participate in any discussions, but if a plea or agreement has been reached, the Judge shall on the record require the disclosure of the agreement in open Court or, on a showing of good cause, in chambers at the time the plea is offered. Thereupon the Court may accept or reject the agreement or may defer a decision as to the acceptance or rejection until there has been an

Rule 9: Arraignment.

A. Appearance Before the Court.

Every person arrested and in custody shall be arraigned at the next regularly scheduled session of the Court, or within 72 hours, whichever occurs first. All others will appear before the Court as arranged. The Court may, in its discretion, provide for temporary commitment of persons who, for reasons beyond their control, are unable to appear in Court at the scheduled session or within the 72 hour period.

B. Procedure at Arraignment.

Arraignments shall be conducted in open Court, and shall include:

1. Reading the complaint to the accused, and providing him with a copy of the complaint if he has not received one.
2. Explaining to the defendant the substance of the charges and the language of the law establishing the offense and fixing the penalty.
3. If the defendant is a non-Indian, the Court shall explain his right to assert a lack of personal jurisdiction of the Court over the defendant in a criminal action. If the defendant affirmatively elects to waive personal jurisdiction, the action shall proceed as if the defendant were an Indian. If the non-Indian defendant does not affirmatively waive the lack of personal jurisdiction, the action shall become a civil action to exclude the defendant from the Reservation. The prosecutor shall prosecute such civil action in the name of the Northern Cheyenne Reservation and the action shall be conducted pursuant to the number of this Title. The defendant may assert or waive lack of jurisdiction at any time prior to the start of trial.
4. Advising the defendant of his right to counsel at his expense, and the right to have counsel present before entering a plea or making any statement.
5. Asking the defendant to plead guilty or not guilty to the charges.
6. If the defendant pleads guilty, the Judge must address the defendant personally as set forth in Rule 11, to determine if the plea is made voluntarily and with understanding. If satisfied with the defendant's responses, the Judge may then sentence the defendant. In the Court's discretion, a future date may be set for sentencing. The defendant will be eligible for bail if a future date is set for

the opportunity to make bail and be released pending their trial or appeal.

B. Bail Without Judge.

A bail schedule for Class B and C offenses shall be adopted by the Court and a defendant may obtain release from jail at any time prior to arraignment by posting the amount or amounts of bail specified in the bail schedule for the offense or offenses charged; provided, however, that if the arresting officer or complaining witness shall certify to the jailer, or if the jailer shall certify based on his own observations, that the defendant is at the time he is brought to the jail unconscious or in an intoxicated or apparently intoxicated condition, or for any reason does not appear to be in a conscious and sober condition, such defendant shall not be allowed to post bail according to the bail schedule for eight (8) hours. The defendant shall be informed by the jailer of his right to make bail at the appropriate time.

C. Bail With Judge.

At the arraignment or other appropriate time, the Judge shall set bail at an amount, not to exceed twice the maximum fine payable for the offense charged, which will tend to assure the appearance of the defendant at trial or at such time as his appearance is necessary. A defendant may at arraignment request that any bail posted under the bail schedule be reduced or that he be released as under (D) below.

D. Release Without Bail.

The Judge may at his discretion release the defendant on his own recognizance, if it appears substantially certain, considering all relevant factors, that the defendant will appear at the appointed time.

E. Form of Bail.

The required bail may be tendered in the form of cash, or a bail bond executed by two or more reliable persons as sureties subject to the jurisdiction of the Court in the form which the Court shall by rule direct.

F. Forfeit of Bond.

In the event the defendant fails to appear as required, the Court will forfeit any cash deposited or order the sureties of the bail bond to pay the designated amount to the Court. The liability of the sureties may be enforced by order of the Court without the necessity of an independent action or judgment.

complaint and tried together if they are alleged to have participated in the same act or transaction constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of such defendants need not be charged on each count.

2. Two or more defendants can be tried together by separate complaint if the defendants were involved in the same series of acts or transactions that constitute the offense(s) charged.

C. Severance of Trials.

If it appears that a defendant is prejudiced by a joinder of offenses or other defendants for trial together, the Court may order separate complaints and may order separate trials or provide such other relief as justice requires. In ruling on a motion for severance, the Court may order the Northern Cheyenne Reservation to deliver to the Court for inspection in chambers, any statements made by a defendant which the Northern Cheyenne Reservation intends to introduce in evidence at the trial.

Rule 14: Discovery.

- A. The police, or prosecutor, shall, upon request, permit the defendant or his attorney to inspect and copy any statements or confessions, or copies thereof, made by the defendant if such are within the possession or control or reasonably obtainable by the police or prosecution. The police and prosecution shall make similarly available copies of reports of physical, mental or scientific tests or examinations relating to or done on the defendant.

B. Notice of Alibi Defense.

The defendant or his attorney shall reveal by written notice to the Court at least five (5) working days before trial the names of any witnesses upon whom the defense intends to rely to provide an alibi defense for the defendant. Failure to provide such notice will prevent the use of such witnesses by the defense unless it can be shown by the defense that prior notice was impossible or that no prejudice to the prosecution has resulted, in which case the Judge may order the trial delayed or make such other orders as tend to assure a just determination of the case.

Rule 15: Motions and Hearings.

A. Motions Defined.

An application to the Court for an order shall be by motion.

all criminal actions shall be tried by the Court.

C. Procedure.

If a defendant in a criminal proceeding desires to be tried by a jury, he must either request a jury trial at his arraignment, or file a written request for a trial by jury not less than ten (10) days prior to trial.

Rule 17: Dismissal.

- A. The prosecutor may dismiss a case in the absence of probable cause after a complaint has been initiated.
- B. If there is an unreasonable and unnecessary delay in bringing a defendant to trial the Court may, on motion of the defendant or its own motion, dismiss the complaint.

Rule 18: Service and Filing of Papers.

- A. Written motions, written notices and similar papers shall be served on each party in the manner provided for in civil actions.
- B. All papers required to be served shall also be filed with the Court.

Rule 19: Subpoena.

- A. A subpoena is an order of Court issued by the Clerk of the Court. It shall contain the name of the Court, the title of the case, and shall command each person to whom it is directed to attend and give testimony or produce for use at trial evidence, at the time and place specified therein. The Clerk may issue subpoenas upon the request of the prosecutor or the defendant.
- B. A subpoena may be served by any police officer or court employee or any person over the age of 18 years who is not a party. Service shall be accomplished by handing a copy of the subpoena to the person named therein. No fees or mileage allowance need be tendered with service. The individual serving the subpoena shall file a return of service notice with the Clerk of Court on which is noted the date, time, and place of service as well as the name of the person performing such service.
- C. A subpoena may be served any place within the territorial jurisdiction of the Northern Cheyenne Reservation Court.
- D. Failure, without adequate excuse, to obey a properly served subpoena may be deemed a contempt of Court and prosecution thereof may proceed upon the order of the Court. No

D. Disposition by Order and Memorandum of Pre-Trial Conference

The Order and Memorandum of Pre-Trial Conference shall include:

1. Trial date.
2. Whether or not a jury will be called.
3. List of witnesses to be subpoenaed.
4. Agreements and orders regarding depositions, discovery and motions.
5. Agreements regarding points of law and facts.
6. Remaining issues to be resolved at trial.

This Order shall supercede pleadings for the purpose of framing issues for trial.

III. TRIAL

Rule 22: Rights of Defendant in Criminal Cases.

- A. In all criminal prosecutions, the defendant shall have the following rights:
1. The right to be present throughout the proceeding and to defend himself in person, by lay counsel or professional attorney at his own expense.
 2. The right to know the nature and cause of the charge and to receive a copy of the complaint.
 3. The right to meet the witnesses against him face to face.
 4. The right to compulsory process to obtain the testimony of witnesses and physical evidence in his behalf.
 5. The right to a speedy public trial and by an impartial jury if a prison sentence is possible under this code upon conviction.
 6. The right not to testify. The failure of the defendant to testify shall not be construed against him or be commented upon by the prosecution.

Rule 23: Jury Trials.

1. A defendant may request a trial by jury per Rule 16 in all cases where he faces potential imprisonment, except in a contempt proceeding.

E. Testimony.

The testimony of witnesses shall be taken orally in open Court, but upon motion of the prosecutor, the defense witnesses may be sequestered or excluded until called upon to testify. Testimony can also be given as evidence by properly executed affidavits, depositions or written interrogatories. Physical evidence shall be introduced and admitted only after a proper foundation has been laid as to its relevancy.

F. Motion For Judgment of Acquittal.

The defendant may make a motion for judgment of not guilty or directed verdict acquittal at the close of the evidence offered by the prosecution. If the evidence is not sufficient to support a conviction of the offense charged (beyond a reasonable doubt), the Court shall order the entry of judgment of (not guilty or a directed verdict of) acquittal of the offense charged.

G. Court's Motion for Acquittal.

The Court may also enter judgment of not guilty on its own motion after the evidence on either side is closed, and shall do so if the evidence is not sufficient to support a conviction of the offense charged beyond a reasonable doubt.

H. Defense.

After the prosecution has rested its case, the defense shall have the burden to proceed with the defense and evidence in support thereof, and the prosecution shall have the right to cross-examine any witnesses called by the defense.

I. Rebuttal Testimony.

The parties may then offer rebutting testimony only on matters relating to direct testimony, except that the Court may, in the interest of justice, permit the introduction of newly discovered evidence.

J. Closing Arguments.

The prosecution and the defense may then present final arguments in the case, the prosecution having the right to open and close.

K. Instructions.

1. At the close of the evidence or at such earlier time during the trial as the Court reasonably directs, any party may file written requests that the Court instruct the jury

doubt remains, a verdict of not guilty shall be entered. The Judge shall have the option of rendering a verdict immediately after closing arguments or taking the case under advisement and ruling on it at a later time.

B. Verdict by Jury.

A guilty verdict shall be returned in a jury trial only when a majority of the jury finds that the defendant is guilty beyond a reasonable doubt.

C. Mistrial.

If after repeated efforts, a jury is unable to reach a verdict, the Judge shall dismiss the jury and declare a mistrial. If a mistrial is entered, the defendant may be brought up on the same charge(s) again.

D. Several Defendants.

If there are two or more defendants, the Judge or jury may at any time in his/its deliberations, return a verdict or verdicts with respect to a defendant or defendants as to whom he or it has decided. If the jury cannot agree with respect to each defendant, the defendant or defendants as to whom it cannot agree may be tried again, as after a mistrial.

E. Lesser Included Offense.

The Judge or jury may find the defendant(s) guilty of a lesser included offense instead of the offense he is formally charged with. The lesser included offense does not have to be formally charged, as long as it is proven with the same proof used to show the charged offense.

F. Verdict of Not Guilty.

If a verdict of not guilty is rendered, judgment shall be entered into the record immediately and the defendant shall be immediately released from custody.

G. Verdict of Guilty.

If a verdict of guilty is rendered, the Judge shall so advise the defendant in open Court, either sentence the defendant or set a date for sentencing, and enter a judgment of guilty in the Court's records.

Rule 30: Motions of Trial.

Either party may make motions throughout the course of the trial, all of which shall be oral unless otherwise directed by the Judge. Both parties shall have the opportunity to state their respective positions on any

2. Either party may make a motion for a directed verdict at the close of the defendant's case. A directed verdict of not guilty can be made when the prosecution failed to present a prima facie case and a directed verdict of guilty can be made if the Court finds as a matter of law that no adequate defense was presented.

IV. POST-TRIAL

Rule 31: Judgments.

A judgment of guilty shall set forth the plea, the verdict or findings, the adjudication, and sentence when imposed. If the defendant(s) is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered immediately, and the defendant(s) released. All judgments shall be signed by the presiding Judge and entered into the record by the Court Clerk.

Rule 32: Sentencing.

- A. Sentence shall be imposed without unreasonable delay as provided in this Law and Order Code. Pending sentence, the Court may commit the defendant(s) to jail or continue or alter bail. Before imposing sentence, the Judge shall afford counsel an opportunity to speak on behalf of the defendant and shall ask the defendant if he wishes to speak on his own behalf to present any information which might lessen his punishment.
- B. A motion to withdraw a plea of guilty shall be made only before the defendant(s) is sentenced. However, to correct manifest injustice, the Judge may set aside the judgment of guilty and permit the defendant(s) to withdraw his plea.

Rule 33: Kinds of Punishments.

- A. All persons convicted of any offense may be sentenced to imprisonment, fine, work, or a combination of these punishments. However, no section of this Code shall prohibit the Judge from imposing any sentence deemed more appropriate than imprisonment, fines, or work, under the circumstances of a particular case. Sentences may include, but are not limited to: Commitment to a rehabilitation or alcoholism program; work for the benefit of the Northern Cheyenne Reservation or restitution. Under no circumstances shall fines imposed exceed \$500 or imprisonment imposed exceed six months for a single offense.
- B. Non-Indians who are found guilty of an offense and who did not waive lack of personal jurisdiction in a criminal action shall be excluded from the Northern Cheyenne Reservation for a period not to exceed three times the length of time for

- C. Whether the offense(s) was malicious or willful;
- D. Whether the convicted person has made restitution, paid damages, or shown a willingness to make amends;
- E. The previous record and conduct of the convicted person; and
- F. The financial resources and needs of the convicted person and his dependents, and such other factors, allowable at law, as the Judge finds appropriate to consider.

Upon conviction, the Judge may require the prosecutor to present evidence, as necessary, on the above factors in open Court, with the defendant present and allowed to rebut or cross-examine all witnesses.

Rule 37: Habitual Offenders.

Any person convicted three (3) times for the same offense in two successive years, or five (5) times for any Class A or Class B offense in two successive years, shall be considered a habitual offender. The judgment against such person shall designate him a habitual offender, punishment received shall be the maximum allowable under the offense unless good cause is shown for leniency, and the offender shall not be eligible for suspension of sentence, probation, parole or commutation of sentence.

Rule 38: New Trial.

The Court, on motion of a defendant, may grant a new trial to him if required in the interest of justice. If trial was by the Court without jury, the Court, on motion of a defendant for a new trial, may vacate the judgment, if entered, take additional testimony, and direct the entry of a new judgment. A motion for a new trial based on the ground of newly discovered evidence may be made only within one month after final judgment, but if an appeal is pending the Court may grant the motion only on remand of the case. A motion for a new trial based on any other grounds shall be made within seven (7) days after verdict or finding of guilty or within such further time as the Court may fix during the seven-day period.

Rule 39: Suspension of Sentences - Probation.

- A. Where sentence has been imposed upon any person who has not previously been convicted of any felony, nor classified as a habitual offender, the Judge may, in his discretion, suspend the sentence imposed and allow the offender his freedom on probation upon his signing a pledge of good conduct during the period of the sentence and upon the terms of probation outlined by the Court. No suspension of restitution ordered will be allowed.

sentence, subject only to the terms and conditions he has, in writing, agreed to comply with.

C. Violations.

Any parolee who violates any provision of his parole shall be apprehended and confined to serve the remainder of the original sentence without diminishment for the time the person was free on parole.

Rule 42: Commutation of Sentence.

If a presiding Judge is satisfied that justice will best be served by reducing a sentence, the Judge may at any time reduce any sentence imposed upon a person, upon a showing of proof that during the period of the sentence the person served without misconduct and did satisfactory work.

Rule 43: Appeal.

A. Notice to Defendant.

After imposing sentence in a case which has gone to trial on a plea of not guilty, the Judge shall advise the defendant of his right to appeal.

B. The defendant has the right to appeal from the following:

1. A final judgment of conviction;
2. From an order made, after judgment, affecting his substantial rights.

C. The Northern Cheyenne Reservation has the right to appeal from the following:

1. A judgment of dismissal in favor of the defendant upon motion to dismiss based on any procedural irregularity occurring before trial;
2. An order arresting judgment or acquitting the defendant contrary to the verdict of the jury or before such verdict can be rendered;
3. An order of the Court directing the jury to find for the defendant;
4. An order made after judgment affecting the substantial rights of the Northern Cheyenne Reservation.

3. Willful disobedience or resistance to any process of the court or order issued by the court;
4. Acting as an officer, spokesman or other official of the court without authority.
5. Publication of false or grossly inaccurate report of court proceedings.
6. Requesting a jury trial and failing to appear on the date the jury trial is scheduled.
7. Any other interference with the process, proceeding, or dignity of the Court or judge of the Court while performing official duties.

B. Procedures in Contempt

1. A direct contempt is one committed in the presence of the Court or so near as to be disruptive of court proceedings and may be summarily adjudged and punished.
2. Any other contempt shall be determined at a hearing by the Court in which the person accused of contempt is given notice and an opportunity to be heard.
3. There will be no jury trials in contempt hearings.

C. Penalty

A judge may issue any order necessary to allow the person to purge himself of contempt and may impose a sentence of five (5) days imprisonment and a fine of up to \$500.00, plus costs, as determined by the court.

Rule 47: Clerical Mistakes

Clerical mistakes in judgments, orders, or other parts of the record and errors in the record arising from oversight or omission may be corrected by the court at any time and after such notice, if any, as the Court orders.

Rule 48: Construing Rules of Criminal Procedure

These rules shall be construed together to reach a fair conclusion in all cases. However, if one or more specific sections are found to be invalid for any reason, the remaining rules shall still have the full force of law.

TITLE VI
RULES OF EVIDENCE CODE

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TITLE VI
RULES OF EVIDENCE CODE

I. GENERAL

1. Scope, Purpose, and Construction: These rules govern all proceedings in all courts of the Northern Cheyenne Reservation. These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained.

2. Tribal Custom and Tradition: Custom and tradition may be used as evidence. Any conflicting procedural rule shall be superseded by the specific presentation of custom and tradition. When procedural rules are superseded in accordance with this section, the custom and tradition and reasons for its use shall be included in the Findings of Fact and Conclusions of Law prepared by the court. Reservation custom and tradition shall be established by testimony or affidavit of an expert or by the judge. An expert is an elder or other person recognized by the community as knowledgeable in custom and tradition.

3. Law and Fact Distinction: All questions of law, including but not limited to admissibility of testimony and exhibits, construction of statutes and other writings, shall be decided by the Court. Questions of fact shall be decided by the jury, in a jury trial, or by the presiding judge, if there is no jury.

4. Admissible Evidence: Only relevant evidence is admissible, unless otherwise provided by these rules, or other tribal laws. Relevant evidence means evidence making the existence of any fact consequential to the outcome of the proceeding more or less probable than it would be without the evidence, including evidence on the credibility of a witness or hearsay declarant.

5. Definitions:

- A. Direct Evidence: That which proves the fact in dispute directly, without an inference or presumption, and which in itself, if true conclusively establishes that fact. For example, if the fact in dispute is the existence of an agreement, the testimony of a witness who was present and witnessed the making of it is direct evidence.
- B. Indirect Evidence: That which tends to establish the fact in dispute by proving another fact and which, though true, does not of itself conclusively establish that fact but affords an inference or presumption of its existence. For example, a witness proves an admission of the party to the fact in dispute. This proves a fact from which the fact in dispute is inferred.
- C. Inference: A deduction the jury makes from the facts proved, without an express direction of the law to that effect. An inference must be founded on a fact legally proved and on such a deduction from that fact as is warranted by a consideration of the

usual propensities or passions of persons, the particular propensities or passions of the person whose act is in question, and the course of nature.

D. Presumption: An assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established in the action or proceeding. The trier of fact must find the assumed fact in accordance with the presumption unless the presumption is overcome by a preponderance of evidence to the contrary. If presumptions are inconsistent the court shall apply the presumption that is founded upon weightier considerations of public policy. If those considerations are of equal weight, the court shall disregard both presumptions.

6. Burden of Proof: The burden of proof lies on the party who presents evidence to demonstrate that such evidence is admissible.

7. Instructions to Jury on Evaluation of Evidence: The jury is to be instructed by the court on all proper occasions:

A. That evaluating the effect of evidence is not arbitrary but is to be exercised in accordance with these rules;

B. That a witness false in one part of his testimony is to be distrusted in others;

C. That an accomplice's testimony shall be viewed with distrust; and

D. That a fact may be found contrary to the declarations of a number of non-convincing witnesses, if that fact is in accordance with a lesser number of witnesses, a presumption, or other evidence satisfactory to their minds. Instructions shall also include that if less satisfactory evidence is offered when it appears the party could have produced more satisfactory evidence, the offered evidence should be viewed with distrust.

8. Illegally Obtained Evidence: Evidence obtained under any condition or circumstance that would violate any law of the Northern Cheyenne Reservation shall be inadmissible in any court.

9. Objections: Unless otherwise provided for in these rules, all violations of these rules at trial must be objected to at the time of the violation, or the right to object to the violation is lost, and such violation shall not be heard on appeal.

10. Presentation and Foundation: Each party, when presenting evidence, must first show in open court, through the use of a witness, the reliability of the evidence, and the relevance of the evidence unless shown to be substantially reliable and relevant to the case.

11. Presentation of Witnesses: Each party, when calling a witness, must first show in open court, who the witness is, the witnesses' ability to provide

information, and the relevancy of the information to be given. Before the presenting party continues, the opposing party may then object, and if the court grants its permission, attack the ability, credentials or relevancy using direct examination of the witness not identified, demonstrating a lack of ability or credentials to testify to relevant matters, or failing to provide relevant information.

II. JUDICIAL NOTICE

12. Evidence Subject to Judicial Notice: The Court shall take judicial notice of federal acts, statutes, and treaties, statutes of every state, and constitutional guarantees and protections, duly enacted ordinances and governmental regulations of every other reservation and other jurisdiction of the United States at the request of a party or on its own motion. The Court may take judicial notice of any fact that is either generally known within the territorial jurisdiction of the Court, or capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned, if the fact to be judicially noticed is one not subject to reasonable dispute.

13. Procedure for Judicial Notice: The party requesting judicial notice shall furnish the Court and the adverse party with a copy of the law, act, or other statement the party wishes the Court to notice and a brief written statement of the relevancy of that law, act or statement.

14. Jury Instruction on Judicial Notice: The Court shall direct the jury to find as relevant any fact judicially noticed.

III. HEARSAY

15. Definition: Hearsay is an oral or written statement or nonverbal conduct intended as a statement, made out of court by a person who is not presently testifying, with such statement being offered to prove the truth of the matter asserted.

16. Rule: Hearsay is inadmissible as evidence except as stated elsewhere in these rules.

17. Evidence not covered by the Hearsay rule:

A. Prior statements of a witness in any or all of a transcript or deposition from a prior proceeding may be used against any party who was present or represented at the taking of such prior testimony, or who had due notice in accordance with any of the following provisions:

1. The party against whom the prior testimony is presently offered was a party to the former proceeding and was afforded an opportunity to cross-examine the witness in that proceeding and the issue upon which the prior testimony is presently offered is related to the same subject matter as that in the prior case.

2. The transcript or deposition of a party or of anyone who at the time of taking such testimony, was an officer, director, managing agent, or partner of a public or private corporation, partnership, or association which is a party, may be used by any party for any purpose.
- B. The transcript or deposition of a witness, whether or not a party, may be used by any party for any purpose if:
1. The Court finds that the witness is dead;
 2. The Court finds that the witness is not on the reservation (unless the absence was procured by the party offering the evidence);
 3. The Court finds that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;
 4. The party offering the evidence has been unable to procure the attendance of the witness by subpoena; or
 5. Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.
- C. Where, in the Court's opinion, the questioned evidence is deserving, needed, and otherwise admissible, and the party presenting such evidence has given notice such that the other party has had fair opportunity to exercise discovery, the evidence will be allowed.

IV. PRIVILEGE

18. Claim of Privilege: The objection that information is privileged must be made by or on behalf of the person seeking to have such information excluded from being presented as evidence. If both privileged and non-privileged information is contained in the evidence, the court may, on a party's request, exercise the privileged matter and allow presentation of the remaining information.

19. Waiver of Privilege: A person having privilege under these rules may be found by the judge to have waived the claim of privilege by voluntarily disclosing or consenting to disclosure of any part of the privileged matter unless the disclosure itself is privileged. A disclosure under compulsion or made without the opportunity to claim the privilege is not sufficient to waive the claim.

20. Definition of Incrimination: A matter will incriminate a person within the meaning of these rules if it constitutes or forms an essential part of, or taken in connection with other matter already disclosed, is a basis for a

reasonable inference that a crime has been committed.

21. Self-Incrimination: Every natural person has a privilege to refuse to disclose in court proceedings or to a public official of the Tribe or any governmental agency or division, any matter that will incriminate him. He cannot be compelled in a criminal action to be a witness against himself. Except, a defendant in a criminal case who takes the stand to testify in his own behalf may be required to give testimony against himself. Such testimony shall be limited to the charge on trial.

22. Advocate-Client Privilege: An advocate shall not disclose any communication that is relevant to the outcome of the proceeding made by the client without the client's consent. Advice given in the course of professional employment is privileged and cannot be disclosed without the client's consent. An advocate means any person authorized, or reasonably believed by the client to be authorized to act as the client's legal representative before any Reservation, State, or Federal Court. No person has this privilege if the court finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the legal service was sought or obtained in order to enable or aid the client to commit or to plan to commit a crime or a civil offense.

23. Spousal Privilege: One spouse cannot be examined during or after the marriage for or against the other as to any fact, circumstance or activity involving the other spouse during marriage, without the other's consent. Neither spouse has this privilege in a civil action or proceeding by one against the other, any case involving abuse of a child by either spouse, or a criminal action or proceeding for a crime committed by one spouse against the other, (or someone in the immediate family/extended family).

24. Clergy-Penitent Privilege: Any confession made to a clergyman or priest in his professional character in the course of discipline practiced by the church to which he belongs cannot be disclosed without the penitent's consent.

25. Physician-Patient Privilege:

- A. Any information acquired in attending a patient which was necessary to enable a physician, surgeon, or other regular practitioner of the healing art, to prescribe or act for the patient is privileged and cannot be disclosed without the consent of the patient.
- B. No person has this privilege if the court finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the services of the physician, surgeon, or regular practitioner of the healing art were sought or obtained to enable or aid anyone to commit or plan to commit a crime or civil offense, or to escape detection or apprehension after the commission of a crime or civil offense.

26. Public Officer: A public officer cannot be examined as to official information communicated to him in an official confidence, when public interest would suffer by the disclosure unless the non-disclosure would result

in substantial injustice.

V. WITNESSES

27. Calling Witnesses: Each party shall have the right to call all witnesses necessary to prove evidence allowable under these rules. Each party may request the court to issue subpoenas whenever necessary.

28. Qualifications: Every person is competent to be a witness except as otherwise provided in these rules. A person shall be disqualified if the court finds that the witness is incapable of expressing himself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand him or the witness is incapable of understanding the duty of a witness to tell the truth. A non-expert witness may only testify from personal knowledge.

29. Interpreter: Where needed, the court shall procure and appoint a disinterested person who is capable of understanding and interpreting the language or expressions of the witness to act as an interpreter, with the interpreter subject to the provisions of these rules.

30. Oath: Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

31. Judge as Witness: The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve this as an appealable error.

32. Juror as Witness: A member of the jury shall not be called to testify as a witness before the jury in the trial of the case in which he is sitting as a juror. But, a juror may testify, and an affidavit or evidence of any kind be received, as to any matter or statement concerning only the following questions, whether occurring during the course of the jury's deliberations or not: (a) whether prejudicial information was improperly brought to the jury's attention; (b) whether outside influence was brought to bear on any juror; or (c) whether any juror has been induced to assent to any general or special verdict, or finding on any question submitted to them by the court, by a resort to the determination of chance.

33. Advocate as Witness: When an advocate is a witness for his client upon any trial, except as to merely formal matters, such as the attestation or custody of an instrument or the like, he shall not further participate in such trial.

34. Exclusion of Witnesses: The court on its own motion may, or a party with a showing of good cause may request, that witnesses be excluded so that they cannot hear the testimony of other witnesses. A party who is a natural person, or an officer or employee of a party, which is not a natural person designated as its representative by its advocate, or a person whose presence is shown by a party to be essential to the presentation of his cause, shall not be

TITLE VI
RULES OF EVIDENCE CODE

I. GENERAL

1. Scope, Purpose, and Construction: These rules govern all proceedings in all courts of the Northern Cheyenne Reservation. These rules shall be construed to secure fairness in administration, elimination of unjustifiable expense and delay, and promotion of growth and development of the law of evidence to the end that the truth may be ascertained.

2. Tribal Custom and Tradition: Custom and tradition may be used as evidence. Any conflicting procedural rule shall be superseded by the specific presentation of custom and tradition. When procedural rules are superseded in accordance with this section, the custom and tradition and reasons for its use shall be included in the Findings of Fact and Conclusions of Law prepared by the court. Reservation custom and tradition shall be established by testimony or affidavit of an expert or by the judge. An expert is an elder or other person recognized by the community as knowledgeable in custom and tradition.

3. Law and Fact Distinction: All questions of law, including but not limited to admissibility of testimony and exhibits, construction of statutes and other writings, shall be decided by the Court. Questions of fact shall be decided by the jury, in a jury trial, or by the presiding judge, if there is no jury.

4. Admissible Evidence: Only relevant evidence is admissible, unless otherwise provided by these rules, or other tribal laws. Relevant evidence means evidence making the existence of any fact consequential to the outcome of the proceeding more or less probable than it would be without the evidence, including evidence on the credibility of a witness or hearsay declarant.

5. Definitions:

A. Direct Evidence: That which proves the fact in dispute directly, without an inference or presumption, and which in itself, if true conclusively establishes that fact. For example, if the fact in dispute is the existence of an agreement, the testimony of a witness who was present and witnessed the making of it is direct evidence.

B. Indirect Evidence: That which tends to establish the fact in dispute by proving another fact and which, though true, does not of itself conclusively establish that fact but affords an inference or presumption of its existence. For example, a witness proves an admission of the party to the fact in dispute. This proves a fact from which the fact in dispute is inferred.

C. Inference: A deduction the jury makes from the facts proved, without an express direction of the law to that effect. An inference must be founded on a fact legally proved and on such a deduction from that fact as is warranted by a consideration of the

usual propensities or passions of persons or passions of the person whose act is in question of nature.

- D. Presumption: An assumption of fact made from another fact or group of facts established in the action or proceeding; the assumed fact in accordance with the presumption is overcome by a preponderance of contrary evidence. If presumptions are inconsistent, the presumption that is founded upon weight of policy. If those considerations are of equal weight, both presumptions are disregarded.

6. Burden of Proof: The burden of proof is on the party who offers evidence to demonstrate that such evidence is admissible.

7. Instructions to Jury on Evaluation of Evidence: The jury is instructed by the court on all proper occasions:

- A. That evaluating the effect of evidence is the province of the jury, exercised in accordance with these rules;
- B. That a witness false in one part of his testimony is false in others;
- C. That an accomplice's testimony shall be viewed with distrust;
- D. That a fact may be found contrary to the testimony of non-convincing witnesses, if that fact is supported by a lesser number of witnesses, a preponderance of satisfactory evidence to their minds. Instruct the jury that if less satisfactory evidence is offered and the other party has produced more satisfactory evidence, the fact should be viewed with distrust.

8. Illegally Obtained Evidence: Evidence obtained in violation of any circumstance that would violate any law of the North Carolina shall be inadmissible in any court.

9. Objections: Unless otherwise provided for in these rules at trial must be objected to at the time the evidence is offered; the right to object to the violation is lost, and such error is not reversible on appeal.

10. Presentation and Foundation: Each party must first show in open court, through the use of the evidence, and the relevance of the evidence is substantially reliable and relevant to the case.

11. Presentation of Witnesses: Each party, who offers evidence, must show in open court, who the witness is, the

information, and the relevancy of the information to be given. Before the presenting party continues, the opposing party may then object, and if the court grants its permission, attack the ability, credentials or relevancy using direct examination of the witness not identified, demonstrating a lack of ability or credentials to testify to relevant matters, or failing to provide relevant information.

II. JUDICIAL NOTICE

12. Evidence Subject to Judicial Notice: The Court shall take judicial notice of federal acts, statutes, and treaties, statutes of every state, and constitutional guarantees and protections, duly enacted ordinances and governmental regulations of every other reservation and other jurisdiction of the United States at the request of a party or on its own motion. The Court may take judicial notice of any fact that is either generally known within the territorial jurisdiction of the Court, or capable of accurate and ready determination by resort to sources whose accuracy cannot be reasonably questioned, if the fact to be judicially noticed is one not subject to reasonable dispute.

13. Procedure for Judicial Notice: The party requesting judicial notice shall furnish the Court and the adverse party with a copy of the law, act, or other statement the party wishes the Court to notice and a brief written statement of the relevancy of that law, act or statement.

14. Jury Instruction on Judicial Notice: The Court shall direct the jury to find as relevant any fact judicially noticed.

III. HEARSAY

15. Definition: Hearsay is an oral or written statement or nonverbal conduct intended as a statement, made out of court by a person who is not presently testifying, with such statement being offered to prove the truth of the matter asserted.

16. Rule: Hearsay is inadmissible as evidence except as stated elsewhere in these rules.

17. Evidence not covered by the Hearsay rule:

A. Prior statements of a witness in any or all of a transcript or deposition from a prior proceeding may be used against any party who was present or represented at the taking of such prior testimony, or who had due notice in accordance with any of the following provisions:

1. The party against whom the prior testimony is presently offered was a party to the former proceeding and was afforded an opportunity to cross-examine the witness in that proceeding and the issue upon which the prior testimony is presently offered is related to the same subject matter as that in the prior case.

2. The transcript or deposition of a party or of anyone who at the time of taking such testimony, was an officer, director, managing agent, or partner of a public or private corporation, partnership, or association which is a party, may be used by any party for any purpose.
- B. The transcript or deposition of a witness, whether or not a party, may be used by any party for any purpose if:
1. The Court finds that the witness is dead;
 2. The Court finds that the witness is not on the reservation (unless the absence was procured by the party offering the evidence);
 3. The Court finds that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment;
 4. The party offering the evidence has been unable to procure the attendance of the witness by subpoena; or
 5. Upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.
- C. Where, in the Court's opinion, the questioned evidence is deserving, needed, and otherwise admissible, and the party presenting such evidence has given notice such that the other party has had fair opportunity to exercise discovery, the evidence will be allowed.

IV. PRIVILEGE

18. Claim of Privilege: The objection that information is privileged must be made by or on behalf of the person seeking to have such information excluded from being presented as evidence. If both privileged and non-privileged information is contained in the evidence, the court may, on a party's request, exercise the privileged matter and allow presentation of the remaining information.

19. Waiver of Privilege: A person having privilege under these rules may be found by the judge to have waived the claim of privilege by voluntarily disclosing or consenting to disclosure of any part of the privileged matter unless the disclosure itself is privileged. A disclosure under compulsion or made without the opportunity to claim the privilege is not sufficient to waive the claim.

20. Definition of Incrimination: A matter will incriminate a person within the meaning of these rules if it constitutes or forms an essential part of, or taken in connection with other matter already disclosed, is a basis for a

reasonable inference that a crime has been committed.

21. Self-Incrimination: Every natural person has a privilege to refuse to disclose in court proceedings or to a public official of the Tribe or any governmental agency or division, any matter that will incriminate him. He cannot be compelled in a criminal action to be a witness against himself. Except, a defendant in a criminal case who takes the stand to testify in his own behalf may be required to give testimony against himself. Such testimony shall be limited to the charge on trial.

22. Advocate-Client Privilege: An advocate shall not disclose any communication that is relevant to the outcome of the proceeding made by the client without the client's consent. Advice given in the course of professional employment is privileged and cannot be disclosed without the client's consent. An advocate means any person authorized, or reasonably believed by the client to be authorized to act as the client's legal representative before any Reservation, State, or Federal Court. No person has this privilege if the court finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the legal service was sought or obtained in order to enable or aid the client to commit or to plan to commit a crime or a civil offense.

23. Spousal Privilege: One spouse cannot be examined during or after the marriage for or against the other as to any fact, circumstance or activity involving the other spouse during marriage, without the other's consent. Neither spouse has this privilege in a civil action or proceeding by one against the other, any case involving abuse of a child by either spouse, or a criminal action or proceeding for a crime committed by one spouse against the other, (or someone in the immediate family/extended family).

24. Clergy-Penitent Privilege: Any confession made to a clergyman or priest in his professional character in the course of discipline practiced by the church to which he belongs cannot be disclosed without the penitent's consent.

25. Physician-Patient Privilege:

A. Any information acquired in attending a patient which was necessary to enable a physician, surgeon, or other regular practitioner of the healing art, to prescribe or act for the patient is privileged and cannot be disclosed without the consent of the patient.

B. No person has this privilege if the court finds that sufficient evidence, aside from the communication, has been introduced to warrant a finding that the services of the physician, surgeon, or regular practitioner of the healing art were sought or obtained to enable or aid anyone to commit or plan to commit a crime or civil offense, or to escape detection or apprehension after the commission of a crime or civil offense.

26. Public Officer: A public officer cannot be examined as to official information communicated to him in an official confidence, when public interest would suffer by the disclosure unless the non-disclosure would result

in substantial injustice.

V. WITNESSES

27. Calling Witnesses: Each party shall have the right to call all witnesses necessary to prove evidence allowable under these rules. Each party may request the court to issue subpoenas whenever necessary.

28. Qualifications: Every person is competent to be a witness except as otherwise provided in these rules. A person shall be disqualified if the court finds that the witness is incapable of expressing himself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by one who can understand him or the witness is incapable of understanding the duty of a witness to tell the truth. A non-expert witness may only testify from personal knowledge.

29. Interpreter: Where needed, the court shall procure and appoint a disinterested person who is capable of understanding and interpreting the language or expressions of the witness to act as an interpreter, with the interpreter subject to the provisions of these rules.

30. Oath: Before testifying, every witness shall be required to declare that he will testify truthfully, by oath or affirmation administered in a form calculated to awaken his conscience and impress his mind with his duty to do so.

31. Judge as Witness: The judge presiding at the trial may not testify in that trial as a witness. No objection need be made in order to preserve this as an appealable error.

32. Juror as Witness: A member of the jury shall not be called to testify as a witness before the jury in the trial of the case in which he is sitting as a juror. But, a juror may testify, and an affidavit or evidence of any kind be received, as to any matter or statement concerning only the following questions, whether occurring during the course of the jury's deliberations or not: (a) whether prejudicial information was improperly brought to the jury's attention; (b) whether outside influence was brought to bear on any juror; or (c) whether any juror has been induced to assent to any general or special verdict, or finding on any question submitted to them by the court, by a resort to the determination of chance.

33. Advocate as Witness: When an advocate is a witness for his client upon any trial, except as to merely formal matters, such as the attestation or custody of an instrument or the like, he shall not further participate in such trial.

34. Exclusion of Witnesses: The court on its own motion may, or a party with a showing of good cause may request, that witnesses be excluded so that they cannot hear the testimony of other witnesses. A party who is a natural person, or an officer or employee of a party, which is not a natural person designated as its representative by its advocate, or a person whose presence is shown by a party to be essential to the presentation of his cause, shall not be

excluded for any reason.

35. Calling and Interrogation of Witnesses by the Court: The court may call witnesses and all parties are entitled to cross-examine these witnesses. The court may interrogate witnesses, provided that in trials before a jury, the court's questions are cautiously guarded so as not to constitute express or implied comment.

36. Expert Witnesses: If specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may present opinion testimony within his field of expertise.

37. Opinion Testimony by a Non-Expert Witness: A non-expert witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are rationally based on the perception of the witness and helpful to a clear understanding of his testimony or the determination of a fact issue.

38. Authentication of Writing: A writing offered in evidence as authentic is admissible, if sufficient evidence has been introduced to sustain a finding of its authenticity or the judge finds that the writing; (a) is at least thirty (30) years old at the time it is so offered; and (b) is in such condition as to create no suspicion concerning its authenticity; and (c) at the time of its discovery was in a place in which such a document, if authentic, would be likely to be found. In order to prove the terms or contents of a writing or document, the writing or document itself must be produced or its unavailability shown before any other evidence will be received to prove the terms or contents of such writing or document.

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OFFENSES CODE

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TITLE VII

OFFENSES CODE

Chapter I. GENERAL PROVISIONS

7-1-1. Scope, Purpose and Construction.

- A. **Scope.** This chapter is not exhaustive of the offenses which are punishable and shall not be construed as inconsistent with or as limiting authority to arrest, try, convict, sentence and carry out sentences for violations of any other section of this Code or of any ordinance or resolution of the Northern Cheyenne Tribal Council.
- B. **Purpose.** The purposes of this chapter and of any other provisions of this code are:
 1. To proscribe conduct that is clearly dangerous to the lives, safety, welfare, and good order of the Northern Cheyenne Reservation;
 2. To provide a series of reasonable punishments; and
 3. To redress wrongs for violations of the laws governing the Northern Cheyenne Reservation.
- C. **Construction.**
 1. Each provision in this chapter of the Code and of any other penal provision of this Code shall be construed to give maximum effect to the purposes expressed in subsection (B) of this section.
 2. The punishments authorized by this Code are not intended to be solely retributive or vindictive, but are intended to promote the purposes expressed in subsection (B) of this section.
 3. Wherever possible, the court shall impose that sentence most conducive to redressing any damage or loss sustained as a result of the violation or offense committed.
- D. **Enforcement.**

The Northern Cheyenne Tribal Council authorizes the Bureau of Indian Affairs the authority to enforce this Code and the offenses in this Code.

7-1-2. Multiple Prosecutions and Double Jeopardy.

- A. Prosecution of Multiple Offenses. When the same conduct of a defendant may establish the commission of more than one offense, the defendant may be prosecuted and sentenced for each such offense.
- B. Limitation. Except as provided below, a defendant shall not be subject to separate trials for multiple offenses based on the same conduct or arising from the same criminal offense.
- C. Separate Trials. Upon application of any party and if justice so requires, the Court may order that separate trials be held for two or more offenses based on the same conduct or arising from the same criminal offense.
- D. Double Jeopardy. If a defendant has been prosecuted in the Northern Cheyenne Courts for one or more offense arising out of the same conduct as the original prosecution, a subsequent prosecution in the Northern Cheyenne Courts for the same or a different offense arising out of the same conduct is barred.

7-1-3. Burden of Proof.

- A. Burden of Presumption of Innocence.
 - 1. A defendant in a criminal proceeding is presumed to be innocent until each element of the offense against him is proven beyond a reasonable doubt. In the absence of such proof the defendant shall be acquitted.
 - 2. By "Element of the offense" is meant:
 - a. The conduct, attendant circumstances or results of conduct proscribed, prohibited, or forbidden in the definition of the offense; plus
 - b. The culpable mental state required.
- B. Negating Defenses. The prosecution need not negate any defense either in the complaint or by proof unless the defense is in issue as a result of evidence presented at trial by either side, or unless the defense is an affirmative defense and the defendant has presented evidence of such.

7-1-4. Principals and Accessories.

- A. This code makes no distinction between principals and accessories in criminal prosecutions.
- B. Any person who shall cause another to commit or who shall otherwise advise or assist another to commit any offense under

the laws of the Northern Cheyenne Reservation shall be guilty as if he had actually committed the offense.

7-1-5. Entrapment.

- A. A public law enforcement officer or official or a person acting in cooperation with such an official perpetrates an entrapment if, for the purpose of obtaining evidence of the commission of an offense, he induces or encourages another person to engage in conduct constituting an offense by either:
 - 1. Making knowingly false representations designed to induce the belief that such conduct is not prohibited; or
 - 2. Employing methods of persuasion or inducement which create a substantial risk that such an offense will be committed by persons other than those who are ready to commit it.
- B. The defense afforded by this section shall be unavailable when causing or threatening bodily injury is an element of the offense charged and the prosecution is based on conduct causing or threatening such injury to a person other than the person perpetrating the entrapment.
- C. Except as provided in subsection (B) of this section, a person prosecuted for an offense shall be acquitted if he proves by a preponderance of the evidence that his conduct occurred in response to an entrapment. The issue of entrapment shall be tried to and decided by the Court and not by the jury. Evidence of past offenses shall be admissible only if the defendant takes the stand in his own defense.

7-1-6. Liability.

- A. Acts and Omissions to Act:
 - 1. The minimum requirement for criminal liability is the performance by a person of conduct which includes a voluntary act or the omission to perform a duty imposed by law which he or she is physically capable of performing.
 - 2. Possession is an act within the meaning of this section if there was knowing control of the thing possessed for a sufficient time to be able to terminate control.
- B. Culpability. A person is not guilty of an offense unless he acted purposely, knowingly, negligently, or recklessly as required with respect to each material element of the offense.

C. Corporations and Unincorporated Associations:

1. A person is legally accountable for any conduct he performs or causes to be performed in the name of a corporation or unincorporated association or in its behalf to the same extent as if it were performed in his own name or behalf.
2. Whenever a duty to act is imposed by law upon a corporation or unincorporated association, any agent of the corporation or association having primary responsibility for the discharge of the duty is legally accountable for a reckless omission to perform the required act to the same extent as if the duty were imposed by law directly upon himself.
3. When a person is convicted of an offense by reason of his legal accountability for the conduct of a corporation or an unincorporated association, he is subject to the sentence authorized by law when a natural person is convicted of an offense of the class involved.

7-1-7. Classification of Offenses and Sentences.

- A. Offenses are designated as Class A offenses, Class B offenses and Class C offenses with maximum fines and imprisonment as follows:

Class A: Fine not to exceed \$5,000.00 and a term of imprisonment not to 1 year.

Class B: Fine not to exceed \$1,000.00 and a term of imprisonment not to exceed 6 months.

Class C: Fine not to exceed \$200.00 and a term of imprisonment not to exceed 1 month.

- B. Any offense for which no penalty or sentence is specified or which is not specifically designated a class of offenses shall be treated, for the purpose of imposing punishment, as a Class C offense.

7-1-8. Definitions.

- A. Mental States:

1. Purposely - A person acts purposely with respect to a result or to conduct described in this Code defining an offense if it is his conscious objective or desire to engage in the conduct or to cause that result.

2. Knowingly - A person acts knowingly with respect to a circumstance or to conduct described in this Code defining an offense if he is aware of his conduct or that the

circumstance exists. A person acts knowingly with respect to the result of conduct described in this Code defining an offense if he is aware or believes that it is highly probable that such result will be caused by his conduct.

3. Recklessly - A person acts recklessly with respect to a circumstance or to conduct described in this Code defining an offense if he is aware of a risk created by the circumstance or by the conduct and disregards the risk. The risk must be of such a nature and degree that its disregard constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.
4. Negligently - A person acts negligently with respect to a result or to a circumstance described in this Code defining an offense when he consciously disregards a risk of which he should be aware that the result will occur or that the circumstance exists. This risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would exercise in such a situation.

B. Voluntary and Involuntary Acts:

1. Involuntary act - An "involuntary act" means any act which is:
 - a. A reflex or convulsion;
 - b. A bodily movement during unconsciousness or sleep;
 - c. Conduct during hypnosis or resulting from hypnotic suggestion; or
 - d. A bodily movement that otherwise is not a product of the effort or determination of the actor, either conscious or habitual.
2. Voluntary act - A voluntary act includes any bodily movement, and form of communication, and where relevant, any failure or omission to take action, that is not involuntary.

C. Harm - means disadvantage, or injury or anything so regarded by the person affected, including loss, disadvantage, or injury to any person or entity in whose welfare he is interested.

D. Property - means anything of value. Property includes but is not limited to:

1. Real estate;
 2. Money;
 3. Commercial instruments;
 4. Admission or transportation tickets;
 5. Written instruments which represent or embody rights concerning anything of value, including labor or services, or which are otherwise of value to the owner;
 6. Things growing on, affixed to, or found on land and things which are part of or affixed to any building;
 7. Electricity, gas, and water;
 8. Birds, animals, and fish which ordinarily are kept in a state of confinement;
 9. Food and drink, samples, cultures, microorganisms, specimens, records, recordings, documents, blueprints, drawings, maps, and whole or partial copies, descriptions, photographs, prototypes, or models thereof; and
 10. Any other articles, materials, devices, substance, and whole or partial copies, descriptions, photographs, prototypes, or models thereof which constitute, represent, evidence, reflect, or record secret scientific, technical, merchandising, production, or management information or a secret designed process, procedure, formula, invention, or improvement.
- E. Sexual contact - means any touching of the sexual or other intimate parts of the person of another for the purpose of arousing or gratifying the sexual desire of either party.
- F. Sexual intercourse - means penetration of the vulva, anus, or mouth of one person by the penis of another person, penetration of the vulva or the anus of one person by any body member of another person, or penetration of the vulva or anus of one person by any foreign instrument or object manipulated by another person for the purpose of arousing or gratifying the sexual desire of either party. Any penetration, however slight, is sufficient.
- G. Weapon - means any instrument, article, or substance which regardless of its primary function, is readily capable of being used to produce death or bodily injury.

Chapter 2. DEFENSES AND JUSTIFICATIONS

7-2-1. Justification.

Conduct which the actor believes to be necessary to avoid a harm or evil to himself or to another is justified and is an affirmative defense provided that the harm or evil sought to be avoided by such conduct is no greater than that sought to be prevented by the law defining the offense charged and the actor did not recklessly or negligently bring about the situation requiring his conduct. The fact that conduct is justifiable as specified in this Code does not abolish or impair any civil right or remedy which might arise from such conduct.

7-2-2. Duress.

It is an affirmative defense that the actor engaged in the conduct charged to constitute an offense because he was coerced to do so by the use of, or a threat to use, unlawful force against his person or the person of another, which a person of reasonable firmness in his situation would have been unable to resist and the actor did not recklessly or negligently place himself in a situation in which it was probable he would be subjected to duress.

7-2-3. Ignorance or Mistake.

Ignorance or mistake as to a matter of fact or law is a defense if:

- A. The ignorance or mistake negate the intent, knowledge, belief, recklessness, or negligence required to establish a material element of the offense; or
- B. The law provides that the state of mind established by such ignorance or mistake constitutes a defense.

7-2-4. Public Duty.

Conduct is justified and an affirmative defense when it is required or authorized by law.

7-2-5. Protection of Self, Property, or Other Person.

The use of reasonable force upon or toward another person is justified and an affirmative defense when the actor reasonably believes that such force is immediately necessary for the purpose of protecting himself or a third person against the use of unlawful force by another person or to prevent or terminate an unlawful entry or other trespass upon land or the unlawful carrying away of tangible movable property.

7-2-6. Mental Disease.

A person is not responsible for criminal conduct, and it is an affirmative defense, if at the time of such conduct, as a result of mental disease or

defect, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law.

7-2-7. Use of Force.

A. Force in Defense of Persons.

1. A person is justified in threatening or using force against another when and to the extent that he reasonably believes that such force is necessary to defend himself or a third person against such other's imminent use of unlawful force; however, a person is justified in using force which is necessary to prevent bodily injury only if he reasonably believes that such force is necessary to prevent death or serious bodily injury to himself or a third person.
2. A person is not justified in using force under the circumstances specified in subsection (A) (1) of this section if he:
 - a. Initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant;
 - b. Is attempting to commit, committing, or fleeing after the commission of an offense; or
 - c. Was the aggressor or was engaged in a combat by agreement, unless he withdraws from the encounter and effectively communicates to such other person his intent to do so and the other, notwithstanding, continues or threatens to continue the use of unlawful force.

B. Force in Arrest. A police officer is justified in using any force, except deadly force, which he reasonably believes to be necessary to effect an arrest or to defend himself or another from bodily harm while making an arrest.

C. Force in Defense of Habitation. A person is justified in using force against another when and to the extent that he reasonably believes that the force is necessary to prevent or terminate the other's unlawful entry into or attack upon his place of habitation; however, he is justified in the use of force which is intended or likely to cause death or serious bodily injury only if:

1. The entry is attempted or made in a violent and tumultuous manner and he reasonably believes that the entry is attempted or made for the purpose of assaulting or offering personal violence to any person, dwelling or

person therein and that the force is necessary to prevent the assault or offer of personal violence; or

2. He reasonably believes that the entry is made or attempted for the purpose of committing a Class A offense or other offense involving threat of bodily injury therein and that such force is necessary to prevent the commission of such offense.

D. Force in Defense of Property. A person is not justified in using force in defense of property unless force is necessary to prevent or terminate immediate irreparable harm. The amount of force that may be used is only that which is reasonably necessary to prevent the harm and can never be force likely to cause death or serious bodily injury.

7-2-8. Intoxication Not a Defense.

A. Except as provided in subsection (D) of this section, intoxication of the actor is not a defense unless it negates an element of the offense.

B. When recklessness establishes an element of the offense, and the actor, due to self-induced intoxication, is unaware of a risk of which he would have been aware had he been sober, such unawareness is immaterial and does not constitute a defense.

C. Intoxication does not, in itself, constitute a mental disease as that term is used in this Code.

D. Intoxication which is (a) not self-induced, or (b) the result of intoxication excessive in degree given the amount of intoxicant, to which the actor does not know he is susceptible, is an affirmative defense if by reason of such intoxication the actor at the time of his conduct lacks substantial capacity either to appreciate its wrongfulness or to conform his conduct to the requirements of the law.

Chapter 3. INCHOATE OFFENSES

7-3-1. Solicitation. A person commits the offense of solicitation when, with the purpose that an offense be committed, he commands, encourages, or facilitates the commission of that offense.

7-3-2. Conspiracy.

A. A person commits the offense of conspiracy when, with the purpose that an offense be committed, he agrees with another to the commission of that offense. No person may be convicted of conspiracy to commit an offense unless an act in furtherance of such an agreement has been committed by him

or by a co-conspirator.

- B. It shall not be a defense to conspiracy that the person or persons with whom the accused has conspired:
 - 1. Has not been prosecuted or convicted;
 - 2. Has been convicted of a different offense;
 - 3. Is not amenable to justice;
 - 4. Has been acquitted; or
 - 5. Lacked the capacity to commit the offense.
- C. A person convicted of the offense of conspiracy shall be punished not to exceed the maximum sentence provided for the offense which is the object of the conspiracy.

7-3-3. Criminal Attempt.

- A. Any person who purposely, knowingly, negligently or recklessly engages in any conduct which would reasonably result in the commission of any offense, if not for some unforeseen or intervening circumstance that prevents the actual commission of the offense, shall be guilty of an attempt to commit that offense.
- B. Criminal attempt to commit any offense shall be an offense of the same class as the substantive offense attempted.
- C. A person shall not be liable under this section if, under circumstances manifesting a voluntary and complete renunciation of his criminal purpose, he avoided the commission of the offense attempted by abandoning his criminal effort.
- D. Proof of the completed offense does not bar conviction for the attempt.

Chapter 4. OFFENSES AGAINST THE PERSON

7-4-1. Criminal Homicide.

- A. A person commits the offense of criminal homicide if he purposely, knowingly, or negligently causes the death of another human being.
- B. Criminal Homicide is deliberate homicide, mitigated deliberate homicide, or negligent homicide.
 - 1. Criminal Homicide constitutes Deliberate Homicide if:

- a. It is committed purposely or knowingly; or
 - b. It is committed while the offender is engaged in or is an accomplice in the commission of an attempt to commit, or flight after committing or attempting to commit robbery, sexual intercourse without consent, arson, burglary, kidnapping, felonious escape, or any other felony which involves the use of or threat of physical force or violence against any individual.
2. Criminal homicide constitutes mitigated deliberate homicide when a homicide which would otherwise be deliberate is committed under the influence of extreme mental or emotional stress for which there is reasonable explanation or excuse. The reasonableness of such explanation or excuse shall be determined from the viewpoint of a reasonable person in the actor's situation.
 3. Criminal homicide constitutes negligent homicide when it is committed negligently.
- C. Criminal homicide is a Class A offense, and if the offense is found to have been committed purposely or knowingly, no suspension of sentence, probation or parole shall be granted, and the maximum fine and incarceration shall be imposed.

7-4-2. Assault and Related Offenses.

A. Assault:

1. A person commits the offense of assault if he:
 - a. Purposely or knowingly causes bodily injury to another;
 - b. Negligently causes bodily injury to another with a weapon;
 - c. Purposely or knowingly makes physical contact of an insulting or provoking nature with any individual; or;
 - d. Purposely or knowingly causes reasonable apprehension of bodily injury in another. The purpose to cause reasonable apprehension or knowledge that reasonable apprehension would be caused shall be present in any case in which a person knowingly points a firearm at or in the direction of another, whether or not the offender believes the firearm to be loaded.

2. Assault is a Class B offense.

B. Aggravated Assault:

1. A person commits the offense of aggravated assault if he purposely or knowingly causes:

- a. Serious bodily injury to another;
- b. Bodily injury to another with a weapon; or
- c. Reasonable apprehension of serious bodily injury in another by use of a weapon;

2. Aggravated assault is a Class A offense.

7-4-3. Intimidation.

A. A person commits the offense of intimidation when, with the purpose to cause another to perform or to omit the performance of any act, he communicates to another a threat to perform without lawful authority any of the following acts:

1. Inflict physical harm on the person threatened or any other person or on property;
2. Subject any person to physical confinement or restraint;
3. Commit any criminal offense;
4. Accuse any person of an offense;
5. Expose any person to hatred, contempt, or ridicule; or
6. Take action as a public official against anyone or anything, withhold official action, or cause such action or withholding.

B. A person commits the offense of intimidation if he knowingly communicates a threat or false report of a pending fire, explosion, or disaster which would endanger life or property.

C. Intimidation is a Class B offense.

7-4-4. Mistreating Prisoners.

A. A person commits the offense of mistreating prisoners if, being responsible for the care or custody of a prisoner, he purposely or knowingly:

1. Assaults or otherwise injures a prisoner;

2. Intimidates, threatens, endangers, or withholds reasonable necessities from a prisoner with the purpose to obtain a confession from him or for any other purpose; or
 3. Violates any civil right of a prisoner.
- B. A person convicted of mistreating a prisoner(s) shall be removed from office or employment.
- C. Mistreating prisoners is a Class C offense.

7-4-5. Kidnapping.

- A. A person commits the offense of kidnapping if he knowingly or purposely and without lawful authority restrains another person by either secreting or holding him in a place of isolation or by using or threatening to use physical force.
- B. Unlawful Restraint. A person commits the offense of unlawful restraint if he knowingly or purposely and without lawful authority restrains or causes to be restrained another so as to interfere substantially with his liberty.
- C. Kidnapping is a Class A offense.

7-4-6. Custodial Interference.

- A. A person, whether a parent or other person, is guilty of custodial interference if:
1. Without good cause, he takes, entices, conceals, or detains a child under the age of 16 from his parent, guardian or other lawful custodian:
 - a. Knowing he has no legal right to do so; and
 - b. With intent to hold the child for a period substantially longer than any visitation or custody period previously awarded by a court of competent jurisdiction;
 2. Having actual physical custody of a child under the age of 16 years pursuant to a judicial award of a court of competent jurisdiction which had given another person visitation or custody rights, and without good cause, he detains or conceals the child with intent to deprive the other person of his lawful visitation or custody rights; or
 3. Without good cause he takes, entices or detains an incompetent or other person who has been committed by authority of law to the custody of another person or institution from the other person or institution, knowing

he has no legal right to do so.

B. Custodial Interference is a Class A offense.

7-4-7. Sexual Offenses.

A. Rape:

1. A male person who has sexual intercourse with a female is guilty of rape if:
 - a. He compels her to submit by force or by the threat of death, serious bodily injury, extreme pain, or kidnapping to be inflicted on her or anyone else;
 - b. He compels her to submit by any threat that would prevent resistance by a woman of ordinary resolution;
 - c. He has substantially impaired her power to appraise or control her conduct by administering or employing without her knowledge drugs, intoxicants or other means for the purpose of preventing resistance;
 - d. He knows that she suffers from a mental disease or defect which renders her incapable of appraising the nature of her conduct;
 - e. The female is unconscious or he knows that she is unaware that a sexual act is being committed upon her or that she submits because she falsely supposes that he is her husband; or
 - f. The female is under the age of 16 years.
2. Sexual intercourse includes intercourse as defined in 7-1-8 (F) with some penetration, however slight; emission is not required.
3. Rape is a Class A offense.

B. Deviate Sexual Intercourse:

1. A person is guilty of deviate sexual intercourse if he engages in deviate sexual intercourse, or causes another to engage in deviate sexual intercourse and if:
 - a. He compels the other person to participate by force or by the threat of death, serious bodily injury, extreme pain or kidnapping, to be inflicted on anyone;

- b. He compels the other person to participate by any threat that would prevent resistance by a person of ordinary resolution;
- c. He has substantially impaired the other person's power to appraise or control his conduct by administering or employing without his knowledge drugs, intoxicants or other means for the purpose of preventing resistance;
- d. He knows that the other person suffers from a mental disease or defect which renders him incapable of appraising the nature of his conduct or he knows that the other person is unconscious or submits because he is unaware that a sexual act is being committed on him; or
- e. The other person is under the age of 16 years of age.

2. Deviate sexual intercourse is a Class A offense.

C. **Indecent Exposure:**

- 1. A person is guilty of indecent exposure if, for the purpose of arousing or gratifying sexual desire of himself or of any other person other than his spouse, he exposes his genitals.
- 2. Indecent exposure is a Class C offense.

D. **Provisions Applicable to Sexual Offenses:**

- 1. No prosecution may be instituted or maintained under these provisions on sexual offenses unless the alleged offense was brought to the attention of public authority within three months of its occurrence, or, within three months of when the alleged victim learns of the offense.
- 2. Whenever an element of an offense depends on the age of the child being below the age of 16, it is no defense that the actor did not know the child's age or reasonably believed the child to be older than 16. Whenever an element of an offense depends on the age of the child being below a critical age other than 16, it is a defense for the actor to prove by a preponderance of the evidence that he reasonably believed the child to be above the critical age.

7-4-8. **Prostitution.**

- A. A person is guilty of prostitution if, that person practices

prostitution or knowingly keeps, maintains, rents, leases, any house, room, tent, or other place for the purpose of prostitution.

- B. Prostitution is engaging in or agreeing or offering to engage in sexual intercourse with another person for compensation.
- C. Prostitution is a Class B offense.

7-4-9. Venereal Disease.

- A. A person is guilty of the offense of transmitting a venereal disease if, he knowingly infects another with venereal disease.
- B. The Tribal Court shall have the authority to order and compel the medical examination and treatment of any person charged with the violation of this section or found afflicted with any communicable disease.
- C. Transmitting a venereal disease is a Class C offense.

Chapter 5. OFFENSES AGAINST THE FAMILY

7-5-1. Bigamy.

- A. A person is guilty of bigamy if, knowing that he has a husband or wife or knowing the other person has a husband or wife, he purports to marry another person.
- B. It shall be a defense if the defendant proves by a preponderance of the evidence that he reasonably believed that he and the other person were eligible to marry.
- C. Bigamy is a Class B offense.

7-5-2. Incest.

- A. A person is guilty of incest if he knowingly marries or cohabits or has sexual intercourse or sexual contact with a person he knows to be an ancestor or descendant, brother, sister, aunt, uncle, nephew, niece, or first cousin, any of which are of the whole or half blood, without regard to legitimacy, adoption or step-parent/step-child relationship, while such relationship exists.
- B. Incest is a Class A offense.

7-5-3. Nonsupport and Related Offenses.

- A. Criminal Nonsupport:

1. A person is guilty of criminal nonsupport if, without just cause, he fails to provide for the support of his spouse, child under the age of 18 years, or other dependent when such persons or any of them are in circumstances of need.
2. "Child" includes a child born out of wedlock whose paternity has been admitted by the actor or has been established in a civil suit.
3. In a prosecution under this section, it is no defense that the person to be supported received necessary support from a source other than the defendant.
4. Criminal nonsupport is a Class B offense.

B. Endangering the Welfare of a Child:

1. A person is guilty of endangering the welfare of a child if he is a parent, guardian, or other person supervising the welfare of a child under 18 years of age and he knowingly endangers the child's welfare by violating a duty of care, protection or support or by intentionally leaving or abandoning a child without care or by neglecting to care for a child in any manner which threatens serious harm to the physical, emotional or mental well-being of the child.
2. Endangering the welfare of a child is a Class B offense.

7-5-4. Failure to Send Children to School.

Any person who shall, without good cause, neglect or refuse to send a child under his care, between the ages of six and eighteen years, to school unless that child has graduated from high school, shall be guilty of this offense. Failure to send children to school is a Class C offense.

7-5-5. Truancy.

Any person between the ages of six and eighteen years of age, who shall, without good cause, neglect or refuse to attend school shall be deemed guilty of an offense. The Judge may, in his discretion, hear and determine the case in private and in an informal manner, and, if the accused is found to be guilty, may in lieu of sentence, place such truant for a designated period under the supervision of a responsible person selected by him or may take such other action as he may deem advisable in the circumstances. Truancy is a Class C offense.

7-5-6. Contributing to the Delinquency of a Minor.

- A. A person commits the offense of contributing to the delinquency of a minor if he knowingly:
 1. Sells or gives explosives to a child under the age of

majority except as authorized under appropriate tribal ordinances;

2. Sells or gives intoxicating substances other than alcoholic beverages to a child under the age of majority;
 3. Sells or gives alcoholic beverages to a person under 18 years of age; or
 4. Being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a child under the age of majority without authorization of the parent or guardian.
- B. Contributing to the delinquency of a minor is a Class B offense.

Chapter 6. OFFENSES AGAINST PROPERTY

7-6-1. Arson.

- A. A person is guilty of arson if he starts a fire or causes an explosion with the purpose of:
1. Destroying a building or occupied structure of another; or
 2. Destroying or damaging any property whether his own or that of another to collect insurance for such loss.
- B. Definitions:
1. The term "Occupied Structure" includes a trailer, sleeping car, airplane or vehicle, structure or place adapted for overnight accommodation of persons or for carrying on business therein, whether or not a person is actually present.
 2. Property is that of another, for the purpose of this section, if anyone other than the actor has a possessory or proprietary interest therein. If a building or structure is divided into separate occupied units, any unit not occupied by the actor is an occupied structure of another.
- C. Arson is a Class A offense.

7-6-2. Reckless Burning.

- A. A person is guilty of reckless burning if he:
1. Recklessly starts a fire or causes an explosion which endangers human life;

2. Damages property of another by reckless use of fire or reckless causing of an explosion; or
3. Having started a fire, whether recklessly or not, and knowing that it is spreading and will endanger the life or property of another, either fails to take reasonable measures to put out or control the fire or fails to give a prompt fire alarm.

B. Reckless burning is a Class B offense.

7-6-3. Criminal Mischief.

A. A person is guilty of criminal mischief if he:

1. Purposely or knowingly damages or destroys the livestock, domestic animals, or other property of another;
2. Purposely or knowingly tampers with the property of another and thereby recklessly endangers human life, or recklessly causes substantial interruption or impairment of any public service.

B. Criminal mischief is a Class B offense.

7-6-4. Burglary.

A. A person is guilty of burglary if he enters or remains unlawfully in a building or occupied structure, or separately secured or occupied portion thereof, with purpose to commit an offense therein, unless the premises are at the time open to the public or the actor is licensed or privileged to enter. It is an affirmative defense to a prosecution for burglary that the building or structure was abandoned.

B. Definitions:

1. An "occupied structure" is any structure, vehicle, or place adapted for overnight accommodation of persons, or for carrying on business therein, whether or not a person is actually present.
2. "Enter" means an intrusion of any part of the body, or intrusion of any physical object under control of the actor.

C. Burglary is a Class A offense.

D. A person may not be convicted of both burglary and the offense which it was his purpose to commit after the burglarious entry or for an attempt to commit that offense if such offense was a Class C offense; he may be convicted of

both or all of such other offenses that are Class A or B offenses.

7-6-5. Burglary of a Vehicle.

- A. A person is guilty of burglary of a vehicle if he unlawfully enters any vehicle with intent to commit an offense therein.
- B. Burglary of a vehicle is a Class A offense.

7-6-6. Aggravated Trespass.

- A. A person is guilty of aggravated trespass if he enters or remains unlawfully on trust or non-trust property on which he is not otherwise privileged to enter or remain and:
 - 1. Accomplishes such entry by an act of force or violence or the use of key or similar device which provides entry and which device the actor is not authorized or privileged to use for such purpose;
 - 2. Intends to cause or causes annoyance or injury to any person thereon or damage to any property thereon;
 - 3. Intends to commit or commits an offense thereon; or
 - 4. Is reckless as to whether his presence will cause fear for the safety of another.
- B. Aggravated Trespass is a Class B offense.

7-6-7. Simple Trespass.

- A. A person is guilty of simple trespass if, knowing his entry or presence is unlawful, he enters or remains on property, trust or non-trust, as to which notice against entry is given by:
 - 1. Personal communication to the actor by the owner or someone with authority to act for the owner;
 - 2. Fencing or other enclosure obviously designed to exclude intruders; or
 - 3. Posting of signs reasonably likely to come to the attention of intruders.
- B. It is an affirmative defense to simple trespass that:
 - 1. The property was open to the public when the actor entered or remained and he had not been informed that he should leave or not enter; or

2. The actor's conduct did not substantially interfere with the owner's use of the property and the actor left the property when asked to do so.

C. Simple trespass is a Class C offense.

7-6-8. Robbery.

A. A person is guilty of robbery if, in the course of committing a theft, he:

1. Inflicts serious bodily injury upon another;
2. Threatens another with, or purposely puts him in fear of immediate serious bodily injury; or
3. Commits or threatens to commit a Class A or Class B offense.

B. An act shall be deemed "in the course of committing a theft" if it occurs in an attempt to commit a theft or in flight after the attempt or commission of a theft.

C. Robbery is a Class A offense.

7-6-9. Theft and Related Offenses.

A. Consolidation of Theft Offenses; General Provisions:

1. Conduct denominated in this part of the Code constitutes a single offense embracing the separate offenses heretofore known as larceny, embezzlement, false pretense, extortion, blackmail, fraudulent conversion, receiving stolen property, and the like. An accusation of theft may be supported by evidence that it was committed in any manner that would be theft under this part of the Code, notwithstanding that a different manner is charged in the complaint, subject only to the power of the Court to ensure a fair trial by granting a continuance or the appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

2. It is an affirmative defense to prosecution for theft that the actor:

- a. Acted under an honest claim of right to the property or service involved or that he had a right to acquire or dispose of it as he did; or
- b. Obtained or exercised control over the property or service honestly and reasonably believing that the owner if present would have consented.

3. It is no defense that:
 - a. The theft was from the actor's spouse, except that misappropriation of household and personal effects or other property normally accessible to both spouses, is theft only if it occurs after the parties have stopped living together; or
 - b. The actor has an interest in the property or service stolen if another person also has an interest that the actor is not entitled to infringe upon.
4. Possession of property recently stolen, when no satisfactory explanation of such possession is made, shall be deemed prima facie evidence that the person in possession stole the property.

B. Punishment of Theft Offenses:

1. Theft of property or service as provided in this part shall be punishable as follows:
 - a. If the value of the property or services involved is more than \$500.00, the offense shall be a Class A offense;
 - b. If the value of the property or services involved is \$100.00 or more but less than \$500.00, the offense shall be a Class B offense; or
 - c. If the value of the property or services involved is less than \$100.00, the offense shall be a Class C offense.
2. If no evidence as to the value of the property or services involved is presented and the value of such is not obvious without presentation of such evidence, and if it otherwise is proven that a theft offense has been committed, the offense shall be a Class C offense.

C. Theft of Property:

A person commits theft if he obtains or exercises unauthorized control over the property of another with a purpose to deprive him thereof.

D. Theft by Deception:

1. A person is guilty of theft if he obtains or exercises unauthorized control over the property of another by deception and with a purpose to deprive him thereof.

2. Deception occurs when a person:
 - a. Creates or reinforces a false impression, including false impression as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
 - b. Prevents another from acquiring information which would affect his judgment of a transaction;
 - c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship; or
 - d. Fails to disclose a lien, adverse claim or other legal impediment to the enjoyment of property which he transfers or encumbers in consideration for the property obtained, whether such impediment is or is not valid or is or is not a matter of official record.
3. The term "deceive" does not, however, include matters having no pecuniary significance, or mere puffing or statements unlikely to deceive ordinary persons in the group addressed.

E. Theft by Extortion:

1. A person is guilty of theft if he obtains or exercises control over the property of another by extortion and with a purpose to deprive him thereof.
2. Extortion occurs when a person threatens to:
 - a. Inflict bodily injury on anyone or commit any other criminal offense;
 - b. Accuse anyone of a criminal offense;
 - c. Expose any secret tending to subject any person to hatred, contempt or ridicule, or to impair his credit or business reputation;
 - d. Take or withhold action as an official, or cause an official to take or withhold action;
 - e. Bring about or continue a strike, boycott or other

collective unofficial action, if the property is not demanded or received for the benefit of the group in whose interest the actor purports to act;

- f. Testify or provide information or withhold testimony or information with respect to another's legal claim or defense;
 - g. Inflict any other harm which would not benefit the actor but which would substantially harm any other person with respect to the person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.
3. It is an affirmative defense to prosecution based on subsection (2) that the property obtained by threat of action, exposure, lawsuit or other official action is compensation for property or lawful services.

F. Theft of Property Lost, Mislaid or Delivered by Mistake:

- 1. A person is guilty of theft if he comes into control or possession of property of another that he knows or reasonably suspects has been lost, mislaid, or delivered under a mistake as to the nature or amount of the property or the identity of the recipient, and with purpose to deprive the owner thereof, fails to take reasonable measures to restore the property to a person entitled to have it.

G. Receiving Stolen Property:

- 1. A person is guilty of theft if he receives, retains or disposes of the property of another knowing that it has been stolen, or believing that it has probably been stolen, or who conceals, sells, withholds or aids in concealing, selling, or withholding any such property from the owner, knowing the property to be stolen, with a purpose to deprive the owner thereof.
- 2. The requisite knowledge or belief is presumed in the case of person who:
 - a. Is found in possession or control of other property stolen on a separate occasion;
 - b. Has received stolen property in another transaction within the year preceding the transaction charge; or
 - c. Being a dealer in property of the sort received, acquires it for a consideration which he knows or should know is far below its reasonable value.

3. As used in this section "receives" means acquiring possession, control or title, or lending on the security of the property; "dealer" means a person in the business of buying or selling goods.

H. Theft of Services:

1. A person is guilty of theft if:
 - a. He obtains services which he knows are available only for compensation by deception, threat, force, or any other means designed to avoid the due payment therefor; or
 - b. Having control over the disposition of services of others to which he is not entitled, he diverts such services to his own benefit or to the benefit of another not entitled thereto.
2. Where compensation for service is ordinarily paid immediately upon the rendering of such service, refusal to pay or absconding without payment or offer to pay gives rise to a presumption that the service was obtained by deception as to the intent to pay.
3. "Services" includes, but is not limited to a labor, professional service, telephone or other public service, accommodation in hotels, restaurants or elsewhere, admissions to a place for which a charge for admission is made, the use of vehicles or other moveable or real property.

I. Theft by Failure to make Required Disposition of Funds Received.

1. A person is guilty of theft if he obtains property from anyone, or personal services from an employee, upon agreement, or subject to a known legal obligation to make a specified payment or other disposition to a third person, whether from the property or its proceeds or from his own property in an equivalent amount, and if he deals with the property as his own and fails to make the required payment or disposition.
2. It is no defense that it may be impossible to identify particular property as belonging to the victim at the time of the actor's failure to make the required payment or disposition.
3. An officer or employee of the Tribe, another government, or of a financial institution is presumed:

- a. To know of any legal obligation relevant to his liability under this section; and
- b. To have dealt with the property as his own if he fails to pay or discount upon lawful demand, or if an audit reveals a shortage or falsification of accounts.

7-6-10. Forgery.

- A. A person is guilty of forgery if, he with intent to defraud, falsely signs, executes, or alters any written instrument.
- B. Forgery is a Class B offense.

7-6-11. Unauthorized Use of Vehicle.

- A. A person is guilty of unauthorized use of vehicle if he operates another's automobile, airplane, motorcycle, motorboat, or other motor-propelled vehicle without consent of the owner.
- B. Unauthorized Use of Vehicle is a Class B offense.

Chapter 7. OFFENSES AGAINST PUBLIC ORDER

7-7-1. Violence to a Policeman or Judge.

- A. A person is guilty of violence to a policeman or judge if, he shall willfully or knowingly, by force or violence, render physical abuse to a tribal policeman or a Judge of the Northern Cheyenne Court or to the property of such policeman, judge or Tribal property under the control of the policeman or judge.
- B. Violence to a policeman or judge is a Class A offense.
- C. It is a defense to this offense that the defendant did not know the person was a police officer or a judge or did not know that the property named belonged to a police officer or judge. Such defense does not prevent prosecution for assault or malicious mischief.

7-7-2. Resisting Arrest.

- A. A person is guilty of resisting arrest if he uses force or violence for the purpose of preventing a law enforcement officer from effecting an arrest or detention of himself or of any other person.
- B. Resisting lawful arrest is a Class B offense.

7-7-3. Carrying a Concealed Weapon.

- A. A person is guilty of carrying a concealed weapon if, he shall go about in a public place armed with a dangerous weapon concealed upon his person, unless he has a signed permit by a Judge of the Northern Cheyenne Tribal Court. The weapon so carried may be confiscated by the court.
- B. Carrying a concealed weapon is a Class B offense.

7-7-4. Firing of a Firearms Offense.

- A. A person is guilty of firing of a firearms offense if he:
 - 1. Knowingly or willfully shoots or fires off a gun, pistol or any firearm within the limits of any town, community, village or any private enclosure which contains a dwelling house, or shoots from any vehicle, or shoots across any roadway on the Northern Cheyenne Reservation.
- B. Firing of a firearms offense is a Class B offense.

7-7-5. Breach of the Peace or Disorderly Conduct.

- A. A person commits the offense of disorderly conduct if he knowingly disturbs the peace by:
 - 1. Quarreling, challenging to fight, or fighting;
 - 2. Making loud or unusual noises;
 - 3. Using threatening, profane, or abusive language;
 - 4. Discharging firearms;
 - 5. Rendering vehicular or pedestrian traffic impassable;
 - 6. Rendering the free ingress or egress to public or private place impassable;
 - 7. Disturbing or disrupting any lawful assembly or public meeting;
 - 8. Transmitting a false report or warning of a fire, impending explosion, or other catastrophe in such a place that its occurrence would endanger human life; or
 - 9. Creating a hazardous or physically offensive condition by any act that serves no legitimate purpose.
- B. Disorderly conduct is a Class C offense.

7-7-6. Maintaining a Public Nuisance.

- A. A person is guilty of maintaining a public nuisance if, he acts in such a manner or creates a situation which may be adjudicated a general nuisance, or permits his property to fall into a condition as to injure or endanger the safety, health, comfort or property of his neighbors.
- B. Maintaining a public nuisance is a Class C offense.

7-7-7. Refusing to Aid an Officer.

- A. A person is guilty of refusing to aid an officer if, he neglects or refuses, without good cause, when called upon by a tribal police officer or an officer of the Bureau of Indian Affairs, to assist in the arrest of any person charged with or convicted of any offense, or in securing such offender when apprehended, or in conveying such offender to the nearest place of confinement.
- B. Refusing to aid an officer is a Class C offense.

7-7-8. Escape.

- A. A person is guilty of escape if that person, being lawfully arrested and in custody, for any offense, escapes, or if he permits or assists, or attempts to permit or assist another person to escape from lawful custody.
- B. Escape is a Class C offense.

7-7-9. Curfew.

- A. Every unmarried person under the age of 18 years shall be subject to curfew regulations throughout the Northern Cheyenne Reservation. From June 1 to September 1, the curfew shall be at 11:00 p.m. and from September 2 to May 31, the curfew shall be at 10:00 p.m. Parents or guardians of children under the age of 18 years are responsible for curfew regulations. Exceptions are permitted if the child is under the immediate supervision of an adult, parent or guardian, during meetings and public gatherings, or is attending authorized school functions or other supervised functions without such supervision.
- B. This is a Class C offense for any person whose children fail to obey curfew regulations.

7-7-10. Sanitation and Public Health.

- A. A person is guilty of a sanitation and public health offense if he violates any rules or regulations enforced by the Department of Public Health, or United States Public Health Service

Division of Indian Health, as adopted by Tribal Council ordinances, or any Indian group, organization, or committee for tribal celebrations or gatherings, or fails to properly dispose of all body wastes, garbage, trash and other waste materials or litter.

- B. The sanitation and public health offense is a Class B offense.
- C. The Judge of the Tribal Court may, in his discretion, take any action deemed necessary under the circumstances to safeguard the health or well-being of any community, family or person.

7-7-11. Cruelty to Animals.

- A. A person is guilty of cruelty to animals if, he shall torture or cruelly mistreat any animal.
- B. Cruelty to animals is a Class C offense.

7-7-12. Desecration of Flags.

- A. Definitions. In this section "flag" means anything which is or purports to be the official flag of the United States, the United States Shield, the United States Coat of Arms and the Northern Cheyenne Reservation Flag.
- B. A person is guilty of desecration of flags if he purposely or knowingly publicly mutilates, defiles, or casts contempt upon the flag as defined in this section.
- C. Desecration of a flag is a Class C offense.

7-7-13. Itinerant Vendors Offense.

- A. A person is guilty of itinerant vendors offense if he fails to pay \$25.00 for a license to do business within the boundaries of the Northern Cheyenne Reservation. An offender shall be fined \$25.00 a day for each day he does business within the boundaries of the Northern Cheyenne Reservation without a license.
- B. The fee shall be deposited in the civil fees account so designated.
- C. The license shall state the following:

_____ is an itinerant vendor and has paid the sum of:
\$ _____ for _____ days to do business within the boundaries of
the Northern Cheyenne Reservation. This license is valid until:
_____, 19 __, _____ o'clock __.m.

- D. The license must be accompanied with a receipt and signed by

a bonded person of the Northern Cheyenne Police Department or Court.

E. Itinerant vendors offense is a Class B offense.

7-7-14. Littering

A. A person is guilty of littering if he:

1. Throws, dumps, places or deposits upon the highways, lands of another or any Tribal or public property or street, road, or other area not his own, without the consent of the owner or other lawful permission, any garbage debris, junk, carcasses, trash, refuse or other substances of any nature whatsoever which would mar the appearance or detract from the cleanliness of the area; or
2. Stores, keeps, or allows to accumulate any wrecked, junked, or unserviceable vehicles, appliances, or implements within the boundaries of a town, community or village, unless he has a permit from the Northern Cheyenne Tribal Council to maintain a junkyard.

B. Littering is a Class B offense.

7-7-15. Putting Refuse on Highway

- A. No person shall throw or deposit upon any highway any glass bottles, glass, nails, tacks, wire, cans, paper or any other substance likely to injure any person, animal or vehicle upon such a highway.
- B. Any person removing a wrecked or damaged vehicle from a highway on the reservation shall remove any glass or injurious substance dropped upon the highway from such vehicle.
- C. Conviction under this subsection is a Class C offense.

7-7-16. Failure to Heed Police Emergency Lights and Attempting to Elude.

- A. A person commits the offense of failure to heed police emergency lights if the operator does not stop for police officers in the performance of their duties.
- B. A person commits the offense of attempting to elude a police officer if the operator of a vehicle operates any vehicle in willful or wanton disregard for the safety of persons or property while fleeing or attempting to flee from or elude a police officer who is lawfully in pursuit.
- C. Conviction under this subsection is a Class C offense.

Chapter 8. OFFENSES AGAINST THE ADMINISTRATION OF GOVERNMENT

7-8-1. Bribery in Official Matters.

- A. A person is guilty of bribery in official matters if he offers, confers or agrees to confer upon another, or solicits, accepts or agrees to accept from another:
 - 1. Any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote or other exercise of discretion as a Tribal or governmental officer or employee, or as an official of a party or faction or as a voter;
 - 2. Any benefit as consideration for the recipient's decision, vote, recommendation or other exercise of official discretion in a judicial or administrative proceeding; or
 - 3. Any benefit as consideration for a violation of a known duty as a Tribal or governmental officer or employee or party official.
- B. It is not a defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office, lacked jurisdiction, or for any other reason.
- C. Bribery in official matters is a Class B offense.

7-8-2. Retaliation for Past Official Action.

- A. A person is guilty of retaliation for past official action if he harms any person by any unlawful act in retaliation for anything done lawfully by another person in his capacity as a public servant.
- B. Retaliation for past official action is a Class B offense.

7-8-3. Official Misconduct.

- A. A person is guilty of official misconduct if:
 - 1. Being a public servant, and with intent to benefit himself or another person or harm another person, he knowingly commits an unauthorized act which purports to be an act of his office, or knowingly refrains from performing a nondiscretionary duty imposed on him by law or clearly inherent in the nature of his office; or
 - 2. Being a public servant and knowing that official action is contemplated or in reliance on information which he has acquired by virtue of his office or from another public

servant, which information has not been made public, he:

- a. Acquires or divests himself of a valuable interest in any property, transaction, or enterprise which may be affected by such action or information; or
- b. Speculates or wagers on the basis of such action or information; or knowingly aids another to do any of the foregoing.

B. Official misconduct is a Class B offense.

7-8-4. Falsification in Official Matters.

A. Perjury:

1. A person is guilty of perjury if, in judicial proceedings in any Court of the Northern Cheyenne Reservation, he falsely swears or interprets, or makes a sworn statement or affidavit, knowing the same to be untrue.
2. Perjury is a Class A offense.

B. Tampering with Witnesses:

1. A person is guilty of tampering with witnesses if:
 - a. Believing that an official proceeding or investigation is pending or about to be instituted, he attempts to induce or otherwise cause a person to:
 - (1) Testify or inform falsely;
 - (2) Withhold any testimony, information, document or thing;
 - (3) Avoid legal process summoning him to testify or supply evidence; or
 - (4) Absent himself from any proceeding or investigation to which he has been legally summoned;
 - b. He harms another by an unlawful act in retaliation for anything done by another in his capacity as a witness or informant; or
 - c. He solicits, accepts or agrees to accept any benefit in consideration of his doing any of the things specified in this section.
2. Tampering with a witness is a Class A offense.

C. Tampering with Evidence:

1. A person is guilty of tampering with evidence if, believing that an official proceeding or investigation is pending or about to be instituted, he:
 - a. Alters, destroys, conceals or removes any record, document, or thing with purpose to impair its verity or availability in such proceeding or investigation; or
 - b. Makes, presents or uses any record, document, or thing knowing it to be false and with a purpose to mislead a public servant who is or may be engaged in such proceeding or investigation.
2. Tampering with evidence is a Class B offense.

D. Welfare Offense:

1. A person is guilty of a welfare offense if he:
 - a. Gives false information to another for the purpose of obtaining or retaining welfare benefits;
 - b. Knowingly fails to correct misinformation which enables him to obtain or retain welfare benefits;
 - c. Continues to accept and use for his own benefit or the benefit of another, welfare benefits to which he knows he is not entitled to;
 - d. Uses or expends money or commodities granted him as a welfare benefit in an improper manner or in a manner which does not proportionately benefit each of those persons intended to benefit by the grant; or
 - e. He knowingly uses a welfare benefit in a manner contrary to the regulations relating thereto.
2. Welfare offense is a Class B offense.

Chapter 9. DRUG AND ALCOHOL RELATED OFFENSES

7-9-1. Abuse of Psychotoxic Solvents.

- A. A person is guilty of abuse of psychotoxic solvents if:
 1. For the purpose of causing a condition of intoxication, inebriation, excitement, stupefaction, or for dulling of his brain or nervous system, he purposely:

- a. Smells or inhales the fumes of any psychotoxic chemical solvent; or
 - b. Possesses, purchases, or attempts to possess or purchase any psychotoxic chemical solvent for the purpose described in subsection (1) of this section; or
2. Knowingly or believing that the purchaser or another intends to use a psychotoxic chemical solvent in violation of this section, he sells or offers to sell any psychotoxic chemical solvent.
- B. This section shall not apply to the inhalation of anesthesia for medical or dental purposes.
- C. As used in this section, "psychotoxic chemical solvents" include any glue, cement, or other substance containing one or more of the following chemical compounds: acetone and acetate, benzene, butyl-alcohol, ethyl-alcohol, ethylene dichloride, isopropyl alcohol, methyl alcohol, methyl ethyl ether, petone, pentachlorophenol, petroleum ether, or other chemical substance capable of causing a condition of intoxication, inebriation, excitement, stupefaction, or the dulling of the brain or nervous system as a result of the inhalation of the fumes or vapors of such chemical substance. The statement or listing of the contents of a substance packaged in a container by the manufacturer or producer thereof shall be proof of the contents of such substance without further expert testimony if it reasonably appears that the substance in such container is the same substance placed therein by the manufacturer or producer.
- D. Abuse of psychotoxic chemical solvents is a Class C offense.

7-9-2. Drug Abuse.

- A. A person is guilty of drug abuse if he:
1. Possesses, sells, trades, transports, gives away or manufactures an article or substance which contains any quantity of a substance classified as belonging in Schedule I of the Federal Controlled Substances Act, except peyote in the Native American Church; or
 2. Sells, barter, plants, cultivates, produces, gives away, or possesses marijuana; or
 3. Violates any provision of the Federal Controlled Substance Act.

- B. "Marijuana" includes all parts of the plant *cannabis sativa* L., whether growing or not; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin; but shall not include the mature stalks of such plants, fiber produced from such stalks, oil or cake made from the seeds of such plant, or any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks, fiber, oil or cake except the resin extracted therefrom.
- C. Drug Abuse is a Class A offense.

7-9-3. Possession of Liquor.

- A. Offense. A person commits an offense pursuant to this section if he or she intentionally or knowingly possesses, or transports any beer, ale, wine, whiskey or any other beverage which produces alcoholic intoxication, and such alcoholic beverage is intended for his or her personal use.
- B. Rehabilitation. At the discretion of the court, any person found guilty of violating this section, and found to be addicted to alcohol, may be ordered to receive rehabilitative treatment.
- C. Possession of liquor is is a Class C offense.

7-9-4. Manufacture or Delivery of Liquor.

- A. Offense. A person commits an offense pursuant to this section if he or she intentionally or knowingly manufactures, delivers, or possesses, with intent to deliver, any beer, ale, wine, whiskey, or any other beverage which produces alcoholic intoxication.
- B. Deliver or delivery means the actual or constructive transfer of possession of any alcoholic beverage as described above, with or without consideration, whether or not there is an agency relationship.
- C. Presumption. The possession of 12 or more bottles of beverages with an alcohol content of 10% or greater, or the possession of 24 or more bottles or cans of beverages with an alcohol content of less than 10% shall give rise to the rebuttable presumption that the person possessed such quantity of alcoholic beverages intending to deliver the same.
- D. Manufacture or delivery of liquor is a Class A offense.

7-9-5. Exceptions.

Sections 7-9-3 and 7-9-4 do not apply to intoxicating liquor being transported through the Northern Cheyenne Jurisdiction

in unbroken packages or in containers with unbroken federal tax stamps.

Chapter 10. LIVESTOCK OFFENSES

7-10-1. Livestock Offenses.

- A. A person is guilty of a livestock offense if he commits any of the following offenses:
1. Knowingly or negligently permits his livestock to graze or trespass on the property or permit of another or of the Tribe itself without the permission to do so;
 2. Knowingly or negligently refuses to sell, dispose, or otherwise remove sick or otherwise infectious livestock from common grazing areas or areas where there is a substantial danger of infecting other livestock;
 3. Knowingly or negligently fails to treat or dispose of a sick animal where there is a substantial danger of infecting other livestock;
 4. Fails to dip, inoculate or otherwise treat livestock in the manner which the Northern Cheyenne Tribal Council or its designated representative shall direct;
 5. Makes a false report of livestock owned; or
 6. Purposely obstructs or interferes with a livestock roundup.
- B. Livestock found to be in violation of this section may be impounded at the time an arrest is made, and may be impounded without prior notice to the owner if a Court so orders, upon receipt of evidence that such animals are grazing upon the property or permit of another on the Reservation and that immediate action is necessary to protect such interests from harm. Impounded animals for trespass shall be assessed at \$1.00 per head for damages per day and at \$1.00 per head per day for forage consumed by said impounded animals. The charges are payable to the entity whose forage was consumed. Where animals are impounded with or without ownership known and are not claimed or the owner refuses to pay the impoundment and trespass assessments within ten (10) days of the impoundment, the Northern Cheyenne Court shall arrange for transportation to and sale of the animals at a public livestock market. The costs of the roundup, impoundment and sale will be immediately deducted and paid from the receipts of the sale of the animals. The owner of the animals who has refused to pay the charges against the animals will be delivered the balance remaining from the sale of the impounded animals

less costs and charges. All unbranded animals that are sold and the money taken in will be returned to the Tribal Council treasurer.

C. Livestock offenses are a Class A Offense.

7-10-2. Barrier Offense.

A. It shall be unlawful for any person to cut, move, alter or destroy a barrier, fence, boundary marker, gate or other divisional marker without prior consent of the owner. Any person violating this section will be required to pay and make restitution for all damages done the owner by way of the fence or barrier or marker being destroyed and may be fined and/or jailed as is herein provided.

B. Barrier offenses are Class B offenses.

7-10-3. Gate Offense.

A. A person is guilty of gate offense if he opens and does not close any previously closed gate which crosses any roadway.

B. Gate offense is a Class C offense.

7-10-4. Misbranding.

A. A person is to be charged with misbranding if he purposely, knowingly or negligently brands or alters any brand or mark on any livestock belonging to another person.

B. Misbranding is a Class A offense.

7-10-5. Buffalo and Elk Herd Offense.

A. A person is guilty of a Buffalo or Elk Herd offense if he unlawfully kills, harasses, disturbs, or chases buffalo or elk owned by the Northern Cheyenne Tribe for any purpose or for any reason not connected with official and proper Tribal Council sanctioned management and control.

B. Buffalo or Elk Herd offense is a Class A offense.

7-10-6. Hunting or Fishing by Using Artificial Light.

A. A person is guilty of hunting or fishing by using artificial light if he hunts, takes, pursues, shoots, kills or harasses any game animal or animals or game bird or birds or fish by the aid or use of artificial lights such as automobile lights, spotlights or any other type of lighting apparatus or device.

B. Hunting or fishing by using artificial light is a Class B offense.

Chapter 11. TRAFFIC OFFENSES

7-11-1. GENERAL PROVISIONS

7-11-1-1. Purpose.

The purpose of the Northern Cheyenne Traffic Code is to implement safeguards for persons living within and passing through the Northern Cheyenne Reservation while driving any motorized vehicle. The code will give authority and responsibility to the Northern Cheyenne Police Department and other law enforcement agencies recognized by the Northern Cheyenne Tribe and Reservation to enforce the Northern Cheyenne Traffic Code.

7-11-2-2. Definitions.

- 1) Motor vehicle shall mean every vehicle propelled by its own power and designed primarily to transport persons or property upon Federal, State and Tribal highways.
- 2) Tribe shall mean the Northern Cheyenne Tribe.
- 3) Motorcycle shall mean a motor vehicle having not more than three wheels in contact with the ground. The term does not include a tractor or a bicycle.
- 4) Bicycle shall mean every device propelled by human power having two tandem wheels upon which any person may ride and which shall not be considered a motorized vehicle.
- 5) Truck shall mean every motor vehicle designed, used or maintained primarily for the transportation of property.
- 6) Road tractor shall mean every motor vehicle designed and used for drawing other vehicles and not so constructed as to carry any thereon either independently or any part of the weight of a vehicle or load so drawn.
- 7) Pole trailer means every vehicle without power designed to be drawn by another vehicle and attached to the towing vehicle by means of a reach pole or by being boomed or otherwise secured to the towing vehicle.
- 8) Bus shall mean every motor vehicle designed for carrying more than 10 passengers and used for the transportation of persons.
- 9) School bus shall mean every motor vehicle owned by a public or governmental agency and operated for the transportation of children to or from school or privately owned and operated for compensation for the transportation of children to or from school.
- 10) Police vehicle shall mean any vehicle used in the service of the

Northern Cheyenne Police Department or any law enforcement agency.

- 11) Authorized emergency vehicle shall mean emergency service vehicles of the Northern Cheyenne Reservation or of the state, county or municipal agencies.
- 12) Highways shall mean the entire width between the boundary lines of every publicly-maintained way when any part thereof is open to the use of the public for the purpose of vehicular travel.
- 13) Street shall mean the entire width between the boundary lines of every publicly maintained way when any part thereof is open to the use of the public for purposes of vehicular travel.
- 14) Intersection shall mean the area embraced within the prolongation or connection of the lateral curb lines or if non-curbed then the lateral boundary lines of the roadways of two highways which join one another at or approximately at right angles or the area within which vehicles traveling upon different highways joining at any other angle may come in conflict. Where a highway includes two roadways thirty (30) feet or more apart, then crossing of each roadway of such divided highway by an intersecting highway shall be regarded as a separate intersection. In the event such intersecting highway also includes two roadways thirty (30) feet or more apart, then every crossing of two roadways of such highways shall be regarded as a separate intersection.
- 15) Chief of Police shall mean the Chief of Police for the Northern Cheyenne Police Department.
- 16) Police Officer shall mean every officer of the Northern Cheyenne Police Department or police officers authorized by the Northern Cheyenne Tribe to direct or regulate traffic or to make arrests for violations of traffic regulations.
- 17) Highway Patrolman shall mean every state officer authorized to direct or regulate traffic on state highways or to make arrests for violation of traffic violations on state highways that are so maintained by the state of Montana.
- 18) Local authorities shall mean the Northern Cheyenne Tribal Council which has the authority to enact laws relating to traffic under the constitution and laws of the Northern Cheyenne Tribe but not contrary to federal law.
- 19) Pedestrian shall mean every person or any person afoot.
- 20) Driver shall mean every person who drives or is in actual physical control of a vehicle.
- 21) Owner shall mean the person who holds the legal title to a vehicle.

- 22) Operator shall mean a person who is in actual physical control of a motor vehicle.
- 23) Traffic means pedestrians, ridden or herded animals, vehicles and other conveyances either singly or together while using any highways for purposes of travel.
- 24) Traffic-control signal means any device, whether manually, electrically or mechanically operated, by which traffic is alternately directed to stop and to proceed.
- 25) Official traffic control devices shall mean all signs, signals, markings and devices not inconsistent with this title, placed or erected by the authority of the Northern Cheyenne Tribal Council or official having jurisdiction, for the purposes of regulating, warning or guiding traffic.
- 26) Safety zone shall mean the area or space officially set apart within a roadway for the exclusive use of pedestrians and which is protected or is so marked or indicated by adequate signs as to be plainly visible at all time while set apart as a safety zone.
- 27) Stop means complete cessation from movement when required.
- 28) Right-of-way shall mean the privilege of the immediate use of the roadway.
- 29) Suspension shall mean that the driver's license and privilege to drive a motor vehicle on the public highways are temporarily withdrawn, but only during the period of such suspension.
- 30) Registration shall mean a registration certificate or certificates and registration plates issued under the laws of the State of Montana pertaining to the registration of motor vehicles.
- 31) Certificate of ownership shall mean the certificate issued by the division of motor vehicles of the State of Montana to the transferee upon a transfer of ownership of a motor vehicle.

7-11-2. POWERS OF LOCAL AUTHORITIES

7-11-2-1. Powers of Local Authorities to Regulate Traffic.

The local authorities have the following traffic regulation powers:

- 1) Regulating the standing or parking of vehicles.
- 2) Regulating the traffic by means of police officers or traffic-control devices.

- 3) Regulating or prohibiting processions or assemblages on the highways.
- 4) Designating particular highways as one-way highways and requiring that all vehicles thereon move in one specific direction.
- 5) Regulating the speed of vehicles in public parks.
- 6) Designating any highway as a through highway and requiring that all vehicles stop before entering or crossing the same, designating any intersection as a stop intersection and requiring all vehicles to stop at one or more entrances to such intersections.
- 7) Regulating the operation of bicycles and requiring the registration and licensing of same, including the requirement of a registration fee.
- 8) Regulating or prohibiting the turning of vehicles or specified types of vehicles at intersections.
- 9) Altering the speed limits not contrary to Federal law.
- 10) Regulating the driving of vehicles by any person who is an habitual user of or under the influence of any narcotic drug or who is under the influence of any other drug to a degree which renders him incapable of safely driving a vehicle within the limits of any town or community or highway within the boundaries of the Northern Cheyenne Reservation.
- 11) Regulating or prohibiting any person who is under the influence of intoxicating liquor from driving or being in actual physical control of any vehicle within the limits of any town or community or highway within the boundaries of the Northern Cheyenne Reservation.
- 12) Regulating or prohibiting the driving of vehicles by any person in willful or wanton disregard for the safety of persons or property within the limits of any town or community or highway within the boundaries of the Northern Cheyenne Reservation.
- 13) Enacting as ordinances any and all other provisions or laws regulating traffic, pedestrians, vehicles, and operators thereof, not in conflict with Federal regulations and to enforce the same within their jurisdiction.

7-11-3. **ENFORCEMENT BY THE NORTHERN CHEYENNE POLICE DEPARTMENT AND OTHERS AUTHORIZED BY THE NORTHERN CHEYENNE TRIBAL COUNCIL**

7-11-3-1. **Enforcement.**

The Northern Cheyenne Police Department shall enforce the Northern

Cheyenne Traffic Code. The Northern Cheyenne Tribal Council may also authorize other law enforcement agencies, at its discretion, enforcement of these ordinances.

7-11-3-2. Training of Police Officers.

The Northern Cheyenne Police Department shall provide such training as required to qualify those officers to competently perform their duties under this code and shall adopt such rules as required and necessary for qualification. The officers shall not make arrests until they have successfully completed such training as required by the Northern Cheyenne Police Department.

7-11-3-3. Official Attire Required for Making Arrests.

Qualified officers may make arrests throughout the Northern Cheyenne Reservation only when dressed in official uniform and displaying the official badge authorized by the Northern Cheyenne Police Department. Authorized officers may not carry firearms unless officially attired.

7-11-3-4. Identification Badge and Uniform

Officers of the Northern Cheyenne Police Department engaged in the enforcement of the civil code shall wear and prominently display an identification badge. The department may authorize the uniform dress for officers engaged in such enforcement.

7-11-3-5. Power to Inspect Vehicle Registration, Receipts and Other Documents.

Officers may, when officially dressed, make reasonable inspection of vehicle registration receipts and other documents required to be carried in or for a vehicle traveling on the public highways of Montana through the Northern Cheyenne Reservation and other highways on the Northern Cheyenne Reservation.

7-11-3-6. Cooperation with Other Agencies.

The Northern Cheyenne Police Department shall when at all possible cooperate with other law enforcement agencies.

7-11-3-7. Duty Upon Making an Arrest - Power to Fix and Accept Bail

Officers making an arrest, shall deliver to the offender a form of notice to appear, describing the nature of the offense, with instructions on the notice for the offender to appear before the Northern Cheyenne Court. The bonded officer may accept a deposit for appearance justifiable for the offense charged. The person arrested may be detained for a reasonable time for the purpose of issuing the notice. If the officer accepts bail, he shall give a signed receipt to the offender setting forth the amount received. The officer shall deliver the bail money to the Police Department for deposit into an appropriate account. The bail/bond

monies shall be counted after each officer shift for justification. After filing of the complaint, and appearance of the defendant, the Judge of the Court shall assume jurisdiction and may set further appearance bond.

7-11-4. REMOVAL AND SALE OF ABANDONED VEHICLES

7-11-4-1. Taking Vehicle into Custody.

- A. The following law enforcement agencies may take into custody any motor vehicle found abandoned for a period of forty-eight (48) hours or more on a highway within the Northern Cheyenne Reservation, or for a period of five (5) days or more on any town or community street on the Reservation or on private property or the Northern Cheyenne Tribal property:
 1. The Northern Cheyenne Police Department if the vehicle is upon the right-of-way of any public highway or Reservation maintained highway or roadway.
 2. Other law enforcement agencies recognized by the Northern Cheyenne Tribal Council.
- B. The Northern Cheyenne Police Department or other law enforcement agency recognized by the Tribal Council may use its own equipment or personnel approved by the Chief of Police and facilities for the removal and preservation of the vehicle, or may hire other personnel, equipment and facilities for those purposes. The cost is to be made up by the registered owner before release of such vehicle or the vehicle may be sold at a sale so designated by the Chief of Police.
- C. At the request of the owner in lawful possession or control of the private property, the Chief of Police may remove the vehicle and hold it. The vehicle is not to be released until storage costs are paid at the rate of \$2.00 per day plus any other charges against it.

7-11-4-2. Notice to Owner.

- A. The Chief of Police shall secure a complete description of the vehicle to include: year, make, model, serial number and license number if available, any costs incurred to that date in the removal, preservation and the custody of the vehicle and any available information concerning its ownership.
- B. The Chief of Police shall make reasonable efforts to ascertain the name and address of the owner and lienholder, if any, or person entitled to possession, to notify them of the location of the vehicle.
- C. If the vehicle is registered in the office of the division of

motor vehicles of the State of Montana, notice shall be deemed given when a registered or certified letter addressed to the registered owner of the vehicle and lienholder, if any, at the latest address shown by the records in the office of the division of motor vehicles of the State of Montana, return receipt requested and postage prepaid thereon, is mailed at least thirty (30) days before the vehicle is sold as hereinafter provided.

- D. If the identity of the last registered owner cannot be determined, or if the registration contains no address for the owner, or if it is impossible to determine with reasonable certainty the identity and addresses of all lienholders, notice by one publication in one newspaper of general circulation in the county where the motor vehicle was abandoned shall be sufficient to meet all requirements prescribed for notice by certified or registered mail.

7-11-4-3. Reclaiming Vehicle.

The owner, lienholder or person entitled to possession of the vehicle may reclaim it at any time after it is taken into custody and before it is sold. He shall present to the Chief of Police satisfactory proof of ownership or right to possession, and pay the costs and expenses incurred in the removal, preservation and custody of the vehicle. He shall not be required to pay storage charges for a period longer than ninety (90) days.

7-11-4-4. Sale of Vehicle not Reclaimed.

- A. If a vehicle is not reclaimed within 30 days after notification by registered or certified mail or prescribed publication, the Chief of Police shall sell it at public auction.
- B. After any vehicle has been sold, the former owner or person entitled to possession has no further claim, right, title or interest in or to the vehicle.

7-11-4-5. Certificate of Sale.

- A. When any vehicle has been sold, the Chief of Police at the time of the payment of the purchase price shall execute a certificate of sale in duplicate. He shall deliver the original certificate to the purchaser and retain the copy.
- B. The certificate shall contain the name and address of the purchaser, the date of the sale, the consideration paid, and a stipulation that no warranty is made as to the condition or title of the vehicle.

7-11-4-6. Certificate of Ownership.

It shall be up to the purchaser of the vehicle so bought to file with the

Division of Motor Vehicles of the State of Montana for issuance of a certificate of ownership upon presentation by the purchaser of the certificate of sale and payment of fees required by the Division of Motor Vehicles, State of Montana.

7-11-4-7. Transmitting Return of Sale and Balance of Proceeds.

- A. When any vehicle is sold as provided in 10-4-4 the Chief of Police shall transmit to the Northern Cheyenne Tribal Council Treasurer a return of sale setting forth a description of the vehicle, the purchase price, the name and address of the purchaser, the costs incurred in the sale, and the costs and expenses incurred in the removal, preservation and custody of the vehicle.
- B. With the return of the sale, the Chief of Police shall transmit to the Northern Cheyenne Tribal Council Treasurer the balance of the proceeds of the sale after deducting the costs of the custody of the vehicle.
- C. Upon receipt of the return of sale and such balance the Northern Cheyenne Tribal Council Treasurer shall file the return in his office and deposit the balance in the police budget.

7-11-4-8. Penalty.

Any person or persons violating the provisions of this section shall be guilty of a misdemeanor and upon conviction shall be punished by a fine of not less than \$25.00 or more than \$300.00 or by imprisonment for not less than 5 days or more than 90 days or by both fine and imprisonment.

7-11-5. JURISDICTION OF MINORS

7-11-5-1. Unlawful Operation by Minor - Jurisdiction of Court - Penalties.

- A. The Northern Cheyenne Court shall have original jurisdiction in all proceedings concerning the unlawful operation of motor vehicles by children under the age of 18 years.
- B. Whenever, after a hearing before the court, it shall be found that a child under the age of 18 years has unlawfully operated a motor vehicle, the court may:
 1. Impose a fine, not to exceed \$50.00 provided such child shall not be imprisoned;
 2. Revoke the driver's license of such child, or suspend the same for such time as may be fixed by the court; and

3. Order any motor vehicle owned or operated by such child to be impounded by the probation officer for such time, not exceeding 60 days, as shall be fixed by the court. However, if the court shall find that the operation of such motor vehicle was without the consent of the owner, then such vehicle shall not be impounded.

C. Upon nonpayment of any fine herein provided for, the court may order that any motor vehicle owned by said child or operated by said child shall be impounded until the fine shall be paid, or may order that the driver's license of such child shall be taken up and held by the probation officer until payment of said fine, or may cause both said motor vehicle and said driver's license to be taken up and impounded until such fine shall be paid; but no child shall be committed to or held in any detention facility or jail by reason of nonpayment of such fine.

7-11-5-2. Summons - Issuing to Minor

Whenever any child under the age of 18 years of age unlawfully operates a motor vehicle in the presence of a police officer, such officer may deliver to said child a form of summons describing the nature of the offense, with instructions thereon to appear before the Northern Cheyenne Court and the court shall be informed thereof by the delivery of a copy of said summons to the probation officer, who shall in turn deliver the same to the Judge.

7-11-5-3. Penalties.

Whenever the court shall be informed that a child has unlawfully operated a motor vehicle said child shall be required to appear before the Court and the Court shall, after hearing and investigation, take action as provided in this Code, or may dismiss the proceeding if it be found and determined that it is for the best interest of the child to do so.

7-11-6. DISPOSITION OF FINES

7-11-6-1. Northern Cheyenne Police Department-Disposition of Fines and Forfeitures.

A. All fines and forfeitures collected in the Court from persons apprehended or arrested by police officers for violations of the laws and regulations relating to the use of State and Tribal highways on the Northern Cheyenne Reservation and the operation of vehicles thereon must be deposited in the appropriate account. A separate account shall be established for traffic fines and forfeitures.

B. At the time of payment of any such fine or forfeitures, there shall be filed with the Clerk of the Court and the Northern

Cheyenne Tribal Council Treasurer, a complete statement showing the total of the fines and forfeitures received or incurred, which statement shall give the title of the Court and cause and be subscribed to by the person or officer making the payments.

- C. Traffic fines and forfeitures shall be used in the purchase of docket books, printing of citation books for officers, receipt books and the maintenance of police vehicles (gas, vehicle repairs, tune-ups, oil change).

7-11-6-2. Disposition of Traffic Fines Collected From Juveniles.

All fines collected by the Court from person under the age of eighteen (18) years of age as a result of traffic summonses for unlawful operation of motor vehicles issued by the Police Department shall be deposited in a separate account.

- A. Juvenile fines collected shall be used in part for mileage for the prosecutors and probation officers.
- B. Juvenile fines collected shall be used for printing for the police department and the Court.

7-11-7. REGISTRATION

7-11-7-1. Registration - License Plate Required - Display.

- A. Except as otherwise provided herein, no person shall operate a motor vehicle upon the public highways and Reservation highways unless such vehicle is properly registered in conformance with the laws of the State of Montana and has the proper number plates conspicuously displayed, one on the front and one on the rear of the vehicle, each securely fastened to prevent it from swinging and unobstructed from plain view, except trailers, semi-trailers, and motorcycles shall have but one number plate conspicuously displayed on the rear.
- B. It is unlawful to use license plates issued to one vehicle on any other vehicle, trailer, or semi-trailer unless legally transferred as provided by statute by the State of Montana, or to repaint old license plates to resemble current license plates.
- C. Any person violating these provisions may be fined not to exceed \$30.00.

7-11-8. LICENSING PROVISIONS

7-11-8-1. Operators and Chauffeurs to Be Licensed

- A. All persons residing within the Northern Cheyenne Reservation

must either possess an operator's or chauffeur's license to drive any motorized vehicle except farm machinery. The license must be a Montana operator's or chauffeur's license.

- B. No person shall drive a motor vehicle as a chauffeur unless he holds a valid chauffeur's license.
- C. A person driving motorcycles (street bike) must have his operator's or chauffeur's license so marked in conformance with the State of Montana.

7-11-8-2. Exemptions

- A. A person who has completed and passed a drivers' education course approved by the Division of Motor Vehicles, State of Montana and the superintendent of public instruction, State of Montana unless under the age of sixteen (16) years. The Northern Cheyenne Police Department shall issue a special permit to persons under the age of sixteen (16) years. The permit shall state that the person on the permit has successfully completed and passed a driver's education course as stated above. The permit is to be counter-signed by the Chief of Police and Judge from the Northern Cheyenne Court.

7-11-8-3. Authority of the Northern Cheyenne Tribal Court to Suspend License or Driving Privilege.

The Northern Cheyenne Court has the authority to suspend or cancel the license or driving privileges of any person upon a conviction of:

- A. Driving while under the influence of alcohol;
- B. Reckless driving; or
- C. Vehicular homicide.

7-11-9. MANDATORY LIABILITY PROTECTION

7-11-9-1. Required Motor Vehicle Insurance.

Every owner of a motor vehicle which is registered and operated on the Northern Cheyenne Reservation in the State of Montana by the owner or with his permission must be insured against loss resulting from liability imposed by law for bodily injury or death or damage to property suffered by any person caused by maintenance or use of a motor vehicle, as defined in Montana Code Annotated 61-1-102, in an amount not less than required by Montana Code Annotated 61-6-103, or provide a certificate of self-insurance issued in accordance with Montana Code Annotated 61-6-143.

7-11-9-2. Penalties.

It is unlawful for any person to operate a motor vehicle upon highways, streets, roadways, on the Northern Cheyenne Reservation without a valid policy of liability insurance in effect in an amount not less than that provided in Montana Code Annotated 61-6-103. A violation of 10-9-1 and 10-9-2 is punishable by a fine of \$50.00.

7-11-10. ACCIDENTS

7-11-10-1. Accident Involving Damage to Vehicle.

- A. The driver of any vehicle involved in an accident resulting only in damage to a vehicle which is driven or attended by any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible and shall forthwith return to and in every event shall remain at the scene of such accident. Every stop shall be made without obstructing traffic more than is necessary.
- B. Any person failing to stop or comply with said requirements under such circumstances shall be guilty of a misdemeanor and shall be punished by a fine upon conviction of \$20.00 dollars.

7-11-10-2. Duty to Give Information and Render Aid.

- A. The driver of any vehicle involved in an accident resulting in injury to or death of any person or damage to any vehicle which is driven or attended by any person shall give his name, address and the registration number of the vehicle he is driving and upon request and if available exhibit his operator's or chauffeur's license to the person struck or the driver or occupant of or person attending any vehicle collided with and shall render to any person injured in such accident reasonable assistance, including the carrying, or the making of arrangements for the carrying of such person to a physician, surgeon or hospital for medical or surgical treatment if it is apparent that such treatment is necessary if such carrying is requested by the injured person.
- B. Any person failing to stop or comply with said requirements under such circumstances may be fined \$20.00 dollars.

7-11-10-3. Accidents Involving Death or Personal Injuries.

- A. The driver of any vehicle involved in an accident resulting in injury to or death of any person shall immediately stop such vehicle at the scene of such accident or as close thereto as possible, but shall then forthwith return to and in every event shall remain at the scene of the accident until he has fulfilled the requirements above. Every such stop shall be made without

obstructing traffic more than is necessary.

- B. Any person failing to stop or to comply with said requirements under such circumstances may be imprisoned for not less than 30 days or more than 6 months or by a fine of not less than \$100.00 or more than \$500.00 or both.

7-11-10-4. Accident Reports to the Police.

- A. The persons involved in an accident shall report such accident or accidents to the Northern Cheyenne Police or other law enforcement agencies having such jurisdiction on the Northern Cheyenne Reservation.
- B. A person failing to report as required above may be fined in an amount up to \$50.00 dollars or imprisoned for a period not to exceed ninety (90) days or both.

7-11-10-5. Leaving the Scene of an Accident.

Any person involved in an accident or who witnessed an accident and who leaves such accident without reporting the said accident to the police may be fined not less than \$300.00 or imprisoned for a period of not less than ninety (90) days or both.

7-11-11. ENFORCEMENT - PENALTIES

7-11-11-1. Charging Violations.

In every charge of a violation of any speed regulation the complaint and the summons or notice to appear shall specify the speed at which the defendant is alleged to have driven and the speed applicable within the district or at the location.

7-11-11-2. Use of Radar - Evidence Admissible.

The speed of any motor vehicle may be measured by the use of radio microwaves or other electrical device. The results of such measurements shall be accepted as evidence of the speed of such motor vehicle in tribal court or other legal proceedings where the speed of the motor vehicle is at issue.

7-11-11-3. Arrest Without a Warrant in Radar Cases.

- A. The driver of any such motor vehicle may be arrested without a warrant under this section provided the arresting officer is in uniform or displays his badge of authority and has either:
 - 1. Observed the recording of the speed of the vehicle by radio microwaves or other electrical device; or

2. Received, from the officer who has observed the speed of the vehicle recorded by the radio microwaves or other electrical device, a radio message giving the license number or other sufficient identification of the vehicle and the recorded speed, dispatched immediately after the speed of the vehicle was recorded.

B. The arrest without warrant of any such driver must be made immediately after such observation or radio message and as a result of uninterrupted pursuit.

7-11-11-4. Erection of Signs.

A. No operator of a motor vehicle may be arrested under speeding regulations unless signs have been placed at a conspicuous place upon a highway or street or townsite or community with the boundaries of the Northern Cheyenne Reservation.

B. The Northern Cheyenne Police Department shall erect and maintain appropriate signs giving such notice of such use.

7-11-11-5. Officers or Highway Patrolmen Authorized to Remove Illegally Stopped Vehicles.

Whenever any police officer or highway patrolman finds a vehicle standing upon a highway in violation of any of the traffic laws of the Northern Cheyenne Tribal Council, such officer or highway patrolman is hereby authorized to move such vehicle or require the driver or other person in charge of the vehicle to move the same to a position off the paved or main-traveled part of such highway.

7-11-11-6. Injury to or Removal of Sign Marker, a Misdemeanor-Penalty.

A. No person shall, without lawful authority, attempt to or in fact alter, deface, injure, knock down or remove any official traffic-control device or signal or any inscription, shield or signals thereon or any part thereof.

B. This subsection is a Class C offense.

7-11-11-7. Speeding.

A. Any person who purposely, or negligently drives any car, truck or pickup within any town or village at a speed greater than 25 m.p.h., or who drives at a speed in excess of the speed limit posted at any particular location, or who drives upon any public roadway or highway at a speed greater than 65 m.p.h. shall be prosecuted for speeding. The Police shall post all needed speed limit signs. Notice that radar is being used shall be posted where appropriate.

B. Speeding is a Class C offense.

7-11-11-8. Driving While Intoxicated.

A. A person is guilty of driving while intoxicated offense if he:

1. Is under the influence of intoxicating liquor, psychotoxic solvents or drugs while driving any car, truck, pickup, motorcycle or any motorized vehicle or in actual physical control of a vehicle upon the highways and roads that is parked but the engine is still running or involved in a vehicle accident.

B. Driving while intoxicated offense is a Class C offense for the 1st offense; a Class B offense for the 2nd offense; and the 3rd offense or more is a Class A offense.

7-11-11-9. Reckless Driving.

A. A person is guilty of a reckless driving offense if he:

1. Drives any motorized vehicle in a knowing, willful or wanton disregard for his safety or the safety of others or property; or

B. Reckless driving is a Class B offense.

7-11-11-10. Failure to Yield to an Emergency Vehicle.

A. Upon the immediate approach of an authorized emergency vehicle making an audible or visual signal, the driver of every other vehicle shall immediately yield the right-of-way and shall immediately drive to a position parallel to and as close as possible to the right-hand edge or curb of the highway or roadway clear of any intersection and shall stop and remain in such position until the authorized emergency vehicle has passed, except when otherwise directed by a Northern Cheyenne Police Officer. For the purposes of this subsection, the term "authorized emergency vehicle" shall mean vehicles of any fire department, the Northern Cheyenne Police Department and such ambulances and other emergency vehicle designated or authorized as such.

B. All persons in operational control of a motor vehicle upon a highway or roadway shall comply with any lawful order of a Northern Cheyenne Police Officer to bring his motor vehicle to a stop, to drive to the edge or curb of the highway or roadway, or to otherwise alter or control the movement or position of his motor vehicle.

C. Any person convicted of willfully failing or refusing to comply

with any provision of this ordinance shall be guilty of a Class B offense.

7-11-11-11. Passing School Buses.

Any motorized vehicle which passes any school bus which is stopped and has its warning lights flashing and is either loading or unloading school children shall be impounded by the Police under the authority of this Ordinance and not released to its owner until such owner pays all towing charges and a fine of \$50.00.

If any motorized vehicle is involved a second time in passing a stopped bus, the owner of such vehicle shall not regain possession of his vehicle until all towing and storage costs are totally paid and a fine of \$200.00 is paid.

A third violation of this Ordinance by a motorized vehicle shall necessitate all storage and towing charges plus a \$500.00 fine.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:
Law Enforcement

Mr. Robert Bailey
President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

JAN 22 1988

Dear Mr. Bailey:

Attached for your permanent records is the original of Ordinance No. 11 (88) enacted by the Northern Cheyenne Tribal Council on January 4, 1988 and received in this office on January 14, 1988.

Ordinance No. 11 (88) pertains to the re-enactment of the Intoxication Ordinance and shall become a part of the Drug and Alcohol Related Offense within Title VII.

Upon my review, I approve Ordinance No. 11 (88) as written and enacted under authority of Article IV, Section (1) of the Northern Cheyenne Tribal Constitution and By-Laws.

We have retained sufficient copies for our files and submission to ^{Billings} Billings Area Office for review in accordance with your Tribal Constitution and By-Laws.

Sincerely,

Sharon A. Lamber-Land



Superintendent

Enclosure

DATE: JAN 29 1988

REPLY TO

ATTN OF: Tribal Government Services, Code 102

SUBJECT: Northern Cheyenne Commitment Ordinance No. 11 (88)

TO: Assistant Area Director, Programs
Attention: Branch of Social Services
Branch of Law Enforcement

FROM: Tribal Government Services

Attached is a copy of the above subject ordinance with the January 22, 1988, memorandum from the Superintendent, Northern Cheyenne Agency. The Superintendent approved the ordinance on January 22, 1988.

The Superintendent took action on the ordinance pursuant to the review provision of the Northern Cheyenne Tribal Constitution. Therefore, pursuant to that same review provision, we have 90 days from the date of enactment (January 4, 1988) to review the ordinance and to rescind said ordinance if we determine such action necessary.

A copy of the ordinance is being provided to the Billings Field Solicitor for his information at this time. If you determine that a formal legal review is needed, a memorandum to that effect should be initiated from your office to the Field Solicitor.

Attachment

cc: Billings Field Solicitor, With Ordinance
Superintendent, Northern Cheyenne Agency

70 10 11 1988



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:
LAW Enforcement

JUN 12 1988

Mr. Robert Bailey
President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Bailey:

Attached for your permanent records is the original of Ordinance No. 12(88) enacted by the Northern Cheyenne Tribal Council on January 4, 1988 and received in this office on January 14, 1988.

Ordinance No. 12 (88) pertains to the amendment of the Traffic Section of Title VII - Offenses: 7-11-7-1, 7-11-8-1, and 7-11-9-1 whereas, a grace period of enforcement of these offenses be granted until June 1, 1988. The enforcement of these violations will once again commence at 12:00 midnight on June 1, 1988.

The purpose of the grace period is to afford a reasonable period of time for all persons to be in compliance with these ordinances at the expiration of the grace period.

Upon my review, I approve Ordinance No. 12 (88) as written and enacted under authority of Article IV, Section (1) of the Northern Cheyenne Tribal Constitution and By-Laws.

We have retained sufficient copies for our files and submission to Billings Area Office for review in accordance with your Tribal Constitution and By-Laws.

Sincerely,



Superintendent

Enclosure

DATE: JAN 23 1988

REPLY TO
ATTN OF: Tribal Government Services, Code 102

SUBJECT: Northern Cheyenne Consultant Ordinance No. 12 (88)

TO: Assistant Area Director, Programs
Attention: Branch of Law Enforcement

FROM: Tribal Government Services

Attached is a copy of the above subject ordinance with the January 22, 1988, letter from the Superintendent, Northern Cheyenne Agency. The Superintendent approved the ordinance on January 22, 1988

The Superintendent took action on the ordinance pursuant to the review provision of the Northern Cheyenne Tribal Constitution. Therefore, pursuant to that same review provision, we have 90 days from the date of enactment (January 4, 1988) to review the ordinance and to rescind said ordinance if we determine such action necessary.

A copy of the ordinance is being provided to the Billings Field Solicitor for his information at this time. If you determine that a formal legal review is needed, a memorandum to that effect should be initiated from your office to the Field Solicitor.

Attachment

cc: Billings Field Solicitor, With Ordinance
Superintendent, Northern Cheyenne Agency

7 8 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE INDIAN RESERVATION
LAME DEER, MONTANA

ORDINANCE NO.12(88)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL AMENDING THE TRAFFIC SECTION OF TITLE VII - OFFENSES - BY POSTPONING THE EFFECTIVE DATE OF ENFORCEMENT OF ORDINANCE 7-11-7-1, 7-11-8-1, AND 7-11-9-1 UNTIL JUNE 1, 1988.

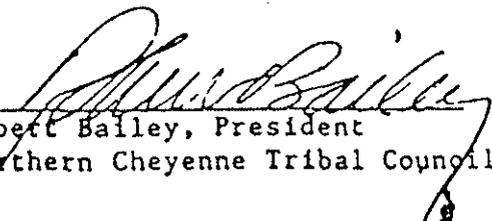
WHEREAS, on August 6, 1987, The Bureau of Indian Affairs Superintendent approved Ordinance 26 (87) and the Northern Cheyenne Reservation had a recodified set of laws, and

WHEREAS, the section written The Traffic Offenses that involve a car having to have a license plate on the car (7-11-7-1), all drivers having to have a license(7-11-8-1), and all operators having liability insurance before they drive (7-11-9-1) are causing some hardship on the citizen's of the Northern Cheyenne Reservation, and

WHEREAS, to give everyone time to get their vehicles licensed, to get licenses themselves, and to get liability insurance the Tribal Council feels the enforcement of the above 3 Ordinance's needs to be postponed.

SO BE IT ORDAINED by the Tribal Council that the enforcement by the Northern Cheyenne Police of Ordinance 7-11-7-1, 7-11-8-1, and 7-11-9-1 of Title VII- Offenses- are to cease upon approval of this Ordinance by the Bureau of Indian Affairs and will commence again on June 1, 1988.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council with 5 votes for passage and adoption and 4 votes against passage and adoption with 1 abstention on this 4th day of January, 1988.

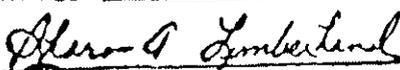

Robert Bailey, President
Northern Cheyenne Tribal Council

ATTEST:


RoGene Not Afraid, Secretary
Northern Cheyenne Tribal Council

APPROVED

JAN 11 1988


SUPERINTENDENT



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:
Law Enforcement

Mr. Robert Bailey
President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

JAN 22 1988

Dear Mr. Bailey:

Attached for your permanent records is the original of Ordinance No. 13(88) enacted by the Northern Cheyenne Tribal Council on January 4, 1988 and received in this office on January 14, 1988.

Ordinance No. 13(88) pertains to the establishment and adoption of the Lewd or Lascivious Acts Against Minors Ordinance. This crime occasionally occurs on the Northern Cheyenne Reservation but is seldom prosecuted. Violation of this ordinance will offer prosecution and a possible conviction of said crimes.

Upon my review, I approve this highly commendable Ordinance No. 13(88) as written and enacted under authority of Article IV, Section (1) of the Northern Cheyenne Tribal Constitution and By-Laws.

We have retained sufficient copies for our files and submission to Billings Area Office for review in accordance with your Tribal Constitution and By-Laws.

Sincerely,

 Superintendent

Enclosure

DATE:

PLY TO
FROM: Tribal Government Services, Code 102
SUBJECT: Northern Cheyenne Ordinance No. 13 (88)

TO: Assistant Area Director, Progresses
Attention: Branch of Law Enforcement
Branch of Social Services

FROM: Tribal Government Services

Attached is a copy of the above subject ordinance with the January 22, 1988, letter from the Superintendent, Northern Cheyenne Agency. The Superintendent approved the ordinance on January 22, 1988

The Superintendent took action on the ordinance pursuant to the review provision of the Northern Cheyenne Tribal Constitution. Therefore, pursuant to that same review provision, we have 90 days from the date of enactment (January 4, 1988) to review the ordinance and to rescind said ordinance if we determine such action necessary.

A copy of the ordinance is being provided to the Billings Field Solicitor for his information at this time. If you determine that a formal legal review is needed, a memorandum to that effect should be initiated from your office to the Field Solicitor.

Attachment

cc: Billings Field Solicitor, With Ordinance
Superintendent, Northern Cheyenne Agency

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 13 (88)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL ADDING THE CRIME OF LEWD OF LASCIVIOUS ACTS AGAINST MINORS TO TITLE VII OF THE OFFENSE CODE.

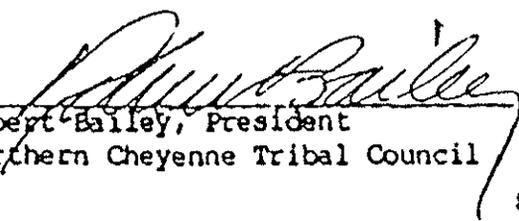
WHEREAS, the Tribal Council feels the following ordinance may offer a prosecution and conviction of a crime which occasionally occurs on the Northern Cheyenne Reservation but is seldom prosecuted and therefore should be enacted by the Tribal Council at this time.

SO BE IT ORDAINED by the Northern Cheyenne Tribal Council that the following ordinance, the Lewd or Lascivious Acts Against minors ordinance, is hereby adopted by the Tribal Council. It shall be a part of Offenses Against the Person in Title VII and shall be numbered 7-4-10. The ordinance is as follows:

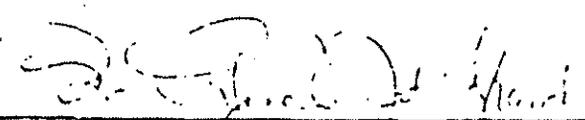
LEWD OR LASCIVIOUS ACTS AGAINST MINORS

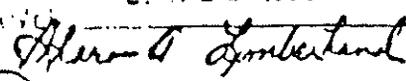
- A. A person who purposely, knowingly, or negligently commits any sodomy, oral copulation, or any other lewd, wanton, or lascivious act on any part of the body of any other person, under 18 years of age, with the intent of arousing to, or gratifying the passions of either party shall be charged with a violation of this ordinance.
- B. Lewd or lascivious acts against minors is a Class A Offense.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 11 votes for passage and adoption and 0 votes against passage and adoption with 1 abstention on this 4th day of January, 1988.


Robert Bailey, President
Northern Cheyenne Tribal Council

ATTEST:


RoGene Not Afraid, Secretary
Northern Cheyenne Tribal Council

JAN 10 1988
Approved: 
SUPERINTENDENT



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:
Law Enforcement

JAN 22 1988

Mr. Robert Bailey
President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Bailey:

Attached for your permanent records is the original of Ordinance No. 14(88) enacted by the Northern Cheyenne Tribal Council on January 4, 1988 and received in this office on January 14, 1988.

Ordinance No. 14(88) pertains to the "Elderly Exploitation or Neglect" for the protection of the Elderly Citizens from physical or mental "abuse", "exploitation" and "neglect" of person(s) who are at least sixty (60) years of age.

Upon my review, I approve this highly commendable Ordinance No. 14(88) as written and enacted under authority of Article IV, Section (1) of the Northern Cheyenne Tribal Constitution and By-Laws.

We have retained sufficient copies for our files and submission to the Billings Area Office for review in accordance with your Tribal Constitution and By-Laws.

Sincerely,



Superintendent

Enclosure

DATE:

JUN 29 1988

REPLY TO

ATTN OF: Tribal Government Services, Code 102

SUBJECT: Northern Cheyenne Ordinance No. 14 (88)

TO: Assistant Area Director, Programs
Attention: Branch of Law Enforcement
Branch of Social Services

FROM: Tribal Government Services

Attached is a copy of the above subject ordinance with the January 22, 1988, letter from the Superintendent, Northern Cheyenne Agency. The Superintendent approved the ordinance on January 22, 1988

The Superintendent took action on the ordinance pursuant to the review provision of the Northern Cheyenne Tribal Constitution. Therefore, pursuant to that same review provision, we have 90 days from the date of enactment (January 4, 1988) to review the ordinance and to rescind said ordinance if we determine such action necessary.

A copy of the ordinance is being provided to the Billings Field Solicitor for his information at this time. If you determine that a formal legal review is needed, a memorandum to that effect should be initiated from your office to the Field Solicitor.

Attachment

cc: Billings Field Solicitor, With Ordinance
Superintendent, Northern Cheyenne Agency

NORTHERN CHEYENNE INDIAN RESERVATION

LAME DEER, MONTANA

ORDINANCE NO. 14(88)

ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL ADDING THE CRIME ELDERLY EXPLOITATION OR NEGLECT TO TITLE VII OF THE OFFENSES CODE.

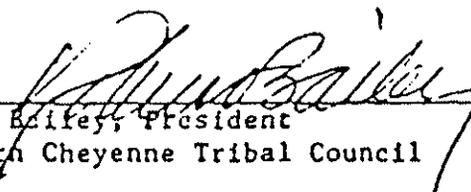
WHEREAS, the Tribal Council has studied the following ordinance which has been suggested to help stem some of the elderly abuse problems that the Northern Cheyenne Reservation Court Systems faces daily.

SO BE IT ORDAINED by the Northern Cheyenne Tribal Council that the following ordinance, the elderly exploitation or neglect ordinance, is hereby adopted by the Tribal Council. It shall be a part of Offenses Against The Family in Title VII and shall be numbered 7-5-7. The ordinance is as follows:

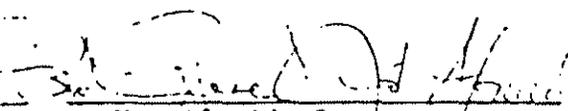
ELDERLY EXPLOITATION OR NEGLECT

- A. A person who purposely, knowingly, or negligently exploits or neglects any person who is at least 60 years of age shall be prosecuted for a violation of this Ordinance.
- B. Elderly Exploitation or neglect is a Class B Offense.
- B. Definition:
 - (1) "Exploitation" means the use of a person at least 60 years of age, or his money, or his property for the advantage of another by means of duress, menace, fraud, or undue behavior.
 - (2) "Neglect" means the failure of a guardian, employee of any public facility, or any other person legally responsible for the welfare of a person at least 60 years of age, by failing to provide food, shelter, clothing, or services necessary to maintain the health of the person who is 60 years of age or older.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 8 votes for passage and adoption and 0 votes against passage and adoption on this 4th day of January, 1988.


 Robert Bailey, President
 Northern Cheyenne Tribal Council

ATTEST:


 Patricia Not Afraid, Secretary
 Northern Cheyenne Tribal Council

APPROVED: JAN 22 1988

 SUPERINTENDENT



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:

Law Enforcement

JAN 22 1988

Mr. Robert Bailey
President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Bailey:

Attached for your permanent records is the original of Ordinance No. 15(88) enacted by the Northern Cheyenne Tribal Council on January 4, 1988 and received in this office on January 14, 1988.

Ordinance No. 15 (88) pertains to the "Domestic Violence Ordinance". The passage of this ordinance will enable the investigating and/or responding Police Officers to become the prosecuting witness in many of these domestic violence crimes. This will hopefully minimize exposure to the victim.

Upon my review, I approve Ordinance No. 15(88) as written and enacted under authority of Article IV, Section (1) of the Northern Cheyenne Tribal Constitution and By-Laws.

We have retained sufficient copies for our files and submission to Billings Area Office for review in accordance with your Tribal Constitution and By-Laws.

Sincerely,



Superintendent

Enclosure

DATE: JAN 29 1989

REPLY TO
ATTN OF: Tribal Government Services, Code 102

SUBJECT: Northern Cheyenne Ordinance No. 15 (88)

TO: Assistant Area Director, Programs
Attention: Branch of Law Enforcement
Branch of Social Services

FROM: Tribal Government Services

Attached is a copy of the above subject ordinance with the January 22, 1988, letter from the Superintendent, Northern Cheyenne Agency. The Superintendent approved the ordinance on January 22, 1988.

The Superintendent took action on the ordinance pursuant to the review provision of the Northern Cheyenne Tribal Constitution. Therefore, pursuant to that same review provision, we have 90 days from the date of enactment (January 4, 1988) to review the ordinance and to rescind said ordinance if we determine such action necessary.

A copy of the ordinance is being provided to the Billings Field Solicitor for his information at this time. If you determine that a formal legal review is needed, a memorandum to that effect should be initiated from your office to the Field Solicitor.

Attachment

cc: Billings Field Solicitor, With Ordinance
Superintendent, Northern Cheyenne Agency

NORTHERN CHEYENNE RESERVATION

LAME DEER, MONTANA

ORDINANCE NO. 15(88)

ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL ADDING THE CRIME OF DOMESTIC VIOLENCE TO TITLE VII OF THE OFFENSES CODE.

WHEREAS, the Tribal Council believes the following ordinance may produce more successful prosecutions against the growing crime of domestic violence by allowing police officers themselves to become the prosecuting witness in many of these domestic violence crimes, and

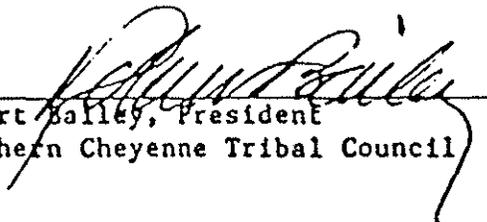
WHEREAS, the community has requested that the Tribal Council enact a domestic violence ordinance and the Tribal Council believes the following ordinance will meet our need.

BE IT ORDAINED by the Northern Cheyenne Tribal Council that the following ordinance, the domestic violence ordinance, is hereby adopted by the Tribal Council. It shall be a part of offenses against the family in Title VII and shall be numbered 7-5-8. The Ordinance is as follows:

DOMESTIC VIOLENCE

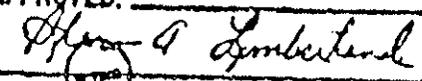
- A. A person shall be prosecuted for a violation of this Ordinance if they commit a battery upon their spouse, former spouse, a person with whom they are or were actually residing, or with whom they have had a child in common. The complaining witness for a domestic violence prosecution can be either the battered person or a Northern Cheyenne Police Officer, if the police officer has probable cause and the arrest is made within four (4) hours of the time the battery took place. Any person charged with the offense of domestic violence shall not, if arrested, be admitted to bail sooner than twelve (12) hours after arrest.
- B. Domestic violence is a Class B Offense. The sentencing Judge may also sentence the convicted offender to counseling or to a treatment center.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 7 votes for passage and adoption and 0 votes against passage and adoption on this 4th day of January, 1988.


Robert Bailey, President
Northern Cheyenne Tribal Council

WITNESSES:


Not Afraid, Secretary
Northern Cheyenne Tribal Council

JAN 22 1988
APPROVED: 
SUPERINTENDENT



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:
Law Enforcement Services

MAY -4 1989

Mr. Edwin Dahle, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Dahle:

Attached is the original of Northern Cheyenne Tribal Ordinance No. 19(89) enacted by the Council on April 18, 1989 and received in this office on April 28, 1989.

Ordinance No. 18(89) - repeals Ordinance No. 14(88) as both Ordinances pertain to Elderly Protection. However, Ordinance No. 14(88) did not adequately provide enough coverage for the protection of the Elderly. Therefore, this new Ordinance shall be a part of the offenses against the Family in Title VII and shall be numbered 7-5-7.

Upon review, I approve Ordinance No. 18(89) as written and enacted under authority of Article IV, Section 1(i) of the Northern Cheyenne Tribal Constitution and By-Laws.

We have retained sufficient copies for our files and submission to the Billings Area Office for review in accordance with your Tribal Constitution and By-Laws.

Sincerely,

Superintendent

Attachments

APR 28 1989

ORDINANCE NO. 18 (89)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL ADDING AN ELDERLY PROTECTION ORDINANCE TO TITLE VII OF THE OFFENSES CODE.

WHEREAS, by Ordinance 14 (88), the Tribal Council tried to deal with elderly protection; and

WHEREAS, Ordinance 14 (88) did not go far enough in its coverage and the Tribal Council now believe's 14 (88) should be repealed and replaced with the following elderly protection ordinance.

SO BE IT ORDAINED by the Tribal Council that the following Ordinance, the elderly protection ordinance, is adopted by the Tribal Council. The prior ordinance on elderly protection, adopted pursuant to ordinance 14 (88), is repealed and is to be replaced by this new elderly protection law. Again, this new ordinance shall be a part of the Offenses Against The Family in Title VII and shall be numbered 7-5-7. The ordinance is as follows:

7-5-7 Elderly Protection

A. A person who purposely, knowingly or negligently exploits or abuses or neglects any elderly person shall be prosecuted for a violation of this ordinance.

B. Elderly protection is a Class B Offense.

C. Definitions:

1. exploits means to use the money or property of an elderly person for one's own advantage by means of duress, menace, fraud, or undue influence.
2. abuses means to inflict physical or mental injury or to deprive an elderly person of food, shelter, clothing or services necessary to maintain the physical health of the of the elderly person.
3. neglects means the failure of a gaurdian, employee of any public facility, or any other person legally responsible for an elderly persons welfare, by failing to provide food, shelter, clothing, or services necessary to maintain the health of the elderly person.
4. elderly person is a person who is at least 60 years of age.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council with 12 votes for passage and adoption and 0 votes against passage and adoption on this 18th day of April, 1989.

Edwin Dahle
Edwin Dahle, President
Northern Cheyenne Tribal Council

ATTEST:
Verna Sarr
Vernon Sooktis, Secretary
Northern Cheyenne Tribal Council

APPROVED: MAY -4 1989
John W. P...



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY

LAME DEER, MONTANA 59043

IN REPLY REFER TO:

102

JUN 28 1991

Mr. Edwin Dahle, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Dahle:

Enclosed is the original of Northern Cheyenne Tribal Ordinance No. 7(91) enacted by the Council on June 17, 1991 and received in this office on June 27, 1991.

Ordinance No. 7(91) - amends the Law and Order Code under Section 7-11-11-7, Speeding.

I have reviewed and approve Ordinance No. 7(91). We will have the speed limit signs installed and notify the Law and Order Department and Tribal Courts of the amendment.

A copy of this ordinance will be forwarded to the Billings Area Office for their information.

The Northern Cheyenne Tribal Council has the authority to take this action via Article IV, Section 1(i) of the Constitution and By-laws.

All necessary copies of this resolution have been retained for our files.

Sincerely,

Kenneth W Davis
Superintendent

Enclosure

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 7 (91)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL AMENDING THE EXISTING LAW WHICH THE TRIBAL COUNCIL HAS ALREADY CODIFIED AT 7-11-11-7.

WHEREAS, the Tribal Council feels the speeding law at 7-11-11-7 is necessary and is being enforced by our police department; now,

WHEREAS, the Tribal Council believes that the section which governs speed at the Northern Cheyenne Pow-wow needs to be amended; now,

THEREFORE BE IT ORDAINED that the Northern Cheyenne Tribal Council hereby amends the Law and Order Code by inserting the following to replace 7-11-11-7:

7-11-11-7 SPEEDING:

Starting one day before the Annual July 4th Pow-wow and ending the day after the Pow-wow of each year, a 35 mph speed limit shall be vigorously enforced by the Northern Cheyenne Police Department on the paved road between Lame Deer and the Northern Cheyenne Pow-wow complex. Violators of this speed limit will be issued a warning for their first violation and shall be fined \$5.00 for each violation thereafter.

A citation procedure shall be utilized by the Police Department so each person who is stopped has the option to pay a bond at the time the Police stop is initially made or they may elect to go to court and appear before the reservation judge to await a hearing on the speeding violation. The Police will install 35 mph signs before this Ordinance is to be used by the Police Department.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 14 votes for passage and adoption and no vote against passage and adoption this 17th day of June, 1991.

Edwin Dahle
Edwin Dahle, President
Northern Cheyenne Tribal Council

ATTEST:

Norma Wolfchief
Norma Wolfchief, Secretary
Northern Cheyenne Tribal Council

JUN 28 1991
APPROVED: *Kenneth W. Davis*
Superintendent



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:

TRIBAL OPERATIONS

JAN 5 1989

Mr. Edwin Dahle, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Dahle:

Attached is the original of Northern Cheyenne Tribal Ordinance No. 7 (89) enacted by the Council on December 21, 1988 and received in this office on December 29, 1988.

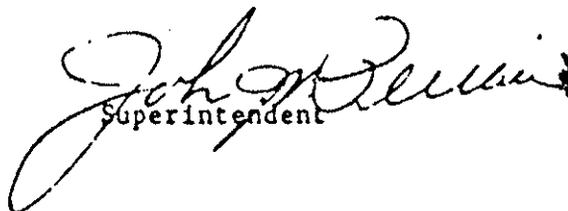
Ordinance No. 7(89) - repeals three (3) sections of the Northern Cheyenne Law and Order Code, sections 7-11-7, Registration of Vehicles, section 7-11-8, Driver's License and section 7-11-9, Liability Insurance requirements.

The Northern Cheyenne Tribal Council has the right to take this action via Article IV, Section 1(1) of the Constitution and By-laws.

We are approving this Ordinance but do so reluctantly. We also remind you that on October 21, 1987 a Referendum Vote was held on the Law and Order Code, Ordinance No. 26(87) to give the Northern Cheyenne Tribal members the opportunity to vote for or against the codes which were passed. At least 30% of the qualified voters is required in a referendum vote and only 16% cast their votes in this referendum election.

All necessary copies have been retained for our files.

Sincerely,


Superintendent

Attachment

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE TRIBE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 7 (89)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL REPEALING THREE (3) SECTIONS OF TITLE SERVICES.

WHEREAS, the Tribal Council feels that these presently adopted section of Title Service are too heavy of an Economic burden on the Northern Cheyenne Reservation.

SO BE IT ORDAINED by the Northern Cheyenne Tribal Council that Section 7-11-7, Registration of Vehicles; Section 7-11-8, Driver's License and Section 7-11-9 Liability Insurance requirements are hereby repealed from Title Service Offensive Code.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 14 votes for passage and adoption and 0 votes against passage and adoption this 21st. day of December, 1988.

Edwin Dahle

Edwin Dahle, President
Northern Cheyenne Tribal Council

ATTEST:

Vernon Sooktis
Vernon Sooktis, Secretary
Northern Cheyenne Tribal Council

JAN - 5 1989
APPROVED
John J. O'Brien
SUPERINTENDENT

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 32 (89)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL REPEALING VARIOUS SECTIONS OF TITLE SEVEN OF THE NORTHERN CHEYENNE LAW AND ORDER CODE.

BE IT ORDAINED by the Northern Cheyenne Tribal Council that Sections 7-11-7-1: License Plate Required; 7-11-8-1: Operators and Chauffers to be licensed; 7-11-8-2: Exemptions; 7-11-9-1: Required Motor Vehicle Insurance; and 7-11-9-2: Penalties, of Title Seven of the Northern Cheyenne Law and Order Code are hereby repealed.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 16 votes for passage and adoption and 0 votes against passage and adoption this 17th day of July, 1989.

Edwin Dahle
Edwin Dahle, President
Northern Cheyenne Tribal Council

ATTEST:

Norma Wolfchief
Norma Wolfchief, Secretary
Northern Cheyenne Tribal Council

DISAPPROVED:

Clarice C. Braumant/ld
Superintendent

Law Enforcement Services

Mr. Edwin Dahle, President
Northern Cheyenne Tribal Council
Lana Beer, Montana 59043

Dear Mr. Dahle:

Attached is the original of Northern Cheyenne Tribal Ordinance No. 12(89) enacted by the Council on July 17, 1989 and received in this office on July 31, 1989.

Ordinance No. 12(89) pertains to the Tribal Council repealing various sections of Title Seven of the Northern Cheyenne Law and Order Code.

Please refer to Ordinance No. 7(89) enacted by the Council on December 21, 1988, which already took action to repeal those three (3) sections of Title Seven of the Northern Cheyenne Law and Order Code.

The Agency Superintendent approved Ordinance No. 7(89) on January 3, 1989.

Therefore, we are disapproving Ordinance No. 12(89).

Sincerely,

Clarice C. Beaumont / *ll*

Superintendent

Attachment

cc: LES Or File

~~XXXXXXXXXXXXXXXXXXXX~~

NCT/Attorney

NCT/Secretary

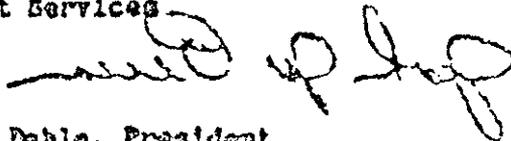
NCT/Executive Committee

NCT/Research Dept./Mike Runningsolf

WBR:scall:ajb:8/1/89

SEP 11 1989

Law Enforcement Services


Mr. Edwin Dahle, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Dahle:

Attached is the original of Northern Cheyenne Tribal Ordinance No. 33(89) enacted by the Council on August 21, 1989 and received in this office on September 1, 1989.

Having reviewed the proposed changes or amendments to the Northern Cheyenne Law & Order Code, I have some questions or comments on two (2) particular areas that I feel fringes on violations of the Indian Civil Rights Act and Police Officers discretions based on training and experience.

In the proposed Section 7-11-11-11 Passing School Buses; 1) I feel the impoundment of the violators vehicle, plus a fine of not less than \$200.00 and a jail term not to exceed six (6) months, is excessive. In my opinion, the crime does not fit the proposed sentence, and fringes on a Indian Civil Rights Act violation. This type of sentencing should be reserved if an injury is involved. 2) The wording in the section states; passing a school bus, which is stopped and has its warning lights flashing. Normally warning lights are yellow, in which case its not against the law to pass under this condition, but your are allowed to proceed with caution. The section should read; Passing a school bus with its flashing red lights & stop sign indicators extended.

In the proposed Section 7-9-6 Intoxication. The cost, wasted time and energy would be astronomical if we were to require every intoxicated person to take a breathalyzer test. Determining whether a person is intoxicated or not should be left to the discretion of the police officer, based on the smell of intoxicating beverages, abnormal behavior, temporary loss of motor skills, (staggering, falling, etc). Requiring a BAC breath test on every offender could tie up a police officer for hours at the station when they should be out on patrol.

Keep in mind that breathalyzers cannot detect the use of drugs & under certain circumstances individuals who are under the influence of drugs, act the same as those on alcohol. A trained police officer is able to make that determination from the lack of a smell of alcohol and dilation of the pupils, often times, these individuals are extremely violent and uncontrollable.

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 33 (89)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL AMENDING VARIOUS SECTIONS OF THE LAW AND ORDER CODE.

WHEREAS, amendments need to be made in the Law and Order Code; and

WHEREAS, the Tribal Council agrees with the Code Review Committee on these changes.

SO BE IT ORDAINED by the Tribal Council that the following amendments are made in various sections of the Law and Order Code.

SECTION 7-1-7 Classification of Offenses and Sentence,

Class C is to now read:

Class C: Fine not to exceed \$200.00
(This section to go into effect immediately).

SECTION 7-11-11-11 Passing School Buses; is to now read:

SECTION 7-11-11-11 PASSING SCHOOL BUSES:

Any motorized vehicle which passes any school bus which is stopped and has its warning lights flashing and is either loading or unloading school children shall be confiscated and impounded by the police department and that vehicle shall not be released until the owner of that vehicle pays all towing charges and a fine of not less than \$200.00 but not more than \$1,000.00 and a jail term not to exceed six (6) months. (This section to go into effect immediately).

SECTION 5 - RULE 33.

The sentence which now reads "Under no circumstance's shall fine imposed exceed \$500.00 or imprisonment imposed exceed six (6) months for a single offense." is removed from the Code.

SECTION 5 - RULE 34.

Besides the existing two (2) paragraphs the Tribal Council adds the following sentence to this rule:

If fined and unable to pay the fine, the person fined has the option to serve the fine at a rate of \$20.00 per day if served in jail or \$40.00 per day of work, when the work will be court authorized and police department assigned, on work-program projects that involve cleaning or building up the Northern Cheyenne Reservation.

(This section to go into effect immediately).

SECTION 5 - RULE 37.

The sentence which now reads in two successive years is now amended to read "in one year."

(This section to go into effect immediately).

A NEW SECTION - NUMBERED 7-9-6 INTOXICATION is added:

- A. A person who is found under the influence of intoxicating liquor within the exterior boundaries of the Northern Cheyenne Reservation shall be charged with a violation of this ordinance. When arrested, the suspect shall be offered the opportunity to take a Breathalyzer test. If the results of the Breathalyzer test show a blood alcohol content of 0.10 or less, the suspect shall be released within 8 hours of the arrest with the charge being dismissed. If, however, the blood alcohol content is more than 0.10 or if the suspect refused to take a Breathalyzer test the suspect shall be prosecuted.
- B. Intoxication is a Class C Offense, but the maximum fine for any intoxication conviction is \$20.00. The bond shall also be set at \$20.00.
(This section to go into effect October 1, 1989).

SECTION 7-11-11-8 DRIVING WHILE INTOXICATED; is amended to read as follows:

SECTION 7-11-11-8 DRIVING WHILE INTOXICATED.

A person will be charged with a violation of this section if while driving or in physical control of any motorized vehicle, the person is under the influence of liquor. Any person arrested for this offense shall be given the opportunity to have his breath analyzed with a Breathalyzer. The concentration of alcohol as shown by the Breathalyzer shall give rise to the following presumptions:

A) If there was at the time an alcohol concentration of 0.05 or less, it shall be presumed that the person was not under the influence of alcohol.

B) If there was at the time an alcohol concentration in excess of 0.05 or less than 0.10. That fact shall not give rise to any presumptions that the person was or was not under the influence of alcohol, but such fact may be considered with other competent evidence in determining guilt or innocence.

C) If there was at the time an alcohol concentration of 0.10 or more, it shall be presumed that the person was under the influence

ORDINANCE NO. 33 (89)
AUGUST 21, 1989
PAGE 3.

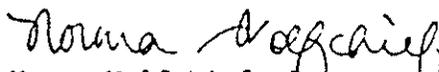
D) Any person who refuses to take the Breathalyzer shall not be forced to do so, but if refused shall be taken as a presumption of guilt. Driving while intoxicated is a Class A Offense. It is a bondable offense and the bond can not be forfeited. Any person prosecuted under this section must answer and appear in Court and shall be required to attend and complete a driving while intoxicated court mandated school, to be taken on the Northern Cheyenne Reservation, the costs of the court school to be paid by the person who is sentenced to attend the DUI school.
(This section to go into effect October 1, 1989).

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council with 15 votes for passage and adoption and 0 votes against passage and adoption and 1 abstenction this 21st day of August, 1989.



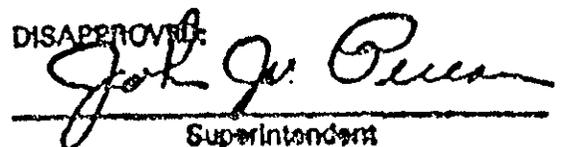
Edwin Dahle, President
Northern Cheyenne Tribal Council

ATTEST:



Norma Wolfchief, Secretary
Northern Cheyenne Tribal Council

DISAPPROVED:



Superintendent



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:

Forestry

March 30, 1990

Mr. Edwin Dahle, President
Northern Cheyenne Tribal Council
P.O. Box 128
Lame Deer, Montana 59043

Dear Mr. Dahle:

Enclosed is the original of Northern Cheyenne Tribal Ordinance No. 7 (90). This was passed by the Tribal Council on March 20, 1990 and received by this office on March 29, 1990.

Ordinance No. 7 (90) enacts a burning ordinance which supercedes Section 7-6-2, Reckless Burning, Part A.1,2, and 3 of the Northern Cheyenne Law and Order Code. This ordinance, along with the required burning permit, will provide increased awareness and control over reckless burning which has been a major cause of a wildfires in recent years. The Northern Cheyenne Tribe has the authority to pass this ordinance according to Article IV, Section 1.(k) of the Tribal Constitution and By-Laws. I, therefore, approve this ordinance as submitted.

Sincerely,

Kenneth W. Davis
Superintendent

Attac.ments

NORTHERN CHEYENNE TRIBAL COUNCIL
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 7 (90)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL ENACTING A BURNING ORDINANCE WHICH SUPERCEDES SECTION 7-6-2, RECKLESS BURNING, PART A.1, 2, AND 3 OF THE NORTHERN CHEYENNE LAW AND ORDER CODE.

WHEREAS, wildfires cause thousands of dollars of resource damage annually, and,

WHEREAS, man caused fires left unattended or unextinguished have become wildfires which damage the natural and man recreated resources; and,

WHEREAS, the Northern Cheyenne Tribe believes those causing fires should be held accountable; now,

BE IT ORDAINED by the Northern Cheyenne Tribal Council that Reckless Burning, part A.1, 2 and 3 of Section 7-6-2 of the Northern Cheyenne Law and Order Code is hereby superceded by the following new law:

7-6-2. Reckless Burning

A.1. It shall be a criminal offense for any person who kindles a fire in or near any forest, timber, rangeland or other inflammable material upon land within the exterior boundaries of the Northern Cheyenne Reservation and then leaves said fire without totally extinguishing the same, or permits or suffers said fire to spread beyond his control, or leaves or suffers said fire to burn unattended shall be made to make complete restitution, including resource loss, suppression and rehabilitation costs. Agricultural burning (weeds, stubble field, irrigation ditches, etc.) in excess of one (1) acre will require a burning permit. Recreational fires (ie camp fires) and residential fires (burn barrels, trash piles, etc.) will be excluded from this ordinance if conducted under safe burning conditions. Traditional fires (sweat lodges, sundances, etc.) will be excluded from this ordinance at all times.

A.2. The Tribal President shall have the authority to ban all fires (agricultural, recreational, residential, traditional, etc.) and to ban the sale and use of fireworks during high fire danger conditions.

A.3. A burning permit shall be valid for a maximum of one (1) year, expiring December 31, and shall be issued by BIA and/or Tribal Forestry and shall constitute authority to burn as described in this ordinance.

BE IT FURTHER ORDAINED that Part B of Section 7-6-2 shall remain unchanged.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 10 votes for passage and adoption and 2 votes against passage and adoption on this 20th day of March, 1990.

Edwin Dahle
Edwin Dahle, President
Northern Cheyenne Tribal Council

ATTEST:

Norma Wolfchief
Norma Wolfchief, Secretary
Northern Cheyenne Tribal Council

MAR 30 1990

APPROVED: _____
Kenneth W Davis
SUPERINTENDENT

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 17 (90)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL AMENDING SECTION 7-7-14 OF TITLE SEVEN, OFFENSES CODE, OF THE NORTHERN CHEYENNE RESERVATION LAW AND ORDER CODE.

WHEREAS, the Tribal Council believes that our substantive law on littering should be expanded and clarified as to who is to issue permits; now,

THEREFORE BE IT ORDAINED by the Northern Cheyenne Tribal Council that Section 7-7-14 of the Law and Order Code is replaced in its present entirety by the following littering law:

7-7-14 LITTERING

- A. A person is guilty of littering if he:
1. Throws, dumps, or places upon any roadway, upon the land, or property of another, or upon tribal land or property, garbage, junk, trash, debris, refuse, or any substance of any nature whatsoever which mars the appearance or detracts from the cleanliness of an area; or
 2. Stores or keeps any unserviceable vehicle, appliance or implement within any town or village, unless he has a permit from the Northern Cheyenne Land Committee allowing him to maintain a junkyard;
 3. Allows any abandoned building to remain on land he owns or controls within any town or village, unless he has a permit from the Northern Cheyenne Land Committee allowing him to maintain an abandoned building.

B. Littering is a Class B offense.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 14 votes for passage and adoption and 1 vote against passage and adoption this 18th day of June, 1990.

Edwin Dahle
Edwin Dahle, President
Northern Cheyenne Tribal Council

ATTEST:

Ma Wolfchief
Ma Wolfchief, Secretary
Northern Cheyenne Tribal Council

APPROVED: 7/9/90

Kenneth W Davis

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 17 (90)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL AMENDING SECTION 7-7-14 OF TITLE SEVEN, OFFENSES CODE, OF THE NORTHERN CHEYENNE RESERVATION LAW AND ORDER CODE.

WHEREAS, the Tribal Council believes that our substantive law on littering should be expanded and clarified as to who is to issue permits; now,

THEREFORE BE IT ORDAINED by the Northern Cheyenne Tribal Council that Section 7-7-14 of the Law and Order Code is replaced in its present entirety by the following littering law:

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 2. Stores or keeps any unserviceable vehicle, appliance or implement within any town or village, unless he has a permit from the Northern Cheyenne Land Committee allowing him to maintain a junkyard;
 3. Allows any abandoned building to remain on land he owns or controls within any town or village, unless he has a permit from the Northern Cheyenne Land Committee allowing him to maintain an abandoned building.
- B. Littering is a Class B offense.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 14 votes for passage and adoption and 1 vote against passage and adoption this 18th day of June, 1990.

Edwin Dahle
for Edwin Dahle, President
Northern Cheyenne Tribal Council

ATTEST:

Norma Wolfchief
Norma Wolfchief, Secretary
Northern Cheyenne Tribal Council

APPROVED
151 Kenneth W. Davis
SUPERINTENDENT

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:
102

DEC 13 1991

Mr. Edwin Dahle, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Dahle:

Enclosed is the original of Northern Cheyenne Tribal Ordinance No. 4(92) enacted by the Council on November 25, 1991 and received in this office on December 4, 1991.

Ordinance No. 4(92) - sets forth the Crime of Domestic Abuse for the Northern Cheyenne Reservation and Ordinance No. 15(88) is repealed and the Domestic Violence Law found at 7-5-8 in the Law and Order Code is also repealed upon approval of 7-5-10, Domestic Abuse, by the Bureau of Indian Affairs.

The Northern Cheyenne Tribal Council has the authority to take this action via Article IV, Section 1(1) of the Constitution and By-laws.

I am approving Ordinance No. 4(92) and forwarding a copy to the Billings Area Office for review in accordance with your Tribal Constitution and By-laws.

All necessary copies of this ordinance have been retained for our files.

Sincerely,

Kenneth W. Jarn
Superintendent

Enclosure

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 4 (92)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL SETTING FORTH THE CRIME OF DOMESTIC ABUSE FOR THE NORTHERN CHEYENNE RESERVATION.

WHEREAS, the communities of the Northern Cheyenne Reservation have requested that the Tribal Council strengthen the law on the Northern Cheyenne Reservation which relates to abuse within households; and,

WHEREAS, the Tribal Council has worked with the communities and has developed law which the communities want; now,

THEREFORE BE IT ORDAINED by the Tribal Council that the following domestic abuse law shall be law for the Northern Cheyenne Reservation and is to be so numbered in the Law and Order Code:

7-5-10 DOMESTIC ABUSE

A. Any person who purposefully, knowingly, recklessly, or negligently abuses their spouse, family member, or household member shall be prosecuted for committing the offense of domestic abuse.

B. DEFINITIONS:

1. Domestic abuse is defined as causing physical harm, bodily injury, assault or inflicting fear of imminent harm, bodily injury or assault.

2. Spouse means a person with whom the victim is currently living with or who has lived with the victim in the past, irregardless of whether they are or were married, or, a person with whom the victim has a child in common, irregardless of whether they were married or had lived together.

3. Family member or household member means a spouse, former spouse, adult person related by blood or marriage, or adult person of the opposite sex residing with the defendant or who formerly resided with the defendant.

C. THE PENALTIES

Conviction of domestic abuse is a Class A offense. A person convicted of a first offense for domestic abuse shall be jailed for not less than 30 days and fined not less than \$500.00. A person convicted a second time for domestic abuse shall be jailed not less than 90 days and fined not less than \$1,000.00. A person convicted for the third or subsequent times shall be jailed for not less than 180 days and fined not less than \$2,000.00. Restitution to the victim shall be ordered by the Judge when appropriate. Twenty five

sessions of mandatory counseling shall be ordered by the Judge in all convictions. This mandatory counseling shall include education on violence and learning non-violent behavior. This counseling may be ordered for up to one year by the Judge with progress reports to be made not less than monthly, if alcohol or drugs were involved in the offense; a chemical dependency evaluation and complete cooperation with recommendations for treatment shall be ordered by the Judge.

OTHER PROVISIONS

1. **Mandatory Arrest.** A police officer shall immediately arrest, without having to obtain an arrest warrant and take into custody any person whom the officer has probable cause to believe has committed the crime of domestic abuse. The victim need not sign a complaint. The officer shall make the arrest even though an arrest may be against the expressed wishes of the victim.

An officer, under this ordinance, is not required to arrest both parties when he/she believes that parties have assaulted one another. The officer shall arrest the person whom he/she believes to have been the primary aggressor. In making this determination, the officer shall make every reasonable effort to consider (1) the intent to protect the victims of domestic abuse under this ordinance; (2) the comparative extent of injuries inflicted, or serious threats creating fear of physical injury; and (3) the history of domestic abuse between the persons involved.

2. **Filing a Complaint.** The police officer making the arrest for domestic abuse shall sign the complaint and include a detailed report of the circumstance of the arrest and any available statements from witnesses or victims. The victim maybe utilized in a prosecution as a witness, if the victim is willing. Otherwise, the arresting officer shall testify as the prime witness in the prosecution. Any spousal privilege not to testify as a husband and wife shall not apply in domestic abuse prosecution.

3. **Victims Rights.** The victim of domestic abuse shall be informed by the arresting police officer of the local above shelter, and shall see that the victim contact is made with that shelter. Shall inform the victim that a restraining order is available against the abuser, that an order can be obtained ordering the abuser from the household, school or business of the victim. That an order can be obtained awarding temporary custody of minor children to the victim, and that the abuser can be ordered to pay support to the victim and minor children regardless if the victim is male or female.

4. Reports. In cases where a police officer is called to a scene in which domestic abuse is suspected, but in the discretion of the police officer, no arrest is made by the officer, the officer shall write and file a written report explaining the reason for not making an arrest.

5. Holding Time and Bail. Any person arrested for domestic abuse shall be held without bail for a period not less than 24 hours or more than 36 hours mandatory cooling off period. No bail schedule shall be set until the time period expires. Bail put forth can not be forfeited in lieu of court appearance. Appearance at court before a Judge is mandatory.

6. Education of Public Officials. All judges, prosecutors, and police officers, shall be trained to implement this section with at least one eight hour initial session given by a domestic abuse specialist in addition, all personnel shall have a minimum of four hours of refresher and update training in domestic abuse each year.

BE IT FURTHER ORDAINED that Ordinance 15 (88) is repealed and the Domestic Violence Law, found at 7-5-8 in the Law and Order Code is also repealed upon approval of 7-5-10, Domestic Abuse, by the Bureau of Indian Affairs.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 12 votes for passage and adoption and 1 vote against passage and adoption this 25th day of November, 1991.

Edwin Dahle
Edwin Dahle, President
Northern Cheyenne Tribal Council

ATTEST:

Norma Wolfchief
Norma Wolfchief, Secretary
Northern Cheyenne Tribal Council



United States Department of the Interior

BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:

Mr. Edwin Dahle, President
Northern Cheyenne Tribe
Lame Deer, Montana 59043

MAY - 8 1992

Dear Mr. Dahle:

Enclosed is the original of Northern Cheyenne Tribal Ordinance No. 10(92) enacted by the Council on April 20, 1992 and received in this office on April 30, 1992.

Ordinance No. 10(92) - An Ordinance of the Northern Cheyenne Tribal Council rescinding Ordinance No. 13(88) which amended Title VII, Offenses Code, and replacing said Ordinance and further amending said Title VII, in order to create new offenses entitled Sexual Assault and Aggravated Sexual Assault and shall be numbered 7-4-7 (D), (E), and (F).

The Northern Cheyenne Tribal Council has the authority to take this action via Article IV, Section (i) of the Constitution and By-laws.

I am approving Ordinance No. 10(92) and forwarding a copy to the Billings Area Office for review in accordance with your Tribal Constitution and By-laws.

All necessary copies of this ordinance have been retained for our files.

Sincerely,

Kenneth W. Davis
Superintendent

Enclosure

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 10 (92)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL RESCINDING ORDINANCE NO. 13 (88) WHICH AMENDED TITLE VII, OFFENSES CODE, AND REPLACING SAID ORDINANCE AND FURTHER AMENDING SAID TITLE VII, IN ORDER TO CRETE NEW OFFENSES ENTITLED SEXUAL ASSAULT AND AGGRAVATED SEXUAL ASSAULT,

WHEREAS, the Tribal Council recognizes that sexual contact without consent is an act which occurs with great frequency and constitutes a significant danger to the health and welfare of Tribal members; and,

WHEREAS, the Tribal Council feel that Ordinance No. 13 (88) does not adequately address the scope of this problem; now,

THEREFORE BE IT ORDAINED by the Northern Cheyenne Tribal Council that the previously adopted Ordinance No. 13 (88) is hereby rescinded and the following Ordinance is hereby adopted and shall become a part of TITLE VII. OFFENSES CODE, Chapter 4. OFFENSES AGAINST THE PERSON, and shall be numbered 7-4-7 (D), (E), and (F). The Ordinance is as follows:

TITLE VII. OFFENSES CODE

Chapter 4. OFFENSES AGAINST THE PERSON

7-4-7 Sexual Offenses.

D. Sexual Assault.

(1) A person who knowingly subjects another person to any sexual contact without consent commits the offense of sexual assault.

(2) Sexual Assault is a Class B offense.

E. Aggravated Sexual Assault.

(1) A person commits the offense of Aggravated Sexual Assault if he knowingly subjects another person to any sexual contact without consent and;

A) the victim is sixteen (16) years of age or younger and the offender is three (3) or more years older than the victim; or

B) the offender inflicts bodily injury upon anyone in the course of committing the sexual assault. "Bodily injury" shall mean physical pain, illness, or any impairment of physical condition and includes mental illness or impairment.

(2) Aggravated Sexual Assault is a Class A offense.

(3) An offender convicted of Aggravated Sexual Assault shall be required to serve a mandatory minimum jail sentence of at least ninety (90) days and shall be fined not less than \$500.00. An offender convicted of Aggravated Sexual Assault, second offense, shall be required to serve a mandatory minimum jail sentence of at least six (6) months and shall be fined not less than \$1,000.00. An offender convicted of any subsequent offenses of Aggravated Sexual Assault shall be required to serve a mandatory minimum jail sentence of one (1) year and shall be fined \$5,000.00. The mandatory minimum sentences under this provision may not be suspended or deferred. This provision shall not limit the authority of a sentencing judge to impose a more severe sentence for first or second offenders, up to the maximum allowed by law.

F. Provisions Applicable to Sexual Offenses:

(1) A prosecution for a Class A sexual offense may be commenced within seven (7) years after the victim reaches the age of eighteen (18) years old if the victim was less than eighteen (18) years old at the time the offense occurred.

(2) A person fourteen (14) years of age or younger does not have the legal capacity to consent.

(3) No evidence concerning the sexual conduct of the victim is admissible in prosecutions involving a sexual offense except evidence of specific instances of the victim's sexual activity to show the origin of semen, pregnancy, or disease which is at issue in the prosecution.

(4) Evidence of failure to make a timely complaint or immediate outcry does not raise any presumption as to the credibility of the victim. Force, fear, or threat alone is sufficient to show lack of consent; resistance by the victim is not required.

(5) A civil action for recovery of damages for injuries suffered by a minor as a result of a sexual offense must be commenced not later than seven (7) years after the victim reaches the age of eighteen (18).

(6) Any person convicted of a Class A Sexual Offense in Tribal Court and/or any person residing on the reservation who is convicted of a Felony Sexual Offense in any other jurisdiction, shall be required to register in writing with the local reservation law enforcement agency as a convicted sexual offender. Public notice of a person's conviction of a Class A Sexual Offense in Tribal Court, or a Felony Sexual Offense in any other jurisdiction shall be published in a weekly newspaper of general circulation for two *2) consecutive weeks; and posted at the Tribal Office, Tribal Court, Police Department, and in all post offices on or near the reservation.

(7) Any person convicted of a Class A Sexual Offense in Tribal Court shall be required to obtain both a chemical dependency evaluation and a sexual offender evaluation, and comply with the recommendations thereof. Copies of such evaluations shall be filed with the Court within ninety (90) days of the date of conviction.

(8) In the interest of protecting the community, the Court may order a convicted offender to comply with any reasonable condition of sentence, including but not limited to any of the following:

a. Restrictions against types of employment involving access to children, elderly or other classes of vulnerable potential victims.

b. Restrictions from being physically present on or near schools, playgrounds, day care centers, elderly residential facilities, and other specific locations.

c. Prohibition against the use of alcoholic beverages, illegal drugs, and other chemical substances; and being present in business establishments where alcoholic beverages are the chief item of sale.

d. Payment of the cost of any counseling and/or treatment that the victim may require.

PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council by 9 votes for passage and adoption and 1 vote against passage and adoption with 2 abstentions this 20th day of April, 1992.

ATTEST:

Norma Wolfchief
Norma Wolfchief, Secretary
Northern Cheyenne Tribal Council

Edwin Dahle
Edwin Dahle, President
Northern Cheyenne Tribal Council

APPROVED: 5/8/92

Kenneth W. Davis
SUPERINTENDENT



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:

102

MAY -2 1990

Mr. Edwin Dahle, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Dahle:

Attached is the original of Northern Cheyenne Tribal Resolution No. 135(90) enacted by the Council on April 16, 1990 and received in this office on April 26, 1990.

Resolution No. 135(90) - authorizes the Tribal President to sign an Agreement between the Department of Family Services, the Northern Cheyenne Tribe and the Northern Cheyenne Social Services to clarify the responsibilities to the reservation of the Department of Family Services under Title IV-E of the Social Security Act.

The Northern Cheyenne Tribal Council has the authority to take this action per Article -IV, Section 1(m) of the Tribal Constitution and By-laws.

All necessary copies of this resolution have been retained for our files.

Sincerely,


 Superintendent

Attachment

E. In
E. No

AGREEMENT BETWEEN DEPARTMENT OF
FAMILY SERVICES, NORTHERN CHEYENNE
RESERVATION, AND THE
NORTHERN CHEYENNE SOCIAL SERVICES DEPARTMENT

This Agreement is entered into by the Northern Cheyenne Indian Reservation (hereinafter referred to as "Reservation"), the Montana Department of Family Services (hereinafter referred to as "DFS") and Northern Cheyenne Social Services Department (hereinafter referred to as "Social Services").

WHEREAS, there are Indian children on the Northern Cheyenne Indian Reservation who may be eligible for foster care maintenance payments under Title IV-E of the Social Security Act, 42 USC §670 et seq.;

WHEREAS, 42 USC §672(d)(2) requires that DFS enter into an agreement with any agency who will be responsible for the care and placement of children for whom Title IV-E foster care maintenance payments are sought;

WHEREAS, the Reservation to maintain administrative and judicial supervision over Indian foster children for whom Title IV-E payments will be sought: and

WHEREAS, the Reservation Social Services and DFS recognize the need to coordinate their efforts to ensure that the federal eligibility requirements of the Title IV-E foster care program are met;

The parties hereby agree as follows:

I. PURPOSE

The purpose of this Agreement is to clarify the relative responsibilities of the Reservation, Social Services and DFS regarding the payment of foster care maintenance payments under Title IV-E of the Social Security Act.

II. PLACEMENT

The Reservation shall continue to exercise its jurisdiction in placement of Indian children residing on the Reservation who are in need of foster care.

III. TRIBAL COURT ORDERS

The Tribal Court, in ordering foster care placement for any Indian child, shall designate social services as the agency responsible for the care and placement of the child. Social Services shall be responsible for providing services as described in paragraph IV of this Agreement.

The care and placement responsibility for the child is vested with the Social Services Department and not with DFS, and that agency must fulfill all of the requirements of 42 USC §671(15) & (16), 42 USC §672 and related federal regulations contained in 45 CFR 233.110 and 45 CFR Section 1356 et sec. for all children for whom Title IV-E foster care is paid.

In addition to designating the Social Services Department responsible for the care and placement of the child, the Tribal Court order must include the following determinations by the Tribal Court:

- (1) That the removal of the child from the home was necessary because continuation in the home would be contrary to the welfare of the child.
- (2) That reasonable efforts have been made prior to the placement to prevent or eliminate the need for removal or that because of the emergency circumstances no reasonable efforts could be taken to prevent removal.
- (3) That the child must be placed in a licensed foster home or other licensed youth care facility.

IV. SERVICES

The Reservation shall provide services to eligible children placed in foster care on the reservation in compliance with 42 USC Sections 671 and 672 and 45 CFR 233.110 and 45 CFR 1356 et sec. The services provided shall be consistent with the following standards:

- a. Placement. The child will be placed in a licensed youth foster home, youth group home, or child care agency.
- b. Case plan. The case plan for each child for whom DFS pays foster care maintenance payments must be a written case plan and must include:
 - (1) a description of the type of home or institution in which the child is to be placed;
 - (2) a discussion of the appropriateness of the placement;
 - (3) a description of the care and services the child will receive while in foster care;
 - (4) a description of the services which are provided to the parents, child, and foster parents in order to improve the condition in the parents' home, facilitate return of the child to his home or the

permanent placement of the child, and address the needs of the child;

- (5) an evaluation of the appropriateness of the services provided under the plan.

c. Case review. The Reservation, through the Social Services Department designated under paragraph III above, will maintain a case review system to insure that:

- (1) the status of each child in foster care will be reviewed no less frequently than once every six months, through either Tribal Court or foster care review committee;
- (2) the periodic review will determine whether the placement is still necessary and appropriate; determine whether there has been compliance with the case plan; determine the progress made toward eliminating the need for foster care; and project a likely date by which the child will either be returned home or placed for adoption or a permanent foster care;
- (3) any child for whom DFS pays foster care maintenance payments must be reviewed by a foster care review committee every six months. Social Services, designated under paragraph II above, shall participate in the foster care review committee meetings when a child for whom the agency is responsible is being reviewed by the committee.
- (4) the Tribal Court will hold a dispositional hearing no later than 18 months after the original placement of the child in foster care to determine whether the child should be returned to his or her parents, be continued in foster care for a specified period of time, be placed for adoption or because the child's special needs and circumstances, continued in foster care on a permanent, life long basis.

V. LICENSING .

The Reservation is responsible for the licensing of foster homes on the Northern Cheyenne Indian Reservation. DFS will pay foster care maintenance payments for any eligible child who is placed in a foster home which has been licensed by the Reservation and who currently meets Tribal licensing standards.

VI. FOSTER CARE MAINTENANCE PAYMENTS

DFS will make foster care maintenance payments in accordance with the terms of this agreement on behalf of children who meet all of the eligibility requirements for Title IV-E foster care and who have been placed in licensed foster homes as provided in this agreement.

VII. EVALUATION

DFS will conduct periodic evaluation of the Reservation's implementation of the terms of this Agreement, solely for the purpose of determining whether there is compliance with the federal standards pertaining to Title IV-E foster care. The periodic evaluation shall be done in a manner that does not interfere with the Reservation's orderly administration of foster care placement for Indian children.

VIII. REFERRALS FOR FOSTER CARE MAINTENANCE PAYMENTS

The Reservation, through the Social Services designated under paragraph III above, shall provide the Department of Social and Rehabilitative Services (SRS) at the county welfare office, the necessary information from the family to complete all applications and forms including SRS EA-1a, EA-32,, CS/EA-2, CS/EA-1 and EA-4. The Reservation will also provide verification of the information contained on the forms at the time of the initial placement and at a six month eligibility review.

SRS will process referrals from the Reservation for foster care maintenance payments within 30 days of the date the application is presented.

IX. TERMINATION

Any party may terminate this Agreement, with or without cause, upon 30 days written notice, served by certified mail, return receipt requested upon the authorized representative of the other parties.

In the event of termination for cause based upon a violation of the terms and conditions of this Agreement, the notice of termination shall specify the violation claimed. If the violation is not cured within 30 days of the date of receipt of the notice, the termination shall become effective on the 31st day following receipt of notice, or such later date as may be specified in the notice or as agreed upon by the parties.

X. COOPERATION

The Reservation, Social Services and DFS shall cooperate in carrying out the intent and purpose of this Agreement.

XI. EFFECTIVE DATE AND DURATION

This Agreement is effective upon the date of signature of the parties and approval by the attorney general and shall continue in force for a period of three (3) years from the date of signature unless otherwise terminated as provided for in this Agreement.

MONTANA DEPARTMENT OF FAMILY SERVICES

BY: Henry G. Hudson
Henry G. Hudson, Acting Director

DATE: 7/1/90

NORTHERN CHEYENNE INDIAN RESERVATION

BY: Edwin Dahle
Edwin Dahle, President of the
Northern Cheyenne Tribal Council

DATE: 7/13/90

BY: Phyllis F. Long Sioux
Phyllis F. Long Sioux,
Tribal Court Judge

DATE: 7/13/90

BY: Carla Small
Carla Small, Director of the
Northern Cheyenne Social Services
Department

DATE: 7/13/90

BUREAU OF INDIAN AFFAIRS

BY: _____
Ken Davis, Superintendent of the
Northern Cheyenne Agency

DATE: _____

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TITLE VIII
DOMESTIC RELATIONS CODE

Chapter 1. MARRIAGE

8-1-1 Short Title

This Code may be cited as the Northern Cheyenne Uniform Marriage and Divorce Act.

8-1-2 Purpose

This act shall be liberally construed and applied to promote its underlying purposes, which are to:

- A. Provide adequate procedures for the solemnization or declaration and registration of marriage;
- B. Strengthen and preserve the integrity of marriage and safeguard family relationships;
- C. Promote the amicable settlement of disputes that have arisen between parties to a marriage;
- D. Mitigate the potential harm to the spouses and their children caused by the process of legal dissolution of marriage;
- E. Make reasonable provision for spouses and minor children during and after litigation; and
- F. Make the law of legal dissolution of marriage effective for dealing with the realities of matrimonial experience by making irretrievable breakdown of the marriage relationship the sole basis for its dissolution.

8-1-3 Application of the Northern Cheyenne Code of Civil Procedure

- A. The Northern Cheyenne Code of Civil Procedure applies to all proceedings under this Code unless otherwise provided in this Code.
- B. A proceeding for dissolution of marriage, legal separation, or declaration of invalidity of marriage shall be entitled "In Re The Marriage of _____ and _____." A custody or support proceeding shall be entitled "In Re The Custody or Support of _____."
- C. The initial pleading in all proceedings under this Code shall be denominated a petition. A responsive pleading shall be denominated a response. Other pleadings, and all pleadings in

other matters under this Code shall be denominated as provided in the Civil Procedure Code.

8-1-4 Uniformity of Application and Construction

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among those reservations and states which enact it.

8-1-5 Formalities

Marriage is a personal relationship between a man and a woman arising out of a civil contract to which the consent of the parties is essential. A marriage license, solemnized or declared and registered as provided in this act is valid in the Northern Cheyenne Reservation. A marriage may be contracted, maintained, invalidated, or dissolved only as provided by the law of the Northern Cheyenne Reservation.

8-1-6 Form of Application, License, Certificate, and Consent

- A. The Northern Cheyenne Court shall prescribe the form for an application for a marriage license, which shall include the following information:
1. Name, sex, address, date and place of birth of each party to the proposed marriage;
 2. If either party has previously married, his name and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;
 3. Name and address of the parents or guardian of each party;
 4. Whether the parties are related to each other, if so, their relationship;
 5. Name and date of birth of any child, of whom both parties are parents, born prior to the making of the application unless their parental rights and the parent and child relationship with respect to the child have been terminated.
 6. Each applicant must provide a medical certificate from a qualified physician who is licensed to practice medicine or any other person authorized by law to make such a medical certificate, which certificate shall state that the applicant has been given such an examination, including a standard serological test, which shall consist of a test for rubella immunity and syphilis, made not more than twenty (20) days before the date of issuance of the license, and

that the report of the results of the serological test has been exhibited to the applicant and that each party to the proposed marriage contract has examined the report of the serological test of the other party to the proposed contract.

- B. The Northern Cheyenne Reservation Court shall provide the forms for the marriage license, the marriage certificate, and the consent to marriage, or the declaration of marriage.

8-1-7 License to Marry

When a marriage application has been completed and signed by both parties to a prospective marriage, and at least one (1) party has appeared before the Clerk of Court, the Clerk of Court shall issue a license to marry.

8-1-8 Effective Date of License

A license to marry becomes effective throughout the Northern Cheyenne Reservation three (3) days after the date of issuance, unless the Court orders that the license is effective when issued, and expires one hundred eighty (180) days after it becomes effective.

8-1-9 Judicial Approval

- A. Any person eighteen (18) years or older is eligible to apply for a license to marry. In addition, the Court may order the Clerk of Court to issue a marriage license and a Marriage certificate form to a party aged sixteen (16) or seventeen (17) years who has no parent capable of consenting to his marriage, or has the consent of both parents, or of the parent having the actual care, custody, and control, or of his guardian. The Court may require both parties to participate in a reasonable period of marriage counseling with a designated person as a condition of the order for issuance of marriage license and a marriage certificate form.
- B. A marriage license and a marriage certificate form may be issued under this section only if the Court finds that the underaged party is capable of assuming the responsibilities of marriage and that marriage will serve his best interest. Pregnancy alone does not establish that the best interest of the party will be served.
- C. The Court shall authorize performance of a marriage by proxy upon the showing required by the provisions on solemnization.

8-1-10 Solemnization and Registration

- A. A marriage may be solemnized by a Judge of the Northern Cheyenne Court, by a public official whose powers include

solemnization, by a Justice of the Peace, or in accordance with any mode of solemnization recognized by any religious denomination, Reservation government or native group. Either the person solemnizing the marriage, or, if no individual acting alone solemnized the marriage, a party to the marriage shall complete the marriage certificate form and forward it to the Clerk of Court.

- B. If a party to the marriage is unable to be present at the solemnization he may authorize in writing a third person to act as his proxy. If the person solemnizing the marriage is satisfied that the absent party is unable to be present and has consented to the marriage he may solemnize the marriage by proxy. If he is not satisfied, the parties may petition the Court for an order permitting the marriage to be solemnized by proxy.
- C. Upon receipt of the marriage certificate, the Clerk of Court shall register the marriage.
- D. The solemnization of the marriage is not invalidated by the fact that the person solemnizing the marriage was not legally qualified to solemnize it if either party to the marriage believed him to be so qualified. No particular form of solemnization is required so long as both parties declare in the presence of the person solemnizing the marriage that they take each other as husband and wife.

8-1-11 Existing Marriages

- A. All marriages performed other than as provided for in this Code, which are valid under the laws of the jurisdiction where and when performed, are valid within the jurisdiction of the Northern Cheyenne Reservation.
- B. All marriages performed on the Reservation prior to the effective date of this Code, including those perfected according to Reservation custom, are valid for all purposes under this code.

8-1-12 Declaration of Marriage without Solemnization

- A. A person desiring to consummate a marriage by written declaration without the solemnization provided for in 8-1-10 must, prior to executing the declaration, meet all other provisions of the Northern Cheyenne Domestic Relations Code, and a certificate attesting to this shall be attached to the declaration and shall be filed by the Clerk of Court when the contract is executed on the Northern Cheyenne Reservation. A declaration of marriage must contain the following:
 - 1. The names, ages, and residence of the parties;

2. The fact of marriage;
 3. The name of the father and maiden name of the mother of both parties and addresses of each;
 4. A statement that both parties are legally competent to enter into the marriage contract.
- B. The declaration must be signed by the parties and attested by at least two witnesses and formally acknowledged before a judge of the Northern Cheyenne Reservation Court.

8-1-13 Declaration -- Acknowledged and Recorded

The written declaration of marriage shall be filed by the Clerk of Court and shall serve and be processed as an official record of the marriage of the parties so long as all pertinent provisions of this Code are met.

8-1-14 Validity of Common Law Marriage

Common law marriages are not invalidated by this Code.

8-1-15 Prohibited Marriages

- A. The following marriages are prohibited:
1. A marriage entered into prior to the dissolution of an earlier marriage of one or more of the parties;
 2. Marriages between parents and children, between brothers and sisters of the one-half as well as the whole blood, and between uncles and nieces, or aunts and nephews, are incestuous and void from the beginning, whether the relationship is legitimate or illegitimate.
 3. All marriages between first cousins.
- B. Parties to a marriage prohibited under this section who cohabit after removal of the impediment are lawfully married as of the date of the removal of the impediment.
- C. Children born of a prohibited marriage are legitimate.

8-1-16 Declaration of Invalidity

- A. The Court shall enter its decree declaring the invalidity of a marriage entered into under the following circumstances:
1. A party lacked capacity to consent to marriage because of the influence of alcohol, drugs or other incapacitating substances, or a party was induced to enter into a

marriage by force or duress, or by fraud involving the essentials of marriage;

2. A party lacked the physical capacity to consummate the marriage by sexual intercourse, and at the time the marriage was entered into, the other party did not know of the incapacity;
 3. A party was under the age of sixteen (16) or was age sixteen (16) or seventeen (17) and did not have the consent of his parents or guardian or judicial approval; or
 4. The marriage is prohibited.
- B. A declaration of invalidity may be sought by either party, the legal spouse in case of a bigamous marriage, the Reservation Prosecutor, or a child of either party, at any time prior to the death of one of the parties.
- C. Children born of a marriage declared invalid are legitimate.
- D. In no event may a declaration of invalidity be sought after the death of either party to the marriage.
- E. A marriage declared invalid under this Code shall be found invalid as of the date of the marriage, except the Court may determine that a nonretroactive decree better serves the interest of all of the parties under the circumstances. The provisions of the Code relating to property disposition, maintenance, support and child custody on dissolution of marriage are applicable to decrees of invalidity.

8-1-17 Putative Spouse

Any person who has cohabited with another to whom he is not legally married and had a good faith belief that he was married to that person is a putative spouse until knowledge of the fact that he was not legally married terminates his status and prevents acquisition of further rights. A putative spouse acquires the rights conferred upon a legal spouse. If there is a legal spouse or other putative spouse the Court shall apportion property, maintenance, and support rights among the parties as appropriate under the circumstances.

Chapter 2. DISSOLUTION OF MARRIAGE, SEPARATION, DISPOSITION OF PROPERTY, CHILD SUPPORT, MAINTENANCE

8-2-1 Dissolution of Marriage -- Separation

- A. The Court shall enter a decree of dissolution of marriage when:
1. The Court determines that one of the parties, at the time the action is commenced, has been domiciled within the

Northern Cheyenne Reservation for 90 days;

2. The Court finds that the marriage is irretrievably broken, and these findings are supported by evidence; and
 3. The Court has made determinations concerning child custody and support, maintenance of either spouse, and disposition of property, or set a date for a separate hearing to complete such matters.
- B. If a party requests a decree of separation rather than a decree of dissolution of marriage the Court shall grant the decree in that form unless the other objects.

8-2-2 Procedure - Commencement-Pleadings-Abolition of Existing Defenses

- A. The certified petition in a proceeding for dissolution of marriage or separation shall allege the marriage is irretrievably broken and shall set forth:
1. The age, occupation, and residence of each party and his length of residence within the Reservation;
 2. The date of the marriage and the place at which it was registered;
 3. Facts which place jurisdiction in the Court under the Northern Cheyenne Civil Procedure Code and section 8-2-1;
 4. A statement that the marriage is irretrievably broken under 8-2-1;
 5. The names, ages, and addresses of all living children of the marriage and whether or not the wife is pregnant;
 6. Any arrangements as to support, custody and visitation, and maintenance; and
 7. The relief sought.
- B. Either or both parties to the marriage may initiate the proceeding.
- C. If a proceeding is commenced by one of the parties, the other party must be served in the manner provided by the Northern Cheyenne Civil Procedure Code, and may, within twenty (20) days of receiving the service, file a response. No decree shall be entered until twenty (20) days after the date of service.
- D. Previously existing defenses to divorce and separation, including

but not limited to connivance, collusion, recrimination, insanity, and lapse of time are abolished.

- E. The Court may join additional parties to gather information in order to exercise its authority to implement this Code.

8-2-3 Temporary Order to Temporary Injunction

- A. In a proceeding for dissolution of marriage or separation, either party may move for temporary maintenance or temporary support of a child of the marriage entitled to support. The motion shall be accompanied by an affidavit setting forth the factual basis for the motion and the amounts requested.
- B. Either as a part of the motion for temporary maintenance or support, or by a separate motion accompanied by an affidavit as a factual basis for the motion, either party may request the Court to issue a temporary injunction which:
 - 1. Restrains any person from transferring, encumbering, concealing, or otherwise disposing of any property except in the usual course of business or for the necessities of life, and if so restrained, requiring him to notify the moving party of any extraordinary expenditures made after the order is issued;
 - 2. Enjoins a party from molesting or disturbing the peace of the other party, a child, or any other person, concerned in the proceeding;
 - 3. Excludes a party from the family home or from the home of one of the parties upon the showing that physical or emotional harm would otherwise result;
 - 4. Enjoins a party from removing a child from the jurisdiction of the court; or
 - 5. Provides other injunctive relief under the circumstances.
- C. The Court may issue a temporary injunction without requiring notice to the other party if it determines that irreparable injury will result to the moving party if the injunction is not issued immediately.
- D. A response may be filed within twenty (20) days after service or at a time specified in the temporary injunction.
- E. On the basis of the facts alleged in accordance with this section, the Court may issue a temporary maintenance or support order, or a temporary injunction in amounts and on terms just and proper in the circumstances.

F. A temporary order or temporary injunction:

1. Does not prejudice the rights of the parties or the child which are to be adjudicated at subsequent hearings on the proceedings;
2. May be revoked or modified before final decree on a showing by sworn affidavit of the facts necessary to revocation or modification of a final decree under this Code;
3. Terminates when the final decree is entered or when the petition for dissolution or legal separation is voluntarily dismissed.

8-2-4 Irretrievable Breakdown

- A. If both of the parties have stated under oath, affirmation, by petition or otherwise that the marriage is irretrievably broken, or one of the parties has so stated and the other has not denied it, the Court shall determine whether the marriage is irretrievably broken.
- B. If one of the parties has denied under oath or affirmation that the marriage is irretrievably broken the Court shall consider all relevant factors as to the prospect for reconciliation and shall:
 1. Determine whether the marriage is irretrievably broken; or
 2. Continue the matter for further hearing no earlier than thirty (30) days nor more than sixty (60) days from the date that the denial of irretrievable breakdown is received. The Court may suggest to the parties that they seek counseling. At the further hearing date the Court shall make a finding of whether or not the marriage is irretrievably broken.
- C. A finding of irretrievable breakdown is a determination that there is no reasonable prospect of reconciliation.

8-2-5 Separation Agreement

- A. To promote amicable settlement of disputes between parties the parties may enter into a written separation agreement containing provisions for disposition of property, support, custody and visitation of their children, and maintenance.
- B. In a proceeding for dissolution of marriage or for legal separation, the terms of the separation agreement, except those providing for the support, custody, and visitation of children, are binding upon the Court unless it finds that due to the economic circumstances of the parties or any relevant

circumstances that the separation agreement is unconscionable.

- C. If the Court finds the separation agreement is appropriate under all of the circumstances:
 - 1. Its terms shall be set forth in the decree of dissolution or legal separation and the parties shall be ordered to perform them, except when the agreement itself provides to the contrary;
 - 2. If the agreement provides that its terms shall be set forth in the final decree, the decree shall identify the agreement, and incorporate its terms in the final decree, stating that the terms are appropriate under all of the circumstances.
- D. Terms of the agreement set forth in the decree are viewed as a contract and are enforceable by all remedies available for enforcement of a judgment, including contempt of court.
- E. If the Court finds that the separation agreement is not appropriate under all of the circumstances it may request the parties to submit a revised agreement or make orders for the disposition of property, maintenance, and support.
- F. Except for terms concerning the support, custody, or visitation of children, the decree may expressly preclude or limit modification of terms set forth in the decree if the separation agreement expressly states that preference.

8-2-6 Disposition of Property

- A. In a proceeding for a dissolution of marriage, separation, or disposition of property following a decree of dissolution of marriage or separation the Court, without regard to marital misconduct, shall apportion between the parties all property and assets belonging to either or both regardless of how or when the property or assets were acquired or whether the title is in the name of the husband, wife, or both. In making the apportionment the Court shall consider:
 - 1. The duration of the marriage;
 - 2. Antenuptial agreements, if any, of the parties;
 - 3. The age, health, occupation, amount and source of income, skills and employability, liabilities and needs of each of the parties;
 - 4. Child custody provisions; and child support provisions;
 - 5. Whether or not the apportionment is in lieu of or in

addition to maintenance;

6. The contribution or dissipation of value of the respective estates; and
 7. The contribution of a spouse as a homemaker or to the family unit.
- B. The Court may protect and promote the best interest of a child by setting aside a portion of the property or assets or either or both parties in a separate fund or trust for the support, maintenance, educational, and general welfare of any minor, dependent, or incompetent children of the parties.

8-2-7 Maintenance

- A. In a proceeding for dissolution of marriage or legal separation, or a proceeding for maintenance following a final decree in a dissolution of marriage the Court may grant a maintenance order for either spouse only if it finds that the spouse seeking maintenance:
1. Lacks sufficient property to provide for his reasonable needs; and
 2. Is unable to support himself through appropriate employment or is a custodian of a child whose condition or circumstances make it appropriate that the custodian not seek employment outside the home.
- B. The maintenance order shall be in an amount and for a period of time that the Court deems just, without regard to marital misconduct, after considering all relevant facts including:
1. The financial resources of the party seeking maintenance, including marital property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that child's custodian;
 2. The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find appropriate employment;
 3. The standard of living established during the marriage;
 4. The duration of the marriage;
 5. The age, and the physical and emotional condition of the spouse seeking maintenance; and
 6. The ability of the spouse from whom maintenance is

sought to meet his needs while meeting those of the spouse seeking maintenance.

8-2-8 Child Support

In a proceeding for dissolution of marriage, separation, maintenance or child support, the Court may order either or both parents owing a duty of support to a child to pay an amount reasonable or necessary for his support, without regard to marital misconduct, and after considering all relevant circumstances.

8-2-9 Representation of the Child

The Court may, upon its own motion or the motion of an interested person, appoint an attorney or lay representative authorized to practice before the Court to represent the interest of a minor child. The Court shall enter an order for expenses and fees in favor of the child's attorney or lay representative. The order shall be made against either or both parents except when one or both of the parties is indigent.

8-2-10 Payment of Maintenance or Support to the Court

- A. Upon its own motion or upon the motion of either party, the Court may order at any time that the maintenance or support payments shall be paid to the Clerk of Court as trustee for the remittance to the person entitled to receive the payments.
- B. The Clerk of Court shall maintain records showing the amount of the payments, the date payments are required to be made, the date payments are received by the Court, and the date of the distribution of the payment to the person entitled to receive the payments, and the names and addresses of the parties affected by the order.
- C. The parties subject to the order shall inform the Clerk of Court of any change of address or other condition which may affect the administration of the order.

8-2-11 Assignments

The Court may order the person obligated to pay support or maintenance to make an assignment of a part of his periodic earnings or trust income to the person entitled to receive the payments. The assignment is binding on an employer, trustee, or other payer of the funds two (2) weeks after the service upon him of notice that it has been made. The payer shall withhold from the earnings or trust income payable to the person obligated to support the amount specified in the assignment, and shall transmit the payment to the person specified in the order. The payer may deduct from each payment a sum not exceeding one dollar (\$1.00) as reimbursement for cost. An employer shall not discharge or otherwise discipline an employee as the result of a wage or salary assignment authorized by Court order.

8-2-12 Cost -- Attorney's Fees

The Court, after considering the financial resources of both parties, may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this Code and for attorney's fees, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or after entry of judgment. The Court may order that the amount be paid directly to the attorney, who may enforce the order in his name.

8-2-13 Decree

- A. A decree of dissolution of marriage or separation is final when entered, subject to the right of appeal. Appeal from the decree of dissolution which does not challenge the finding that the marriage is irretrievably broken does not delay the finality of the provisions of the decree which dissolves the marriage beyond the time for appealing from that provision. Either party may remarry pending appeal.
- B. No sooner than six (6) months after entry of a decree of separation, the Court on motion of either party shall convert a separation to a decree of dissolution of marriage.
- C. The Clerk of Court shall give notice of the entry of the decree of dissolution or separation to the appropriate official where the marriage is registered with the request that he enter the fact of dissolution in the appropriate record.
- D. Upon request by a wife whose marriage is dissolved or declared invalid, the Court shall order her maiden name or a former name restored.

8-2-14 Independence of Provisions of Decree or Temporary Order

If a party fails to comply with a provision of a decree or temporary order or injunction, the obligation of the other party as to payments for support or maintenance or to permit visitation is not suspended; but he may move the Court to grant an appropriate order.

8-2-15 Modification and Termination of Provisions for Maintenance, Support, and Property Disposition

- A. Except as otherwise provided in this Code, the provisions of any decree concerning maintenance or support may be modified by a Court only as to installments accruing subsequent to the motion for modification and either:
 1. Upon a showing of changed circumstances so substantial and continuing as to make the terms unconscionable; or

2. Upon written consent of the parties. The provisions as to property disposition may not be revoked or modified by the Court except:
 - a. Upon written consent of the parties; or
 - b. If the Court finds the existence of conditions that justify a reopening of a judgment under the Northern Cheyenne Reservation Code.
- B. Unless otherwise agreed in writing or expressly provided in the decree, the obligation to pay future maintenance is terminated upon the death of either party or the remarriage of the party receiving maintenance.
- C. Unless otherwise agreed in writing or expressly provided in the decree, provisions for the support of a child are terminated by emancipation of the child, but not by the death of the parent obligated to support the child. When a parent obligated to pay support dies, the amount of support may be modified, revoked, or commuted to a lump sum payment to the extent that the Court determines is appropriate in the circumstances.

Chapter 3 CHILD CUSTODY

8-3-1 Jurisdiction - Commencement of Proceedings

- A. The Northern Cheyenne Reservation Court has jurisdiction to make a child custody determination by initial or modification decree if:
 1. The Northern Cheyenne Reservation:
 - a. Is the home of the child at the time of commencement of the proceedings in Reservation Court; or
 - b. Has been the child's home within six (6) months before commencement of proceedings and the child is absent from this home because of his removal or retention by a person claiming custody or for other reasons, and a parent or person acting as parent continues to live within the Northern Cheyenne Reservation;
 2. It is in the best interest of the child that the Court assumes jurisdiction because:
 - a. The child and his parents or the child and at least one contestant have a significant connection with the Northern Cheyenne Reservation; and

- b. There is substantial evidence concerning the child's present or future care, protection, training, and personal relationships available to the Court;
 - 3. The child is physically present within the Reservation; and:
 - a. Has been abandoned; or
 - b. It is necessary in an emergency to protect him because he has been subjected to or threatened with mistreatment or abuse or is neglected or dependent; or
 - 4. No state or other tribal government has jurisdiction under provisions substantially in accord with this Code, or another state or reservation has declined to exercise jurisdiction on the grounds that the Northern Cheyenne Reservation is the more appropriate forum to determine custody of the child.
- B. Physical presence of the child, while desirable, is not a prerequisite for jurisdiction to determine his custody in the Northern Cheyenne Court.
- C. A child custody proceeding is commenced in the Court:
- 1. By a parent filing a petition for
 - a. Dissolution or legal separation; or
 - b. Custody of the child; or
 - 2. By a person other than a parent, but only if he is not in the physical custody of one of his parents.
- D. Notice of the child custody proceeding shall be given to the child's parents, guardian, custodian, those persons having physical custody of the child, and all other parties who may appear, be heard and file pleadings. Upon showing of good cause, the Court may permit intervention of other interested parties.

8-3-2 Best Interest of the Child

The Court shall determine custody in accordance with the best interest of the child; relevant factors include but are not limited to:

- A. The wishes of the child's parents;
- B. The wishes of the child as to his custodian;

- C. The interaction and relationship of the child with his parent or parents, his siblings, his extended family, and any other person who may significantly affect the child's best interest;
- D. The child's adjustment to his home, school and community;
- E. The mental and physical health of all individuals involved;
- F. Whether or not the child has been incorporated into the home of one of the parents.

8-3-3 Temporary Orders

- A. A party to a custody proceeding may move for a temporary custody order. The motion must be supported by an affidavit as provided in this Code. The Court may award temporary custody after a hearing determining the best interests of the child, or, if there is no objection, solely upon the basis of the affidavits.
- B. If a proceeding for dissolution of marriage or a legal separation is dismissed, any temporary custody order is vacated unless a parent or the child's custodian moves that the proceeding continue as a custody proceeding and the Court finds that circumstances of the parents and the best interest of the child require that a custody decree be issued.
- C. If a custody proceeding commenced in the absence of a petition for dissolution of marriage or legal separation is dismissed, any temporary custody order is vacated.

8-3-4 Interviews

- A. The Court may interview the child in chambers to ascertain the child's wishes as to his custodian and as to visitation. The Court may permit counsel to be present at the interview. The Court shall make a record of the interview and make that record part of the record of the entire proceeding.
- B. The Court may seek the advice of professional personnel, whether or not employed by the Court on a regular basis. The advice given shall be in writing and made available by the Court to counsel upon request. The counsel may examine as a witness any professional personnel consulted by the Court.

8-3-5 Investigations and Reports

- A. In contested custody proceedings, if a parent or child's custodian so requests, the Court may order an investigation and report concerning custodial arrangements of the child. The investigation and report may be made by the Northern

Cheyenne Social Services or the appropriate county welfare department.

- B. The investigator may consult any person who may have information about the child and his potential custodial arrangements. Upon order of the Court the investigator may refer the child to professional personnel for evaluation and advice as to the best interest of the child. The investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child without obtaining the consent of the parent or the child's custodian, except the child must consent if he has reached the age of sixteen (16) unless the Court determines that he lacks the mental capacity to consent. The investigator's report may be received as evidence at the custody hearing.
- C. The Court shall mail the investigator's report to counsel and to any party with a substantial interest in the outcome of the proceedings who is not represented by counsel, at least ten (10) days prior to the hearing. The investigator shall make available to counsel and the appropriate parties not represented by counsel, the investigator's file of underlying data, and reports, complete text of diagnostic information, and the names and addresses of all persons who the investigator has consulted. Any party to the proceeding may call the investigator and any person who he has consulted for cross-examination. A party may not waive his right of cross-examination prior to the hearing.

8-3-6 Hearings

- A. The Court may order one of the parties or both of the parties to pay the travel costs and other necessary expenses incurred by any person whose presence at the hearing the Court deems necessary to determine the best interest of the child.
- B. The Court shall determine questions of law and fact without a jury. If it determines that a public hearing will be detrimental to the child's best interest the Court may exclude the public from a custody hearing admitting only persons who have a direct and legitimate interest in the particular case or legitimate educational or research interest in the work of the court.
- C. When the Court determines the child's welfare is best protected by keeping the records of interviews, reports, investigations, or testimony confidential in a custody proceeding the Court may make an order sealing the record.

8-3-7 Parental Visitation

- A. A parent not granted custody of the child is entitled to

reasonable visitation rights unless after a hearing the Court determines that visitation would endanger the child's physical, mental, moral, or emotional health.

- B. The Court may modify an order granting or denying visitation rights whenever modification would serve the best interest of the child. The Court shall not restrict a parent's visitation rights unless it determines that the visitation would seriously endanger the child's physical, mental, moral, or emotional health.

8-3-8 Grandparent - Extended Family - Former Custodian - Visitation

Visitation rights may be granted to a child's grandparents, a former custodian, or extended family members when the Court finds such visitation to be in the best interest of the child.

8-3-9 Determination of Custody upon Death of Custodial Parent

- A. Upon the death of a parent granted custody of a child the child becomes a ward of the Northern Cheyenne Reservation. The Northern Cheyenne Court may award physical custody to any of the following:
1. The noncustodial natural parent;
 2. The surviving spouse of the deceased custodial parent;
 3. A person nominated by the will of the deceased custodial parent;
 4. Any person nominated by the child if the child is at least twelve (12) years old;
 5. Any other person if that person has actual physical control over the child;
 6. Any other party whom, upon showing of good cause, the court permits to intervene as an interested party.
- B. The noncustodial parent shall be a party in any proceeding brought under this section.
- C. Upon the death of a parent granted custody of a child, any of the parties listed in subsection (A) may request a custody hearing and seek custody of the child.

8-3-10 Award of Joint or Separate Custody

In custody disputes involving both parents of a minor child, custody shall be awarded to the following according to the best interests of the child; and the Court may require the submission to the Court of a plan for the

implementation of the custody order:

- A. To either parent. In making an award to either parent, the Court shall consider, along with the factors set out in 8-3-2, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent and may not prefer a parent as custodian because of the parent's sex or tribal status.
- B. To both parents jointly pursuant to 8-3-11.

8-3-11 Joint Custody - Modification - Consultation with Professionals

- A. Upon application of both parents for joint custody the Court shall consider whether or not joint custody is in the best interests of the minor child. If the Court declines to award joint custody it shall state in its decision the reasons for denial of joint custody.
- B. For the purposes of this section, "joint custody" means an order awarding custody of the minor child to both parents and providing that the residency of the child shall be shared by the parents in such a way as to assure the child frequent and continuing (but not necessarily equal) contact with both parents.
- C. Any order for joint custody may be modified to terminate the joint custody.
- D. The court may direct the parties to consult with appropriate professionals for the purpose of assisting the parties to formulate a plan for implementation of the custody order or to resolve any controversy that has arisen in the implementation of a plan for custody, with the consent of both parties.

8-3-12 Access to Records by Noncustodial Parent

Access to records and information pertaining to a minor child, including but not limited to medical, dental, law enforcement, and school records, may not be denied to a parent because such parent is not the child's custodial parent.

8-3-13 Judicial Supervision

- A. Except as otherwise agreed by the parties in writing at the time of the custody decree, the custodian may determine the child's upbringing, including his education, health care, and religious training, unless the Court, after a hearing, finds, upon motion by the noncustodial parent, that in the absence of a specific limitation of the custodian's authority, the child's physical health would be endangered or his emotional development significantly impaired.

8-3-16 Application

- A. This Code applies to all proceedings commenced on or after the date of its approval by the Secretary of the Interior.
- B. This act applies to all pending actions and proceedings prior to its effective date on which a judgment has not been entered. Pending actions for dissolution of marriage or separation are deemed to have been commenced on the basis of irretrievable breakdown. Evidence adduced after the effective date of this Code shall be in compliance with the Code.
- C. This Code applies to all proceedings commenced after its effective date for the modification of a judgment or order entered prior to the effective date of this Code.
- D. In any action or proceeding in which an appeal was pending or a new hearing was ordered prior to the effective date of this Code, the provisions in effect at the time of the order sustaining the appeal or the new hearing govern the appeal, the new hearing, and any subsequent hearing or appeal.

Chapter 4. CHILD CUSTODY JURISDICTION

8-4-1 Purpose --Construction

- A. The general purposes of this section are to:
 - 1. Avoid jurisdictional confusion with courts of other tribes and states in matters of child custody which have in the past resulted in the shifting of children from place to place with harmful effects on their well being;
 - 2. Promote cooperation with courts of other tribes and states to the end that an appropriate forum will be provided as it serves the best interest of the child;
 - 3. Discourage, as much as possible continuing controversies over child custody and encourage a stable home environment and secure family relationships for the child;
 - 4. Deter abductions and other unilateral removals of children undertaken to obtain custody awards;
 - 5. Avoid relitigation of custody decisions of this court, other tribal courts and state courts in so far as is feasible;
 - 6. Promote and expand the exchange of information and other forms of mutual assistance between this court, and

- B. If both parents or all contestants agree to the order, or if the Court finds the absence of the order would cause a risk that the child's physical health would be endangered or his emotional development significantly impaired, the Court may order the Northern Cheyenne Social Services or the appropriate county welfare department to exercise continuing supervision over the case to assure that the custodial and/or visitation terms of the decree are carried out.

8-3-14 Modification

- A. No motion to modify a custody decree may be made earlier than two (2) years after its date unless the Court permits it to be made on the basis of affidavits that there is reason to believe that the child's present environment may endanger seriously his physical, mental, moral or emotional health.
- B. The Court shall not modify a prior custody decree unless it finds upon the basis of facts that have arisen since the prior decree or that were unknown to the Court at the time of the prior decree, that a change has occurred in the circumstances of the child or his custodian, and that modification is necessary to serve the best interests of the child. In applying these standards, the Court shall retain the custodian appointed under the prior decree unless:
 - 1. The custodian agrees to the modification;
 - 2. The child has been integrated into the family of the petitioner with consent of the custodian; or
 - 3. The child's present environment endangers his physical, mental, moral or emotional health, and the harm likely to be caused by a change of environment is outweighed by its advantages to the child.
- C. Attorney fees and costs shall be assessed against the party seeking modification if the Court finds that the modification action is vexatious and constitutes harassment.

8-3-15 Affidavit Practice

A party seeking a temporary custody order or modification of a custody decree shall file an affidavit setting forth facts supporting the requested order or modification and shall give notice, together with a copy of his affidavit to other parties to the proceeding who may file opposing affidavits. The Court shall deny the motion unless it finds an adequate cause for hearing the motion as established by the affidavits, in which case it shall set a date for hearing on an order to show cause why the requested order or modification should not be granted.

8-4-5 Inconvenient Forum

- A. When the Northern Cheyenne Court has jurisdiction under this section to make an initial or modification decree it may decline to exercise its jurisdiction any time before making a decree if it finds that it is an inconvenient forum to make a custody determination under the circumstances of the case and that another tribal court or a state court is a more appropriate forum.
- B. A finding of inconvenient forum may be made upon the Court's own motion or upon motion of a party or a guardian ad litem or other representative of the child.
- C. In determining if it is an inconvenient forum, the Court shall consider if it is in the best interest of the child that another tribal court or state court assume jurisdiction. For this purpose it may take into account the following factors, among others:
 - 1. If another location is or recently was the child's home place;
 - 2. If another court has a closer connection with the child and one or more of the contestants;
 - 3. If substantial evidence concerning the child's present or future care, protection, training, and personal relationships is more readily available in another court;
 - 4. If the parties have agreed on another forum which is no less appropriate; and
 - 5. If the exercise of jurisdiction by the Court would contravene any of the purposes stated in 8-4-1.
- D. Before determining whether to decline or retain jurisdiction, the Court may communicate with another court and exchange information pertinent to the assumption of jurisdiction by either court with a view to assuring that jurisdiction will be exercised by the more appropriate court and that a forum will be available to parties.
- E. If the Court finds that it is an inconvenient forum and that another court is a more appropriate forum, it may dismiss the proceedings or it may stay the proceedings upon condition that a custody proceeding be promptly commenced in another named court or upon any other conditions which may be just and proper, including the condition that a moving party stipulate his consent and submission to the jurisdiction of the other forum.

- F. The court may decline to exercise jurisdiction under this chapter if a custody determination is made in another proceeding for divorce or another proceeding over the divorce or other proceeding.
- G. Upon dismissal or stay of proceedings, the court of original jurisdiction shall inform the court of the forum of this fact.
- H. Any communication received from the Court of a finding of inconvenient forum shall inform the more appropriate forum shall be the registry of the Court. Upon a finding of inconvenient forum shall inform the original court of

8-4-6 Jurisdiction Declined by Reason of C

- A. If the petitioner for an initial determination of custody of a child from another reservation has engaged in similar reprehensible conduct, the court shall decline its jurisdiction if this is just and proper.
- B. Unless required in the interest of justice, the court shall not exercise its jurisdiction to modify a custody determination if the petitioner, without good cause, to custody, has improperly removed the child from the custody of the person entitled to custody or retained the child after a relinquishment of physical custody. If the petitioner violated any other provision of this chapter, the court shall decline its jurisdiction if this is just and proper in the circumstances.
- C. In appropriate cases a court of original jurisdiction may charge the petitioner with the costs of the proceedings and other expenses, including attorney's fees, for the parties or their witnesses.

8-4-7 Information Under Oath to be Submi

- A. Each party in a custody proceeding shall file an affidavit attached to that petition under oath as to the child's present and past addresses the child has lived within the last year and the present addresses of the persons with whom the child shall further declare under oath
 - 1. He has participated (as a party or in any capacity) in any other litigation

- of the same child in this or any other court;
2. He has information of any custody proceeding concerning the child pending in another court; and
 3. He knows of any person not a party to the proceedings who has physical custody of the child or claims to have custody or visitation rights with respect to the child.
- B. If the declaration as to any of the above items is in the affirmative, the declarant shall give additional information under oath as required by the Court. The Court may examine the parties under oath as to details of the information furnished and as to other matters pertinent to the Court's jurisdiction and the disposition of the case.
- C. Each party has a continuing duty to inform the Court of any custody proceeding concerning the child in this or any other location of which he obtained information during this proceeding.

8-4-8 Additional Parties

If the Court learns from information furnished by the parties under 8-4-7 or from other sources that a person not a party to the custody proceeding has physical custody of the child or claims to have custody or visitation rights with respect to the child it shall order that person to be joined as a party and to be duly notified of the pendency of the proceeding and of his joinder as a party. If the person joined as a party is outside the Northern Cheyenne Reservation he shall be served with process or otherwise notified in accordance with the Northern Cheyenne Civil Procedure Code.

8-4-9 Appearance of Parties and Child

- A. The Court may order any party to the proceeding who is inside this reservation to appear personally before the Court. If that party has physical custody of the child, the Court may order that he appear personally with the child.
- B. If a party to the proceeding whose presence is desired by the Court is outside this reservation with or without the child, the Court may order that the notice given under the Northern Cheyenne Civil Procedure Code include a statement directing that party to appear personally with or without the child and declaring that failure to appear may result in a decision adverse to that party.
- C. If a party to the proceeding who is outside this reservation is directed to appear under subsection (B) of this section or desires to appear personally before the Court with or without the child, the Court may require another party to pay to the

Clerk of the Court travel and other necessary expenses of the party so appearing and of the child, if this is just and proper under the circumstances.

8-4-10 Legal Effect of Custody Decree

A custody decree rendered by the Northern Cheyenne Court under proper jurisdiction binds all parties who have been served on the reservation or notified in accordance with 8-4-3 or who have submitted to the jurisdiction of the Court and who have been given an opportunity to be heard. As to these parties the custody decree is conclusive as to all issues of law and fact decided and as to the custody determination made unless and until that determination is modified pursuant to law, including the provisions of this Code.

8-4-11 Recognition of Off-Reservation Custody Decrees

The Northern Cheyenne Court shall recognize and enforce an initial or modification decree of a court which assumed jurisdiction under statutory provisions substantially in accord with this Code which was made under factual circumstances meeting the standards of this Code, so long as this decree has not been modified, except when the other tribal or state court has refused to recognize decrees of the Northern Cheyenne Court.

8-4-12 Modification of Custody Decree of Another Court

- A. If another tribal court or a state court has made a custody decree, the Northern Cheyenne Court may not modify that decree unless it appears to the court that the court which rendered the decree does not now have jurisdiction under jurisdictional prerequisites substantially in accordance with this code or has declined to assume jurisdiction to modify the decree and the Northern Cheyenne Court has jurisdiction.
- B. If the Northern Cheyenne Court is authorized under subsection (A) of this section and 8-4-1 to modify a custody decree of another court it shall give due consideration to the transcript of the record and other documents of all previous proceedings submitted to it.

8-4-13 Filing and Enforcement of Custody Decree of Another Court

- A. A certified copy of a custody decree of another tribal court or a state court may be filed in the office of the Clerk of Court. The Clerk shall treat the decree in the same manner as a custody decree of the Northern Cheyenne Court. A custody decree so filed has the same effect and shall be enforced in like manner as a custody decree rendered by the Northern Cheyenne Court.
- B. A person violating a custody decree of another court, which

has been filed with the Northern Cheyenne Court, which makes it necessary to enforce the decree in the Northern Cheyenne Court may be required to pay necessary travel and other expenses, including attorney's fees, incurred by the party entitled to the custody or his witnesses.

8-4-14 Registry of Custody Decrees and Proceedings of Other Courts

The Clerk of the Northern Cheyenne Court shall maintain a registry in which he shall enter the following:

- A. Certified copies of custody decrees of other courts received for filing;
- B. Communications as to the pendency of custody proceedings in other courts;
- C. Communications concerning a finding of inconvenient forum by another court; and
- D. Other communications or documents concerning custody proceedings in another court which may affect the jurisdiction determinations of the Northern Cheyenne Court or the disposition to be made by it in a custody proceeding.

8-4-15 Certified Copies of Custody Decree

The Clerk of the Northern Cheyenne Court, at the request of the court of a state or of another tribal court or at the request of any person who is affected by or has a legitimate interest in a custody decree, shall certify and forward a copy of the decree to that court or person.

8-4-16 Taking Testimony Off-Reservation

In addition to other procedural devices available to a party, any party to the proceeding or a guardian ad litem or other representative of the child may adduce testimony of witnesses, including parties and the child, by deposition or otherwise, in a location off of the Northern Cheyenne Reservation. The court on its own motion may direct that the testimony of a person be taken off of the reservation and may prescribe the manner in which and the terms upon which the testimony shall be taken.

8-4-17 Hearings and Studies Off-Reservation -- Orders to Appear

- A. The Northern Cheyenne Court may request the appropriate court of another tribe or of a state to hold a hearing or appoint a special master to hold a hearing to adduce evidence to order a party to produce or give evidence under procedures of that court, or to have social studies made with respect to the custody of a child involved in proceedings pending in the Northern Cheyenne Court; and to forward to the Northern Cheyenne Court certified copies of the transcript of the record

of the hearing, the evidence otherwise adduced, or of any social studies prepared in compliance with the request. The cost of the services may be assessed against the parties or if necessary, ordered paid by the Northern Cheyenne Reservation.

- B. The Court may request the appropriate court of another tribe or a state court to order a party to custody proceedings pending in the Northern Cheyenne Court to appear in the proceedings and, if that party has physical custody of the child, to appear with the child. The request may state that travel and other necessary expenses of the party and of the child whose appearance is desired will be assessed against another party or will otherwise be paid.

8-4-18 Assistance to Other Courts

- A. Upon request of another tribal court or of a state court which is competent to hear custody matters the Northern Cheyenne Court may order a resident of the Northern Cheyenne Reservation to appear at a hearing to adduce evidence or to produce or give evidence under other procedures available under the Northern Cheyenne Codes or may request social studies to be made for use in a custody proceeding in another tribal court or a state court. A certified copy of the transcript of the record of the hearing or the evidence otherwise adduced and any social studies prepared shall be forwarded by the Clerk of the Court to the requesting court. The Court may condition compliance with the request upon assurance by another court that necessary expenses will be advanced or reimbursed.
- B. A resident of the Northern Cheyenne Reservation may voluntarily give his testimony or statement in the Northern Cheyenne Court for use in a custody proceeding off of the Northern Cheyenne Reservation.
- C. Upon request of the court of another tribe or of a state court the Northern Cheyenne Court may order a person in residence on the Northern Cheyenne Reservation to appear with the child in a custody proceeding off of the Reservation. The Court may condition compliance with the request upon assurance by the other court that travel and other necessary expenses will be advanced or reimbursed.

8-4-19 Preservation of Documents for Use in Other Courts

In any custody proceedings in the Northern Cheyenne Court the Court shall preserve the pleadings, orders and decrees, any record that has been made of its hearings, social studies, and other pertinent documents. Upon appropriate request of another tribal court or of a state court, the Court shall forward to the other court certified copies of any or all of such documents.

8-4-20 Request for Records of Another Court

If a custody decree has been rendered in another court concerning a child involved in a custody proceeding pending in the Northern Cheyenne Court, the Court upon taking jurisdiction of the case shall request of the other court a certified copy of the transcript of any court record and other documents mentioned in 8-4-19.

8-4-21 Priority

A custody proceeding which raises a question of the existence or exercise of jurisdiction under this Code shall be given calendar priority and handled expeditiously.



United States Department of the Interior
BUREAU OF INDIAN AFFAIRS

NORTHERN CHEYENNE AGENCY
LAME DEER, MONTANA 59043

IN REPLY REFER TO:
Law Enforcement Services

JAN - 8 1990

Mr. Edwin Dahle, President
Northern Cheyenne Tribal Council
Lame Deer, Montana 59043

Dear Mr. Dahle:

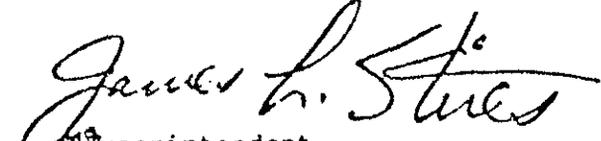
Attached is the original of Northern Cheyenne Tribal Ordinance 5(90) enacted by the Northern Cheyenne Tribal Council on December 19, 1989 and received in this office on January 3, 1990.

Ordinance No. 5(90) pertains to amending the Law and Order Code Title VIII - Domestic Relations.

Upon review, I approve Ordinance 5(90) as written and enacted under authority of Article IV, Section 1(i) of the Northern Cheyenne Tribal Constitution and By-Laws.

We have retained sufficient copies for our files and submission to the Billings Area Office for review in accordance with your Tribal Constitution and By-Laws.

Sincerely,


Superintendent

Attachments

memorandum

DATE: FEB 26 1990

REPLY TO
ATTN OF: Division of Programs, Real Property Management, Code 370SUBJECT: Northern Cheyenne Tribal Ordinance amending Law and Order
Code - Title VIII - Domestic RelationsTO: Superintendent, Northern Cheyenne Agency
Attention: Real Property Management

FROM: Billings Area Director

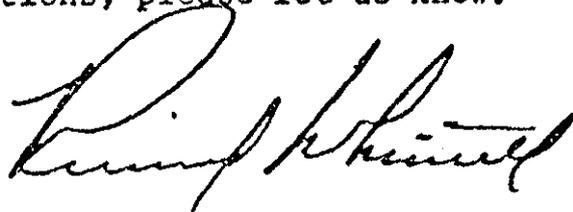
AM
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PH

A copy of Northern Cheyenne Tribal Ordinance No. 5(90), enacted December 19, 1989, was provided to the Branch of Real Property Management for comment.

Since our concerns were that in accordance with 25 CFR 151.22, individually-owned trust or restricted lands may not be conveyed without the approval of the Secretary of the Interior, a review of the subject ordinance was requested from the Solicitor's office.

Recommendations concerning this issue are addressed in the Solicitor's Opinion of January 15, 1990, of which a copy is attached.

Should you have any questions, please let us know.



Attachments



Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

 OPTIONAL FORM NO. 10
 (REV. 7-79)
 GSA FPMR (41 CFR) 101-11.6
 5010-108

TRIBAL COUNCIL OF THE NORTHERN CHEYENNE
NORTHERN CHEYENNE RESERVATION
LAME DEER, MONTANA

ORDINANCE NO. 5 (90)

AN ORDINANCE OF THE NORTHERN CHEYENNE TRIBAL COUNCIL AMENDING THE
LAW AND ORDER CODE - TITLE VIII - DOMESTIC RELATIONS.

WHEREAS, from time to time certain modifications must be made in
the substantive laws that govern the Northern Cheyenne
Reservation: and,

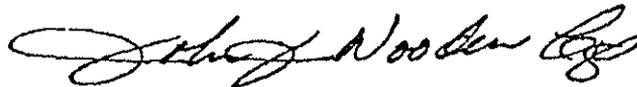
WHEREAS, the potential is great for a couple who is dissolving
their marriage to have the court award a part of the
marital estate to a non-member and if the marital
property is trust realty that property will go out
of trust; now,

BE IT ORDAINED by the Northern Cheyenne Tribal Council that the
following ordinance is hereby adopted as follows:

8-2-6 Disposition of Property

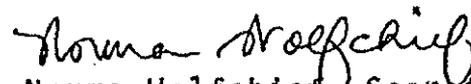
8. The Court shall determine whether during
the marriage the couple acquired any trust
realty within the exterior boundaries of
the Northern Cheyenne Reservation, and, if
such property was acquired, the Court, in
dividing the marital property, shall divide
the property in such a way that if one of
the petitioners is a non-member of the
Northern Cheyenne Tribe then no trust realty
shall be awarded to the non-member.

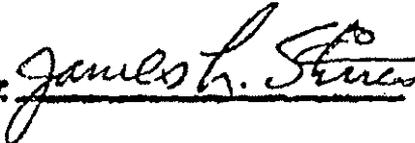
PASSED, ADOPTED AND APPROVED by the Northern Cheyenne Tribal Council
by 12 votes for passage and adoption and no vote against
passage and adoption this 19th day of December, 1989.



John J. Woodenlegs,
Acting Vice-President
Northern Cheyenne Tribal Council

ATTEST:


Norma Wolfchiet, Secretary
Northern Cheyenne Tribal Council

APPROVED: 

JAN - 8 1990

ACTING SUPERINTENDENT



United States Department of the Interior

OFFICE OF THE SOLICITOR

Rec'd R.M.

P.O. BOX 31394
BILLINGS, MONTANA 59101



FEB 8 1 1990

BILLINGS

FEB 15 1990

BIA.BL.0166

MEMORANDUM

TO: Area Director, Indian Affairs, Billings
 Attention: Division of Programs
 Real Property Management, Code 370

FROM: Richard K. Aldrich, Field Solicitor
 Pacific Northwest Region (Billings)

SUBJECT: Northern Cheyenne Ordinance 5(90) on Domestic Relations

Thank for your January 31, 1990, request for an opinion. You indicate that the Northern Cheyenne Tribe adopted Ordinance No. 5(90) on December 19, 1989, which ordinance was approved by the Acting Superintendent on January 8, 1990. You note that conveyances under 25 C.F.R. 152.22 pertaining to individually owned trust or restricted lands may not be conveyed without the approval of the Secretary of the Interior. You asked for our opinion on whether the Northern Cheyenne Tribe (through its council and court) by way of ordinance can legally restrict the disposition of trust real property as part of the dissolution of a marriage whether the party be a member or nonmember.

Ordinance 5(90) indicates that the Northern Cheyenne Tribal Court shall determine whether the couple petitioning for divorce acquired trust property within the exterior boundaries of the reservation, and if so, the court in dividing such property shall divide the property in such a way that the nonmember shall not receive any trust property. The purpose of the ordinance apparently is to keep individual allottee land in trust on the reservation.

You are correct in your implied assertion that the tribal court cannot replace the Secretary of the Interior in approving conveyance of trust property. The Secretary has the unfettered responsibility to approve conveyances of trust property.

However, the Tribe may be, as a matter of policy, directing the tribal court to avoid divorce property settlements wherein the nonmember receives the trust property, if in equity, the nonmember could receive in kind value by way of non-trust assets, leaving the member with the trust asset. The ordinance leaves

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out some of those assumptions in its writing. However, it is not the purpose of this office to find tribal ordinances illegal unless they are directly contradictory to federal statutes. In other words, the tribal ordinance may be applied in certain cases in such a way that it would be fair or equitable to the parties.

On the other hand, where the tribal ordinance unduly restricts the authority of the tribal court to make fair divisions of property, the ordinance may not be applied. Because of that reason the mandatory language ("shall" in the ordinance) may be a fatal flaw of the ordinance. In other words if the parties own all trust real estate and no other assets and the court must make an equitable division between the parties, the tribal court may have no choice but to equitably divide the real estate. That is not to say that the court can actually order the transfer of the property from fee to trust or trust to fee as that would unduly fetter the Secretary's discretion. All the court may do in this instance is to order the party before the court to make application to the Secretary for transfer. In those cases the Bureau of Indian Affairs (BIA) will process the transfer of property and approve same as if the application for transfer meets all requirements. In other words, the BIA cannot refuse to approve an application for transfer of property from trust to fee (or vice versa) merely because the people are involved in a divorce.

In domestic relations if the parties agree to equitably divide their trust property between them, usually the court will approve the property settlement without imposing any other restrictions such as the Tribe here wishes to impose upon the court, and thus the parties. The issue then is whether the tribe can in a sense restrict married members alienability of land from their non-Indian spouses? Is that a reasonable regulation, or is that an unlawful taking of a property right vested by the Constitution?

A right-of-way case before the U.S. Supreme Court addressed the issue. Governments have considerable latitude in regulating property rights in ways that may adversely affect the owners. See Keystone Bituminous Coal Association v. DeBenedictis, 480 U.S. _____ (1987); Penn Central Transportation Co. v. New York City, 438 U.S. 104, 125-27 (1978). The Supreme Court examines whether there is a "taking" question by engaging in essentially ad hoc, factual inquiries that have identified several factors, such as the economic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the governmental action. In the instance at bar, it is very possible that a couple would acquire land in trust with the expectation that the non-Indian spouse would take some of that property in the event of their separation or divorce. Without that right, a non-Indian spouse would have to insist that that persons contributions to the marriage result in fee property, as opposed to trust property. The Indian spouse would lose the tax exemption advantages if their realty had to be in fee. Of course, the tax exemption was not intended to benefit non-

Indians. What of those non-Indian spouses that have already contributed during their marriage to trust property acquisitions? Would the ordinance though applied to future divorces conceivably reach back to those contributions made before the ordinance's effective date? These questions raise constitutional problems and may further narrow the cases to which the ordinance may be applied.

Does the ordinance destroy "one of the most essential sticks in the bundle of rights that are commonly characterized as property? See Kaiser Aetna v. United States, 444 U.S. 164, 176 (1979).

Does a non-Indian spouse who has contributed to trust property have an investment-backed expectation to receive a portion of the real estate in the event of a divorce? In Hodel, et al. v. Irving, et al., 14 I.L.R. 1037 (U.S. Sup. Ct. 1987) the Supreme Court held that the fact that a decedent could have conveyed his property before death by inter vivos transaction was not an adequate substitute for the right taken by the Indian Land Consolidation Act through the escheat provision. There the court held that the fact that a decedent could not devise his escheatable interests and that his right to do so was completely abolished made that statute unconstitutional. However, Justices Stevens and White in concurring in the Irving case, supra, opined that the U.S. government could have used other ways to legally consolidate fractional interests of the land, including outright purchase, condemnation, or conditional devise of voluntary conveyances within a reasonable time.

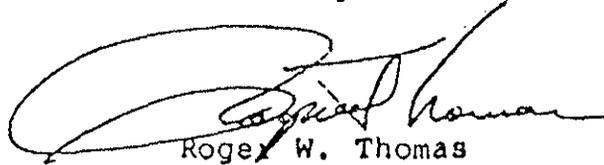
In the instant case the property at least passes to one of the two spouses and does not pass to an entirely third entity as under the Indian Land Consolidation Act where it passed or escheated to the tribe. Therefore, this ordinance is distinguishable from Irving on that basis. Those Justices point out another problem with notice of the statute that is also in this tribal ordinance. The Tribe does not give in the ordinance any mechanism for adequate notice to those parties affected so that they may take appropriate action to avoid the harsh impact of the statute on the non-Indian spouse.^{1/}

This office, like the Courts, refrains from finding ordinances or statutes unconstitutional unless unavoidable; however I do find the ordinance as written without notice and without providing the discretion in the court to equitably divide property to be severe limitations on the application of the ordinance that may cause unconstitutional results on a case by case basis. I would

^{1/} Since the ordinance only regulates trust property which can only be held by Indians, I do not believe the Tribe is unlawfully regulating non-Indians' property rights which would arguably be in violation of the principles announced in Yakima Indian Tribe v. Whiteside, 16 ILR 1044 (S. Ct. 1989) (consolidated with Brendale).

recommend that the Tribe consider another writing of the ordinance so that their goals may be attained without the problems attendant to the present writing.

If you have further questions or comments, please do not hesitate to contact me.

A handwritten signature in black ink, appearing to read "Roger W. Thomas". The signature is fluid and cursive, with a large loop at the beginning.

Roger W. Thomas
For the Field Solicitor

TITLE IX

HEIRSHIP AND PROBATE CODE

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TITLE IX

HEIRSHIP AND PROBATE CODE

I. GENERAL SECTION

9-1-1. Adoption of Heirship and Probate Code.

This Code shall be known as the Northern Cheyenne Heirship and Probate Code. This Code shall supercede any contradictory sections or ordinances.

9-1-2. Purposes - Liberal Construction.

- A. This Code shall be liberally construed and applied to promote its underlying purposes and policies.
- B. The underlying purposes and policies of this Code are to:
 - 1. Discover and make effective the intent of a decedent in distribution of his property;
 - 2. Promote a speedy and efficient system for liquidating the estate of the decedent and making distribution to his successors;
 - 3. Facilitate the power of the Northern Cheyenne Tribal Reservation to prescribe the manner of descent and distribution of the property of its members.

9-1-3. Jurisdiction.

The Northern Cheyenne Tribal Reservation has the inherent power to prescribe the manner of descent and distribution of the property of its members. The Court shall have jurisdiction over personal property of any person who is a resident and dies on the Reservation. The Court shall have the power to appoint conservators and representatives for minors and incompetents, determine the validity of wills, and to probate estates and wills.

9-1-4. General Definitions.

Subject to additional definitions contained in subsequent sections which are applicable to specific sections, the following definitions apply:

- A. Application - a written request for an order of appointment.
- B. Child - includes any individual entitled to take as a child under this code by intestate succession from the parent whose relationship is involved.

- C. Claims - in respect to estates of decedents and protected persons, includes liabilities of the decedent or protected person, and liabilities of the estate which arise at or after the death of the decedent or after the appointment of a conservator, including funeral expenses and expenses of administration. The term does not include estate or inheritance taxes, demands or disputes regarding title of a decedent or protected person to specific assets alleged to be included in the estate.
- D. Conservator - means a person who is appointed by a court to manage the estate of a protected person.
- E. Devise - when used as a noun means a testamentary disposition of real or personal property and when used as a verb means to dispose of real or personal property by will.
- F. Devisee - means any person designated in a will to receive a devise.
- G. Disability - cause for a protective order or appointment of a conservator when:
1. A minor owns money or property that requires management or protection which cannot otherwise be provided, has or may have business affairs which may be jeopardized or prevented by his minority, or when funds are needed for his support and education and that protection is necessary or desirable to obtain or provide funds; or
 2. A person is unable to manage his property and affairs effectively for reasons such as mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, confinement, incarceration, detention by a foreign power, or disappearance.
- H. Distributee - any person who has received property of a decedent from his personal representative other than as a creditor or purchaser.
- I. Estate - includes the property of the decedent, or other person whose affairs are subject to the code.
- J. Fiduciary - includes personal representative, guardian, and conservator.
- K. Formal Proceedings - means those conducted before a judge with notice to interested persons.
- L. Guardian - a person who has qualified as a guardian of a minor

or incapacitated person pursuant to testamentary or court appointment. This term does not include a person who is merely a guardian ad litem.

- M. Heirs - those persons, including the surviving spouse, who are entitled under intestate succession to the property of a decedent.
- N. Incapacitated Person - any person who is impaired by reason of mental illness, mental deficiency, physical illness or disability, advanced age, chronic use of drugs, chronic intoxication, or other cause (except minority) to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person or which cause has so impaired the person's judgment that he is incapable of realizing and making a rational decision with respect to his need for treatment.
- O. Interested Person - includes heirs, devisees, children, spouses, creditors, beneficiaries, and any others having a property right in or claim against a trust estate or the estate of a decedent, ward, or protected person which may be affected by the proceeding. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined by the particular purpose of and matter involved in any proceeding.
- P. Intestate Estate - any part of the estate of a decedent not effectively disposed of by his will passes to his heirs as prescribed by this code so long as that part of the estate is non-trust and non-restricted real property, or personal property of a tribal member.
- Q. Issue - of a person means all his lineal descendants of all generations, with the relationship of parent and child at each generation being determined by the definitions of child and parent contained in this code.
- R. Minor - a person who is under eighteen (18) years of age.
- S. Mortgage - any conveyance, agreement, or arrangement in which property is used as security.
- T. Parent - includes any person entitled to take, or who would be entitled to take if the child died without a will, as a parent under this code by intestate succession from the child whose relationship is in question.
- U. Personal Representative - includes executor, administrator, successor, personal representative, and persons who perform

substantially the same function under the law governing their status.

- V. Petition - a written request to the court for an order after notice.
- W. Property - non-trust and non-restricted real property and personal property or any interest therein.
- X. Protected Person - a minor or other person for whom a conservator has been appointed or other protective order has been made.
- Y. Protective Proceeding - a proceeding to determine that a person cannot effectively manage or apply his estate to necessary ends, either because he lacks the ability or is otherwise incompetent or because he is a minor, and to secure administration of his estate by a conservator or other appropriate relief.
- AA. Testacy Proceeding - a proceeding to establish a will or determine intestacy.
- BB. Ward - a person for whom a guardian has been appointed. A "minor ward" is a minor for whom a guardian has been appointed solely because of minority.
- CC. Will - includes codicil and any testamentary instrument which merely appoints an executor or revokes or revises another will.

9-1-5. Petition for Testacy Proceeding.

When any member of the tribe dies leaving property subject to the jurisdiction of the Northern Cheyenne Court, any person claiming to be an heir or devisee of the decedent, or the tribe itself, may file a petition in the court for the purposes of:

- A. Invoking testacy proceedings to determine intestacy of the decedent's estate, or to establish the validity of the decedent's will; and
- B. Commencement of all necessary determinations resulting in the settlement of the decedent's estate, including petitions and appointment of special administrator, guardians, or personal representative.

9-1-6. Public Notice of Hearing.

Within ten (10) working days after the Petition for Testacy proceedings is filed, the Clerk of Court shall give notice of the date, time, and place of the hearing, and the business to be conducted in accordance with the Northern Cheyenne Civil Procedure Code.

9-1-7. Service of Notice on Interested Parties.

A copy of the notice of Hearing shall be served at least ten (10) days before the date of hearing on each known claimant, presumptive heir, and other interested parties in the manner provided for in the Northern Cheyenne Civil Procedure Code.

9-1-8. Proof of Service of Notice of Hearing.

Proof of service required in Section 9-1-7 shall be filed by the Clerk of Court. Proof of service shall comply with the requirements set forth in the Northern Cheyenne Civil Procedure Code.

9-1-9. Waiver of Notice.

A person, including a guardian, conservator, or other fiduciary, may waive notice by a writing signed by him, or his attorney, and filed with the Clerk of Court.

9-1-10. When Orders or Notice Binding One Binds Another-Representation.

- A. In formal proceedings involving estates of decedents, minors, protected persons, incapacitated persons, unborn or unascertained persons are bound by orders of the Court so long as notice is properly given to:
1. Personal representative;
 2. A person with identical interests;
 3. A parent of a minor; or
 4. Guardian or other representative of a ward.
- B. Subsection (A) applies only to the extent that there is no conflict of interest between the person receiving orders or notice and the person bound by the order or notice.

9-1-11. Effect of Divorce, Annulment, or Separation Decree.

- A. A person who is divorced from the decedent or whose marriage to the decedent has been annulled is not a surviving spouse unless by virtue of a subsequent marriage he is married to the decedent at the time of death. A decree of separation which does not terminate the status of husband and wife is not a divorce for purposes of this section.
- B. The following persons are estopped from claiming a marriage to a decedent:

1. A person who obtains or consents to a final decree or judgment of divorce from the decedent or an annulment of their marriage, which decree or judgment is recognized as valid, unless they subsequently participate in a marriage ceremony purporting to marry each to the other or subsequently live together as man and wife;
2. A person who, following a decree or judgment of divorce or annulment obtained by the decedent, participates in a marriage ceremony with a third person; or
3. A person who was a party to a valid proceeding concluded by an order purporting to terminate all marital property rights.

9-1-12. Homicide - Effect on Intestate Succession, Wills, Joint Assets, Life Insurance, and Beneficiary Designations.

- A. A surviving spouse, heir, devisee, or creditor who purposely and knowingly kills the decedent is not entitled to any benefits under the will or under this chapter, and the estate of the decedent passes as if the killer had predeceased the decedent. Property appointed by the will of the decedent to or for the benefit of the killer passes as if the killer had predeceased the decedent.
- B. Any joint tenant who feloniously and intentionally kills another joint tenant thereby effects a severance of the interest of the decedent so that the share of the decedent passes as his property and the killer has no rights by survivorship. This provision applies to joint tenancies in real and personal property, joint accounts in banks, savings and loan associations, credit unions, and other institutions, and any other form of co-ownership with survivorship incidents.
- C. A named beneficiary of a bond, life insurance policy, or other contractual arrangement who feloniously and intentionally kills the principal obligee or the person upon whose life the policy is issued is not entitled to any benefit under the bond, policy, or other contractual arrangement, and it becomes payable as though the killer had predeceased the decedent.
- D. Any other acquisition of property or interest by the killer shall be treated in accordance with the principles of this section.
- E. A final judgment of conviction of felonious and intentional killing is conclusive for purposes of this section. In the absence of a conviction of felonious and intentional killing, the court may determine by a preponderance of evidence whether the killing was felonious and intentional for purposes of this section.

- F. This section does not affect the rights of any person who, before rights under this section have been adjudicated, purchases from the killer for value and without notice property which the killer would have acquired except for this section, but the killer is liable for the amount of the proceeds or the value of the property. Any insurance company, bank, or other obligor making payment according to the terms of its policy or obligation is not liable by reason of this section unless prior to payment it has received at its home office or principal address written notice of a claim under this section.

9-1-13. Duty and Liability of Will Custodian.

Every custodian of a will must deliver the will to the Tribal Court or to a personal representative named in the will within twenty (20) days after receipt of information that the maker of the will has died. Any such custodian who fails to do so may be liable for monetary damages sustained by a person injured as a result of such failure.

9-1-14. Grounds of Will Contest - Hearing.

- A. If anyone appears to contest the will, he must file written grounds or opposition to the probate and serve a copy on the individual petitioning for the probate and other interested parties within thirty (30) days after the admission of the will to probate. Issues which may be considered by the Court are:
1. The competency of the decedent to make the will;
 2. Whether the will resulted from duress, menace, fraud, or undue influence;
 3. Whether the will is legal in form and properly executed; and
 4. Any questions substantially affecting the validity of the will.
- B. A hearing shall be held to resolve a will contest. If the Court decides the will is invalid, the probate will be voided at that time and the personal representative will be relieved of his duties. The personal representative shall not be liable for any act done in good faith previous to such voiding.

9-1-15. Testacy Hearing.

- A. The Court shall determine the validity or invalidity of any purported will(s), and whether or not the decedent's estate or any part of the decedent's estate is an intestate estate.
- B. Based upon this determination, the Court may also make the following appointments so long as all notice requirements are

met indicating such appointments would be considered:

1. Receive petition and/or upon the Court's own motion, appoint a special administrator;
2. Receive petition(s) for appointment of a personal representative to probate a valid will, or administer an interstate estate and make an appointment; and
3. Appoint guardian to represent the interest of a minor, incapacitated, or disabled person who has an interest in the estate.

C. The Court may elect to set a date for another hearing to make any necessary appointments, including those set out in subsection (B).

9-1-16. Exemptions

- A. Certain property shall be exempt from claims of all interested parties including creditors. Exempt property shall be:
 1. The dwelling of the decedent valued up to \$5,000.00; and
 2. Articles protected under the Historical Protection ordinance at the time of death of the decedent.
- B. Nothing in this exemption shall be interpreted to affect the claims of secured creditors.

9-1-17 Rights of Adopted Child

Except as otherwise provided in a decree of adoption, a tribal member adopted by someone not a tribal member, retains all inheritance rights derived from his biological parents.

II. INTESTATE SUCCESSION

9-2-1. Intestate Estate.

Any part of the estate of decedent not effectively disposed of by his will passes as prescribed in the following sections.

9-2-2. Succession Without Probate.

Absent creditor claims, real property or contested cases, the title of the decedent's property shall automatically vest in the person who has possession.

9-2-3. Who May Initiate Probate Proceedings.

Any person claiming interest in the decedent's property may file a

petition in the court for the purpose of settling the decedent's estate. Persons claiming interest include creditors and persons not in possession of claimed property.

9-2-4. Priority of Settlement.

In settling the decedent's estate, the court shall first pay creditor claims subject to the exempt property provisions.

9-2-5. Order of Succession.

The court will determine, using the intentions of the decedent as the guide, what portion of decedent's estate each claimant, other than a creditor, should have. The court will also consider the needs of those dependent upon the decedent. The court may refer to Montana Code Annotated 72-2-201 through 72-2-212 for guidance.

9-2-6. Intentions of Decedent.

The intentions of the decedent will be determined from testimony of people who knew the decedent.

III. PROBATE

9-3-1. Who May Make a Will.

Any person eighteen (18) or more years of age who is of sound mind may make a will.

9-3-2. Written Instruments - Wills.

- A. When any member of the Northern Cheyenne Tribe dies leaving a will disposing of property, other than allotment or other trust property subject to the jurisdiction of the United States, the Northern Cheyenne Court shall:
 1. Give notice and full opportunity to appear in court to all interested parties at a hearing petitioned under 9-1-5;
 2. Determine the validity or invalidity of the will;
 3. Resolve which will is controlling when more than one will is presented for probate and a conflict results.
- B. If the Court finds there is a valid will, distribution of the decedent's property shall comply with the terms of the will under the Probate Section of this Code.
- C. If the Court finds the will invalid, determination of heirs and distribution will proceed under the Intestate Succession Section of this Code.

9-3-3. Execution of a Will - Validity.

Except as provided for holographic wills, and writings within 9-3-4, every will shall be in writing signed by the testator or in the testator's name by some other person in the testator's presence and by his direction and shall be signed by at least two persons each of whom witnessed either the signing or the testator's acknowledgement of the signature of the will.

9-3-4. Holograph Will.

- A. A will which does not comply with 9-3-3 is valid as a holographic will, whether or not witnessed, if the signature and material provisions are in the handwriting of the testator.
- B. A holographic will may be valid even if immaterial parts or introductory wording are printed, typed, or stamped so long as the printed, typed or stamped portion could be deleted and the handwritten portion would still evidence the testator's intent in devising his property.

9-3-5. Self-Proved Will.

- A. Any will may be simultaneously executed, attested, and made self-proved by acknowledgement thereof by the testator and affidavits of the witnesses, each made before an officer authorized to administer oaths under this Code and evidenced by the officer's certificate, under official seal, in substantially the following form:

I, _____, the testator, sign my name to this instrument this _____ day of _____, 19____, being first duly sworn, and do hereby declare to the undersigned authority that I sign and execute as my last will and that I sign it willingly (or willingly direct another to sign for me), that I execute it as my free and voluntary act for the purposes therein expressed, and that I am 18 years of age or older, of sound mind, and under no constraint or undue influence.

Testator

We, _____, _____, the witnesses, sign our names to this instrument, being first duly sworn, and do hereby declare to the undersigned authority that the testator signed and executes this instrument as his last will and that he signs it willingly (or willingly directs another to sign for him), and that each of us, in the presence and hearing of the testator, hereby signs this will as witness to the testator's signing, and that to the best of our

knowledge the testator is 18 years of age or older, of sound mind, and under no constraint or undue influence.

Witness

Witness

NORTHERN CHEYENNE INDIAN RESERVATION

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses, this _____ day of _____, 19 ____.

(Signed) _____
(Title)

- B. An attested will may at any time subsequent to its execution be made self-proved by the acknowledgement thereof by the testator and the affidavits of the witnesses, each made before an officer authorized to administer oaths under this Code where the acknowledgement occurs and is evidenced by the officer's certificate, under the official seal, attached or annexed to the will in substantially the following form:

NORTHERN CHEYENNE INDIAN RESERVATION

We, _____, _____, and _____, the testator and the witnesses, respectively, whose names are signed to the attached or foregoing instrument, being first duly sworn, do hereby declare to the undersigned authority that the testator signed and executed the instrument as his last will and that he signed willingly or directed another to sign for him and that he executed it as his free and voluntary act for the purposes therein expressed and that each of the witnesses, in the presence and hearing of the testator, signed the will as witnesses and that to the best of his knowledge the testator was at that time 18 or more years of age, of sound mind, and under no constraint or undue influence.

Testator

Witness

Witness

Subscribed, sworn to, and acknowledged before me by _____, the testator, and subscribed and sworn to before me by _____ and _____, witnesses this _____ day of _____, 19____.

(Signed) _____
(SEAL) (Title)

9-3-6. Who May Witness - Effect of Witness by Beneficiary.

- A. Any person generally competent to be a witness may act as a witness to a will.
- B. A will is not invalid because the will is signed by an interested witness.
- C. All beneficial devises made in any will to a subscribing witness thereto are void unless there are two other competent subscribing witnesses to the same, but a mere claim on the estate of the testator does not prevent his creditors from being competent witnesses to his will.
- D. If a witness to whom any beneficial devise void under Subsection (C) is made would have been entitled to any share of the estate of the testator if the testator had died intestate, such witness succeeds to so much of the share as would be distributed to him under intestate succession, not exceeding the devise or bequest made to him in the will.

9-3-7. Incorporation by Reference.

Any writing in existence when a will is executed may be incorporated by reference if the language of the will manifests this intent and describes the writing sufficiently to permit its identification.

9-3-8. Separate Writing Identifying Disposition of Tangible Personal Property.

- A. Whether or not the provisions relating to holographic wills apply, a will may refer to a written statement or list to dispose of items of tangible personal property not otherwise specifically disposed of by the will, other than money, evidences of indebtedness, documents of title, and securities and property used in trade or business.
- B. To be admissible under this section as evidence of the intended disposition, the writing must either be in the handwriting of the testator or be signed by him and must describe the items and the devisees with reasonable certainty.
- C. The writing may be:

1. Referred to as one to be in existence at the time of the testator's death;
2. Prepared before or after the execution of the will;
3. Altered by the testator after its preparation; or
4. A writing which has no significance apart from its effect upon the dispositions made by the will.

9-3-9. Revocation by Writing or Act.

A will or any part thereof is revoked:

- A. By a subsequent will which revokes the prior will or part expressly or by inconsistency; or
- B. By being burned, torn, canceled, obliterated, or destroyed with the intent and for the purpose of revoking it by the testator or by another person in his presence and by his direction.

9-3-10. Omitted Spouse.

If a testator fails to provide by will for his surviving spouse who married the testator after the execution of the will, the omitted spouse shall receive the same share of the estate he would have received if the decedent left no will unless it appears from the will that the omission was intentional or the testator provided for the spouse by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

9-3-11. Pretermitted Child.

- A. If a testator fails to provide in his will for any of his children born or adopted after the execution of his will, the omitted child receives a share in the estate equal in value to that which he would have received if the testator had died intestate unless:
 1. It appears from the will that the omission was intentional;
 2. When the will was executed the testator had one or more children and devised substantially all his estate to the other parent of the omitted child, or
 3. The testator provided for the child by transfer outside the will and the intent that the transfer be in lieu of a testamentary provision is shown by statements of the testator or from the amount of the transfer or other evidence.

- B. If at the time of execution of the will the testator fails to provide in his will for a living child solely because he believes the child to be dead, the child receives a share in the estate equal in value to that which he would have received if the testator had died intestate.

IV. APPOINTMENT OF PERSONAL REPRESENTATIVE, SPECIAL ADMINISTRATOR - DUTIES

9-4-1. Appointments.

- A. Upon notice of a decedent's death whose estate will be settled under the jurisdiction of the Northern Cheyenne Court, the Court may, upon petition or by its own motion, appoint a Special Administrator who shall serve until a Personal Representative is appointed. If a Personal Representative is not petitioned for and appointed, the Special Administrator may be named as a Personal Representative until the decedent's estate is settled.
- B. A Personal Representative may be petitioned for when the decedent died leaving a valid will, or when an intestate estate is involved.

9-4-2. Special Administrator.

When any member of the Northern Cheyenne Tribe or any other person domiciled on the Northern Cheyenne Reservation dies, owning at the time of his death property other than allotment or other trust property subject to the jurisdiction of the United States, the Court may, on its own motion, at the request of any member of the Northern Cheyenne Tribe named in the decedent's will, or any other interested party, appoint a Special Administrator.

9-4-3. Qualification of Special Administrator.

The Special Administrator shall be any legally competent adult tribal member.

9-4-4. Purpose of Appointing Special Administrator.

The purpose of appointing a temporary Special Administrator is to take charge of the decedent's estate immediately so that the property will not be lost, wasted or depreciated in value.

9-4-5. Personal Representative.

When any resident of the Northern Cheyenne Reservation dies leaving a valid will, or an intestate estate, with or without naming a personal representative, and owning at the time of death property other than allotment or other trust property subject to the jurisdiction of the United

States, the Court shall, at the request of any member of the Northern Cheyenne Tribe, or any other interested party, appoint a Personal Representative.

9-4-6. Qualifications of Personal Representative.

The Personal Representative shall be a legally competent adult.

9-4-7. Purpose of Personal Representative.

The purpose of appointing a Personal Representative is to have one person with the responsibility and authority to settle the decedent's estate in accord with the decedent's will and/or applicable provisions of this Code.

9-4-8. Petition for Appointment of Special Administrator, Personal Representative.

- in
- A. A petition for appointment of a Special Administrator must be writing, signed by the applicant, state facts essential to give jurisdiction of the case, and when known to the applicant, the names, ages, and addresses of the heirs of the decedent and the names and addresses of other interested parties, and filed with the Clerk of Court.
 - B. In addition to the requirements of subsection (A), an applicant for Personal Representative shall also state his knowledge or belief that the decedent died intestate or left a valid will, give the reasons for his knowledge or belief, and state which priority categories under 9-4-9 he asserts as authorizing his appointment.

9-4-9. Priorities in Appointment of Special Administrator, Personal Representative.

- A. Special Administrator. Priority shall be given by the Court to a tribal member who is not related to the decedent, and is not an heir or named beneficiary of the decedent.
- B. Personal Representative. Priorities in the Court's appointment of a qualified Personal Representative are:
 - I. The person named in the decedent's will as Personal Representative unless:
 - a. Another person petitions the Court showing the named Personal Representative is incompetent or otherwise disabled; or
 - b. The named Personal Representative refused to undertake the duties of Personal Representative in settlement of the decedent's estate.

2. If under subsection (B) a named Personal Representative is not available the priorities of appointment are:
 - a. The surviving spouse or his designee;
 - b. A lineal descendent;
 - c. A parent;
 - d. A collateral descendent;
 - e. A creditor in respect to property in the decedent's estate which is under the jurisdiction of the Tribal Court; or
 - f. Others.

9-4-10. Duties of Special Administrator, Personal Representative.

- A. The duties of Special Administrator and Personal Representative are:
 1. Inventory and Appraisal:
 - a. Within thirty (30) days of appointment, make and return upon oath to the Court, a complete inventory of all of the property of the estate under the jurisdiction of the Court, including any claims against the property, and an appraisal of the value of each item listed in the inventory.
 - b. The Special Administrator or Personal Representative may request the Court to appoint an appraiser.
 - c. If, after the filing of the inventory and appraisal, any property is found which was not included in the previous inventory and appraisal, the property shall be appraised and added to the inventory and appraisal required under subsection (A)(1) within ten (10) days of its discovery.
 2. A Special Administrator, after an inventory and appraisal is completed and accepted by the Court, shall deliver any property of the estate in his possession and a copy of the inventory and appraisal accepted by the Court to a Court-Appointed Personal Representative. Except, in the event that the Court reappoints the temporary Special Administrator as a Personal Representative, he shall fulfill the duties of that office until discharged by the Court in the manner provided for in this Code

B. Duties of Personal Representative:

1. Receive any property and/or inventory and appraisal of the estate from a Special Administrator and issue him a receipt.
2. Bond: The Court may appoint without a bond, but may later require the Administrator or Representative to file a bond in the amount deemed reasonable in relation to the assets of the estate. When such a bond is required, it shall be obtained through a surety company, or two reliable members of the tribe who reside within the boundaries of the Northern Cheyenne Reservation, who execute an agreement in writing which is approved and accepted by the Court and filed with the Clerk of Court.
3. Notice to Creditors: Immediately after appointment, the appointee shall cause to be posted in public places in three (3) communities on the Northern Cheyenne Reservation, and published in the tribal newspaper, or if there is none, in a newspaper of general circulation on or adjacent to the Northern Cheyenne Reservation, a notice that he has been appointed as the Special Administrator or Personal Representative in either an intestate or probate proceeding. Such notice shall require all creditors and all persons having claims against the deceased or the estate to serve such claims upon the person giving notice and to also file them with the Clerk of Court within sixty (60) days from the publishing of the notice. The notice shall be posted for a period of four (4) consecutive weeks, such posting and publishing to be concurrent. A copy of the notice posted and proof of publication shall be filed with the Clerk of Court.
4. Notice of Acceptance or Rejection of Claim:
 - a. The appointee shall examine each claim filed and notify the claimant in writing whether he will recommend its acceptance or rejection within thirty (30) days of the expiration of the period for filing of claims against the estate. If the claim is rejected or not approved within thirty (30) days after the expiration of the period for filing claims, the claimant may begin legal action to establish his claims. Such action must be commenced within thirty (30) days of notice of rejection or within sixty (60) days after filing the claim.
 - b. All claims shall be preferred in the following order:
 - (1) Expenses of administration;

- (2) Expenses of last illness and burial;
- (3) Any amount due the Northern Cheyenne Tribe;
- (4) All other claims.

c. The appointee shall file copies of the notices of rejection or acceptance of claims with the Clerk of Court.

5. **Petition for Determination of Takers and Distribution of Estate:** As soon as reasonably possible after the inventory, appraisal, and acceptance or rejection of claims are computed, the appointee shall petition the Court for the determination of takers and distribution of the estate. This petition shall include the names of all claimants entitled to payment, the names of claimants whose claims were rejected, the names of each heir or devisee and, a statement of their share of the estate, and such other information as may be necessary to assist the Court in the distribution of the estate.
6. **Final Report:** Within thirty (30) days after the Court's determination of takers and distribution of the estate, the appointee shall file his report with the Court showing he has fully discharged his duties and shall file receipts or other proof of delivery of all property of the decedent and the making of all payments ordered by the Court. This report constitutes the appointee's request for discharge upon settlement of the estate.
7. **Other Duties Assigned by the Court:** At the time of appointment of a Special Administrator or Personal Representative, the Court may assign duties in addition to those listed in this Code. Such additional duties shall be reasonable in light of the complexity of the particular estate before the Court. The additional duties and the reason(s) for the assignment of additional duties will be noted in the Court's Order of Appointment.

9-4-11. Distribution, Settlement, Discharge.

Upon receipt of the Special Administrator's or Personal Representative's final report and the Court's finding that all duties have been faithfully completed, the Court shall enter an order closing the estate and discharging the Special Administrator or Personal Representative.

9-4-12. Mismanagement - Limitations on Actions.

- A. A Special Administrator or Personal Representative and the surety on his bond may be liable to any person who suffers

monetary loss or damage as a result of mismanagement of the estate.

- B. An action under Subsection (A) must be commenced within two (2) years from the date of the final order closing the estate.

9-4-13. Compensation.

A Special Administrator, Personal Representative, or Appraiser may be compensated from the assets and income of the estate in an amount determined by the Court as being fair and reasonable taking into consideration the complexities of the settlement of the estate and the value of the estate.